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Witkin Summary of California Law, Tenth Edition
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CHAPTER XII - Partnership

Witkin Summary of California Law

I. INTRODUCTION

A. Statutes Affecting Partnerships.

9 *Witkin Sum. Cal. Law Partn* § 1

[§ 1] Statutes Affecting Partnerships.

The primary statutes governing partnerships are the following:

- (1) Uniform Partnership Act of 1994. (*Corp.C. 16100* et seq.; *infra*, §15 et seq.)
- (2) Revised Limited Partnership Act. (*Corp.C. 15611* et seq.; *infra*, §62 et seq.)
- (3) Limited Liability Partnerships Statutes. (*Corp.C. 16951* et seq.; *infra*, §122 et seq.).
- (4) Limited Liability Company Act. (*Corp.C. 17000* et seq.; *infra*, §136 et seq.).

Other significant statutes affecting the business activities of partnerships include the following:

- (1) *The Corporate Securities Law*. (*Corp.C. 25019*; see 9 *Summary* (10th), *Corporations*, §401 et seq.)
- (2) *The Bulk Sales Law*. (U.C.C. 6101 et seq.; see 4 *Summary* (10th), *Sales*, §219 et seq.)
- (3) *The Uniform Fraudulent Transfer Act*. (C.C. 3439 et seq.; see 8 *Cal. Proc.* (4th), *Enforcement of Judgment*, §460 et seq.)
- (4) *The Bankruptcy Act*. (11 U.S.C., §101 et seq.; see 9 *Am.Jur.2d* (1991 ed.), *Bankruptcy* §1 et seq.; 8 *Cal. Proc.* (4th), *Enforcement of Judgment*, §486 et seq.)
- (5) The statute regulating a *contract not to carry on a business*. (*B. & P.C. 16602*; see 1 *Summary* (10th), *Contracts*, §585.)
- (6) The statute requiring a foreign partnership doing business within California to designate an *agent for service of process* and permitting service on the Secretary of State where no agent is so designated. (*Corp.C. 15800*; see 3 *Cal. Proc.* (4th), *Actions*, §972.)
- (7) *Taxing statutes*. (See C.E.B., *Advising California Partnerships* 3d, Chaps. 7, 8, 9; 33 *Am.Jur.2d* (2004 ed.), *Federal Taxation* §2000 et seq.; on sales and use taxes, see 9 *Summary* (10th), *Taxation*, §344 et seq.; on local license taxes, see 9 *Summary* (10th), *Taxation*, §309 et seq.)

(8) *The sue and be sued statute.* (C.C.P. 369.5; see 4 Cal. Proc. (4th), Pleading, §82.)

(9) The statute authorizing *charging orders against partners' interests.* (Corp.C. 16307; see 8 Cal. Proc., (4th), Enforcement of Judgment, §287; infra, §40.)

(10) *Mining partnership statutes.* (Pub.Res.C. 3940 et seq.) (On powers, duties, and responsibilities of managing partner of mining partnership, see 24 A.L.R. 2d 1359.)

(11) *Fictitious business name statutes.* (B. & P.C. 17900 et seq.; infra, §3.)

SUPPLEMENT: [This section is current through the latest supplement]

Other significant statutes:

(3) *The Uniform Fraudulent Transfer Act.*

Cross-Reference: 8 Cal. Proc. (5th), Enforcement of Judgment, §488 et seq.

(4) *The Bankruptcy Act.*

Cross-Reference: 8 Cal. Proc. (5th), Enforcement of Judgment, §514 et seq.

(6) *Foreign partnership's agent for service of process:*

Cross-Reference: 3 Cal. Proc. (5th), Actions, §1055.

(8) *The sue and be sued statute.*

Cross-Reference: 4 Cal. Proc. (5th), Pleading, §94.

(9) *Charging orders against partners' interests:*

Cross-Reference: 8 Cal. Proc. (5th), Enforcement of Judgment, §296.



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B. Fictitious Business Name.

1. In General.

9 *Witkin Sum. Cal. Law Partn* § 2

[§ 2] In General.

(1) *Statutory Requirement. B. & P.C. 17900* et seq. govern fictitious business name statements. Every person who regularly transacts business in California for profit under a fictitious business name must file and maintain a current fictitious business name statement. (*B. & P.C. 17910*.) The purpose of the requirement is to make a public record of the individual persons for the benefit of those who deal with them. (*Andrews v. Glick* (1928) 205 C. 699, 701, 272 P. 587; *Bank of America v. National Funding Corp.* (1941) 45 C.A.2d 320, 327, 114 P.2d 49; *Hixson v. Boren* (1956) 144 C.A.2d 547, 553, 301 P.2d 615; see C.E.B., *Advising California Partnerships* 3d, §10.24 et seq.; 57 *Am.Jur.2d* (1988 ed.), *Name* §§66, 67; 56 *Proof of Facts* 3d 103 [proof of liability for failure to acquire fictitious name certification].)

The penalty for failure to comply is merely a prohibition against maintaining an action on a transaction made in the fictitious name, until compliance (*infra*, §8); but making a false statement is a misdemeanor punishable by a maximum fine of \$ 1,000 (*B. & P.C. 17930*).

Filing the statement does not, of itself, authorize the use of the fictitious name in California in violation of the rights of another under California law, federal trademark law, or the common law, including rights in a trade name. (*B. & P.C. 14418*.)

(2) *Definitions.* "Person" includes individuals, limited liability companies, partnerships and other associations, and corporations. (*B. & P.C. 17902*.) "General partner" includes a person interested in the business of an unincorporated association "whose liability with respect to the business is substantially the same as that of a general partner." (*B. & P.C. 17901*.) A "registrant" is a person who is filing or has filed a fictitious business name statement. (*B. & P.C. 17903*.) (For definition of "fictitious business name," see *infra*, §3.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Statutory Requirement. B. & P.C. 17900(a)* was added in 2007 to clarify that the purpose of *B. & P.C. 17900* "is to protect those dealing with individuals or partnerships doing business under fictitious names, and it is not intended to confer any right or advantage on individuals or firms that fail to comply with the law. The filing of a fictitious business name certificate is designed to make available to the public the identities of persons doing business under the fictitious name." (*B. & P.C. 17900(a)(1)*.) Nothing in *B. & P.C. 17900* "shall be construed to impair or impede the rebuttable presumption" in *B. & P.C. 14411* that the registrant of the name has the exclusive right to use it as well as any

confusingly similar name. (*B. & P.C. 17900(a)(2).*)

(2) *Definitions.* *B. & P.C. 17903* was amended in 2007 to provide that a "registrant" is a person or entity who is filing or has filed a fictitious business name statement, and is the legal owner of the business.



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2. Fictitious Name Defined.

9 *Witkin Sum. Cal. Law Partn* § 3

[§ 3] Fictitious Name Defined.

(1) *Partnership or Unincorporated Association.* In the case of a partnership or other association other than a qualifying limited partnership, a foreign limited partnership, or a registered domestic or foreign limited liability partnership, a name is fictitious if (a) it does not include the surname of each general partner, or (b) it "suggests the existence of additional owners." (*B. & P.C. 17900(a)(2)*.) In the case of a qualifying limited partnership or foreign limited partnership, a name other than the name of the limited partnership on file constitutes a fictitious name. (*B. & P.C. 17900(a)(4)*.)

(2) *Corporation.* A name is fictitious if it is other than the corporate name stated in the articles of incorporation. (*B. & P.C. 17900(a)(3)*.) Only a properly organized corporation may adopt a fictitious business name that includes the words "Corporation," "Corp.," "Incorporated," or "Inc." (*B. & P.C. 17910.5(a)*.) Hence, county clerks are prohibited from accepting for filing a fictitious business name that violates *B. & P.C. 17910.5(a)*. (*B. & P.C. 17910.5(c)*.)

(3) *Limited Liability Company.* For limited liability companies, a factious name includes the following: (a) In the case of a domestic limited liability company, a name other than the name stated in the company's articles of organization; (b) for a foreign limited liability company, a name other than the name listed on the application on file with the Secretary of State. (*B. & P.C. 17900(a)(5)*.) Only lawfully organized limited liability companies may adopt a fictitious name that includes "Limited Liability Company," "LLC," or "LC." (*B. & P.C. 17910.5(b)*.) Filings violating the restriction will be rejected. (*B. & P.C. 17901(c)*.)

(4) *Individual.* A name is fictitious if (a) it does not include the surname of the individual, or (b) it "suggests the existence of additional owners." (*B. & P.C. 17900(a)(1)*.) A name that suggests the existence of additional owners may include words such as "Company," "& Company," "& Son," "& Sons," "& Associates," and "Brothers," or similar designations. (*B. & P.C. 17900(b)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Partnership or Unincorporated Association.* In 2007, *B. & P.C. 17900(a)(2)* and *17900(a)(4)* were relettered *B. & P.C. 17900(b)(2)* and *17900(b)(4)*, respectively. (2) *Corporation.* *B. & P.C. 17900(a)(3)* was relettered *B. & P.C. 17900(b)(3)* in 2007.

(3) *Limited Liability Company*. *B. & P.C. 17900(a)(5)* was relettered *B. & P.C. 17900(b)(5)* in 2007, and amended to provide that a fictitious business name for a *foreign* limited liability company is any name other than the name on file with the Secretary of State in accordance with *B. & P.C. 17910.5(b)*.

(4) *Individual*. In 2007, *B. & P.C. 17900(a)(1)* and *17900(b)* were relettered *B. & P.C. 17900(b)(1)* and *17900(c)*, respectively.



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B. Fictitious Business Name.

3. Coverage and Exclusions.

9 *Witkin Sum. Cal. Law Partn* § 4

[§ 4] Coverage and Exclusions.

(1) *Mandatory Filing*. The basic application of the statute is to "[e]very person who regularly transacts business in this state for profit under a fictitious business name." (*B. & P.C. 17910*; see Law Rev. Com. Comment; C.E.B., *Advising California Partnerships* 3d, §10.24; *19 Hastings L. J. 1354*.) *B. & P.C. 17919* permits filing by (a) trustees in bankruptcy, (b) conservators, executors, and administrators, and (c) assignees and purchasers of businesses, whenever filing is necessary to avoid the sanction for noncompliance (*infra*, §8). (On statutes restricting use of fictitious names and mandating filing under specified conditions, see *Fin.C. 12300.2* [check sellers]; *B. & P.C. 7532* [private investigators, private patrol operators, protection dog operators]; *B. & P.C. 10159.5* [real estate salesmen and brokers]; *B. & P.C. 2930.5* [psychologists].)

(2) *Exclusions*. The filing provisions do not apply to the following:

(a) *Nonprofit corporations and associations*, such as churches, labor unions, fraternal and charitable organizations, nonprofit hospitals, and similar organizations. (*B. & P.C. 17911*.)

(b) A *real estate investment trust*, as defined in *Corp.C. 23000*, that has a statement on file under *Corp.C. 18200* designating an agent for service of process, or has qualified to do business under *Corp.C. 2100* et seq. (foreign corporations; *infra*, §101 et seq.). (*B. & P.C. 17912*.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Exclusions*.

(a) *Nonprofit corporations and associations*: *B. & P.C. 17911* was amended in 2007 to delete the reference to "nonprofit hospitals" and to refer instead to "foundations."



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B. Fictitious Business Name.

4. Procedure.

a. Fictitious Name Statement.

9 *Witkin Sum. Cal. Law Partn* § 5

[§ 5] Fictitious Name Statement.

(1) *Content and Form.* *B. & P.C. 17913* specifies the content and form of the fictitious business statement. Required information includes the street address of the principal place of business in California, the names and residence addresses of each general partner or trustee of a business trust, the date on which the registrant first began transacting business under the fictitious name, and a statement of the form (e.g., individual, partnership, etc.) under which the business is conducted. If the registrant is a limited liability company, the form requires the name of the LLC as stated in its articles of organization; the state of organization should also be included. Limited partners need not be listed. (See Law Rev. Com. Comment to *B. & P.C. 17913*; *B. & P.C. 17924* [forms supplied by clerk]; C.E.B., *Advising California Partnerships* 3d, §10.26; Cal Transactions Forms, 4 Business Entities, Chap. 17 et seq.) The statement must also contain a notice of its expiration date. (*B. & P.C. 17913(a)*.) (For statutory form, see *B. & P.C. 17913(a)*.)

(2) *Declaration.* The registrant must declare that all of the information in the statement is true and correct. Falsely declaring as true material matters the registrant knows to be false is a misdemeanor. (*B. & P.C. 17913(c)*.)

(3) *Execution.* Execution by an agent is not permitted. The statement must be signed by the individual registrant, by a general partner, by a trustee of a business trust, or by an officer of the corporation. If the registrant is a limited liability company, the statement must be signed by a manager or officer of the company. (*B. & P.C. 17914*, and Law Rev. Com. Comment.) (On penalty for executing false statement, see *B. & P.C. 17930*.)

(4) *Filing.* The statement must be filed within 40 days from the time that business transactions commence. (*B. & P.C. 17910(a)*.) It is filed with the clerk of the county in which the principal place of business is located (or in Sacramento County if there is no principal place of business in California). (*B. & P.C. 17915*.) Presentation of the statement and one copy, tender of the filing fee, and acceptance of the statement by the county clerk constitute filing. (*B. & P.C. 17916*.) (On filing after bankruptcy, death, or sale, see *B. & P.C. 17919*; on filing fees, see *B. & P.C. 17929*; on indices and retrieval of information, see *B. & P.C. 17925* et seq.)

(5) *Publication.* Four publications of the statement must be made within 30 days after filing. (*B. & P.C. 17917(a)*, (b); *Govt.C. 6064*.) An affidavit showing the publication must be filed within 30 days after completion of the publication. (*B. & P.C. 17917(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Content and Form.* *B. & P.C. 17913* was amended in 2007 to require specified information when the registrants are any of the following: (a) husband and wife, (b) an unincorporated association other than a partnership, (c) a limited partnership, (d) registered domestic partners, or (e) a limited liability partnership. (*B. & P.C. 17913(b).*)

(3) *Execution.* *B. & P.C. 17914* was subdivided and amended in 2007 to require signature of the statement as follows:

(a) If the registrant is an individual, the individual must sign. (*B. & P.C. 17914(a).*)

(b) If the registrants are husband and wife, both must sign. (*B. & P.C. 17914(b).*)

(c) If the registrant is a general partnership, limited partnership, limited liability partnership, copartnership, joint venture, or unincorporated association other than a partnership, the general partner must sign. (*B. & P.C. 17914(c).*)

(d) If the registrant is a limited liability company, a manager or officer must sign. (*B. & P.C. 17914(d).*)

(e) If the registrant is a trust, a trustee must sign. (*B. & P.C. 17914(e).*)

(f) If the registrant is a corporation, an officer must sign. (*B. & P.C. 17914(f).*)

(g) If the registrant is a state or local registered domestic partnership, one of the domestic partners must sign. (*B. & P.C. 17914(g).*) (4) *Filing.* *B. & P.C. 17915* was amended in 2007 to provide that nothing in *B. & P.C. 17900* et seq. precludes a person from filing a fictitious name statement in a county other than that where the principal place of business is located, as long as the requirements of *B. & P.C. 17915* are met.

(5) *Publication.* *B. & P.C. 17917(a)* was amended in 2007 to provide that publication must be in a newspaper of general circulation in either (a) the county where the fictitious business name statement was filed, or, if that county has no such newspaper, (b) an adjoining county.

B. & P.C. 17917(d) was amended in 2007 to provide that the affidavit showing publication must be filed with the county clerk where the fictitious business name statement was filed.



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4. Procedure.

b. Expiration and Change in Facts.

9 Witkin Sum. Cal. Law Partn § 6

[§ 6] Expiration and Change in Facts.

(1) *Expiration and Renewal.* The statement expires 5 years from the date it was filed (*B. & P.C. 17920(a)*), and a new statement must be filed in accordance with *B. & P.C. 17913* (supra, §5) before the expiration (*B. & P.C. 17910(b)*). The new statement need not be published if (a) there was no change in the required information, and (b) the new statement is filed within 40 days of expiration. (*B. & P.C. 17917(c)*.)

(2) *New Statement After Change in Facts.* The statement also expires 40 days after a change in the facts set forth in the statement, except a change in the residence address of an individual, general partner, or trustee. (*B. & P.C. 17920(b)*; see Law Rev. Com. Comment.) A corrected statement must be refiled and republished. (See *B. & P.C. 17917(a), (c)*.)

Withdrawal of a general partner does not cause expiration if a statement of withdrawal is filed and published. (*B. & P.C. 17923(d)*, infra, §7.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Expiration and Renewal.* *B. & P.C. 17910(b)* was amended in 2007 to delete the phrase "on or before the date of expiration of the statement on file."

(2) *New Statement After Change in Facts.* *B. & P.C. 17910(b)* was amended in 2007 to provide that a new statement must be filed after a change in the facts in accordance with *B. & P.C. 17920(b)*.



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4. Procedure.

c. Withdrawal and Abandonment.

9 *Witkin Sum. Cal. Law Partn* § 7

[§ 7] Withdrawal and Abandonment.

(1) *Withdrawal of General Partner.* A general partner withdrawing from a partnership may file a *statement of withdrawal* to avoid prejudice to interests caused by the remaining partners' failure to file a new statement. (*B. & P.C. 17923(a)*, and Law Rev. Com. Comment; see *B. & P.C. 17923(b)* [content of statement].) The withdrawal statement must be published in the same manner as the fictitious name statement. (*B. & P.C. 17923(c)*; *supra*, §5.)

Withdrawal of a general partner does not cause the fictitious business name statement to expire if there is compliance with all provisions of *B. & P.C. 17923*. (*B. & P.C. 17923(d)*.)

(2) *Abandonment of Fictitious Name.* A fictitious business name statement expires when the registrant files a *statement of abandonment*. (*B. & P.C. 17920(c)*.) This statement may be filed by any person who has filed a fictitious business name statement and has ceased to transact business in California under the fictitious name. (*B. & P.C. 17922(a)*.) It is executed, filed, and published in the same manner as the fictitious business name statement. (*B. & P.C. 17922(a)*; see *B. & P.C. 17922(b)* [content of statement]; C.E.B., *Advising California Partnerships* 3d, §§10.32, 10.45.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Abandonment of Fictitious Name.* *B. & P.C. 17922(a)* was amended in 2007 to require that the person who filed the fictitious business name statement file a statement of abandonment when the business ceases operations in California under the fictitious business name that was filed within the previous 5 years.



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B. Fictitious Business Name.

5. Effect of Failure To Comply.

9 *Witkin Sum. Cal. Law Partn* § 8

[§ 8] Effect of Failure To Comply.

The single penalty for failure to comply with the filing requirements is a bar from maintaining an action on contracts made, or transactions had, in the fictitious business name until the statement has been executed, filed, and published. (*B. & P.C. 17918*, and Law Rev. Com. Comment; see *Hixson v. Boren* (1956) 144 C.A.2d 547, 554, 301 P.2d 615 [noncomplying defendant cannot cross-complain]; *Hand Rehabilitation Center v. Work. Comp. App. Bd.* (1995) 34 C.A.4th 1204, 1213, 40 C.R.2d 734 [Workers' Compensation Appeals Board properly rejected rehabilitation center's lien claim on basis of noncompliance with statute; filing claim was "maintaining" action and board was "court" within meaning of statute]; C.E.B., *Advising California Partnerships* 3d, §10.31; 5 *Cal. Proc.* (4th), *Pleading*, §1061.)

This penalty is quite limited in effect:

(1) The partners may enter into contracts and transactions in the fictitious name, but may not maintain actions on them. However, lack of compliance merely *abates the action*, and filing and publication pending the trial is sufficient. (*Rudneck v. Southern Calif. Metal & Rubber Co.* (1920) 184 C. 274, 281, 193 P. 775; *Kadota Fig Assn. of Producers v. Case-Swayne Co.* (1946) 73 C.A.2d 796, 804, 167 P.2d 518 [reversal for failure to allow plaintiff association leave to amend to allege either compliance or exemption from necessity of compliance].) Moreover, if the defense is upheld and the action is abated, the judgment for the defendant is not *res judicata* in a subsequent action on the same cause of action. (*Folden v. Lobrovich* (1957) 153 C.A.2d 32, 34, 314 P.2d 56; see 7 *Cal. Proc.* (4th), *Judgment*, §319.)

(2) The objection must be raised by the defendant or it is waived. (*Bryant v. Wellbanks* (1927) 88 C.A. 144, 152, 263 P. 332; see *Hand Rehabilitation Center v. Work. Comp. App. Bd.*, *supra*, 34 C.A.4th 1215 [where rehabilitation center filed lien claim in workers' compensation proceeding, employer's failure to raise fictitious name issue in first objection letter did not constitute waiver].)

(3) The trial judge has discretion to refuse to permit an amendment to raise this plea. (*Stewart v. San Fernando Refining Co.* (1937) 22 C.A.2d 661, 663, 71 P.2d 1118.)

In *Tyrone v. Kelley* (1973) 9 C.3d 1, 14, 106 C.R. 761, 507 P.2d 65, the amendment was offered during the fourth day of trial. The trial judge reserved his ruling, but on the last day of trial, denied defendants' motion for nonsuit. In upholding this ruling, the court said: "When the plea in abatement is raised for the first time in the midst of the trial, the

policy underlying the fictitious name statute is not the only policy to be considered by the trial judge. The trial judge cannot but be aware that to continue the matter in the midst of trial ... would result in substantial inconvenience to the parties and the court and might involve a substantial waste of our limited judicial resources." (9 C.3d 14.)

(4) Actions may be maintained on torts. (*Ralph v. Lockwood* (1882) 61 C. 155; *Thompson v. Byers* (1931) 116 C.A. 214, 216, 2 P.2d 496.)

(5) The partners may, of course, be sued in the firm name, whether they have filed the certificate or not, if they transact business under that name. (See *C.C.P.* 369.5; *infra*, §40.)

SUPPLEMENT: [This section is current through the latest supplement]

Cross-References:

5 *Cal. Proc.* (5th), *Pleading*, §1135; 7 *Cal. Proc.* (5th), *Judgment*, §376.



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C. Joint Venture.

1. Nature and Distinctions.

9 Witkin Sum. Cal. Law Partn § 9

[§ 9] Nature and Distinctions.

A joint venture (or joint "adventure") resembles a partnership in that its members associate together as coowners of a business enterprise, agreeing to share profits and losses. (*Bank of California v. Connolly* (1973) 36 C.A.3d 350, 364, 371, 111 C.R. 468, citing the text [incidents of partnership and joint venture are the same]; *Stodd v. Goldberger* (1977) 73 C.A.3d 827, 836, 141 C.R. 67 [same]; 12 Proof of Facts 2d 295 [existence of joint venture].)

However, a partnership ordinarily engages in a *continuing business* for an indefinite or fixed period of time, while a joint venture is formed for a *single transaction or series of transactions*, thus being more limited in both scope and duration. (See *Keyes v. Nims* (1919) 43 C.A. 1, 9, 184 P. 695; *Tufts v. Mann* (1931) 116 C.A. 170, 177, 2 P.2d 500; *Parker v. Trefry* (1943) 58 C.A.2d 69, 74, 136 P.2d 55 [agreement between owner of lots and building contractor to build houses for sale and divide profits]; *Martter v. Byers* (1946) 75 C.A.2d 375, 383, 171 P.2d 101; *Nelson v. Abraham* (1947) 29 C.2d 745, 749, 177 P.2d 931; *Fitzgerald v. Provines* (1951) 102 C.A.2d 529, 536, 227 P.2d 860; *Pacific Atlantic Wine v. Duccini* (1952) 111 C.A.2d 957, 964, 245 P.2d 622; *California Home Extension Assn. v. Hilborn* (1953) 115 C.A.2d 634, 637, 252 P.2d 368; *Elias v. Erwin* (1954) 129 C.A.2d 313, 317, 276 P.2d 848; *Lasry v. Lederman* (1957) 147 C.A.2d 480, 485, 305 P.2d 663; *Engineering Service Corp. v. Longridge Inv. Co.* (1957) 153 C.A.2d 404, 408, 314 P.2d 563; *Bariffi v. Longridge Dev. Co.* (1958) 156 C.A.2d 583, 585, 320 P.2d 192; *Nels E. Nelson v. Tarman* (1958) 163 C.A.2d 714, 721, 329 P.2d 953; *Alfinito v. Sater* (1966) 246 C.A.2d 362, 376, 54 C.R. 636 [property rights of members]; *Boyd v. Bevilacqua* (1966) 247 C.A.2d 272, 285, 55 C.R. 610 [joint venture depends on intention of parties; little formality is required]; *Connor v. Great Western Savings & Loan Assn.* (1968) 69 C.2d 850, 863, 73 C.R. 369, 447 P.2d 609, 6 Summary (10th) Torts, §1279 [none found]; *Franco Western Oil Co. v. Fariss* (1968) 259 C.A.2d 325, 344, 66 C.R. 458 [joint venture found despite failure to carry out intent to make operating agreement]; *580 Folsom Associates v. Prometheus Dev. Co.* (1990) 223 C.A.3d 1, 18, 272 C.R. 227 [evidence before trial court established without conflict that there was no oral or written joint venture agreement between parties]; *Scottsdale Ins. Co. v. Essex Ins. Co.* (2002) 98 C.A.4th 86, 91, 119 C.R.2d 62 [agreement between architect/general contractor and owner of real property to build house and share profits when sold was joint venture]; 63 So. Cal. L. Rev. 487 [reviewing law on joint ventures with eye toward future]; Cal. Civil Practice, 2 Business Litigation, §20:1 et seq.; Cal Transactions Forms, 4 Business Entities, Chap. 22; 56 A.L.R.4th 1234 [joint venture's capacity to sue].)

The foregoing distinction is not sharply drawn, for a partnership may be created for a simple and limited activity, while the series of transactions in a joint venture may be of long duration and great complexity. However, the difficulty

of classification raises no serious legal problems, for the *incidents* of both relationships are in all important respects the same, and the courts freely apply the provisions of the Uniform Partnership Act and general partnership law where appropriate. (See *Zeibak v. Nasser* (1938) 12 C.2d 1, 12, 82 P.2d 375; *Milton Kauffman v. Superior Court* (1949) 94 C.A.2d 8, 17, 210 P.2d 88; *Orlopp v. Willardson Co.* (1965) 232 C.A.2d 750, 754, 43 C.R. 125, citing the text; *Weiner v. Fleischman* (1991) 54 C.3d 476, 482, 286 C.R. 40, 816 P.2d 892, *infra*, §10, citing the text; 46 *Am.Jur.2d* (1994 ed.), *Joint Ventures* §4 et seq.) Thus, it is not surprising that a court may find it unnecessary to decide whether the relationship is a partnership or joint venture. (See *Nelson v. Abraham* (1947) 29 C.2d 745, 750, 177 P.2d 931; but see *Hupfeld v. Wadley* (1948) 89 C.A.2d 171, 174, 200 P.2d 564 [complaint alleged wrong committed on behalf of partnership; relief was granted on proof of joint venture].)

West's Key Number Digest, Joint Adventures k. 1 et seq.

SUPPLEMENT: [This section is current through the latest supplement]

Distinction between partnership and joint venture not sharply drawn: See 46 *Am.Jur.2d* (2006 ed.), *Joint Ventures* §3 et seq.



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2. Proof of Oral Agreement.

9 *Witkin Sum. Cal. Law Partn* § 10

[§ 10] Proof of Oral Agreement.

In *Weiner v. Fleischman* (1991) 54 C.3d 476, 286 C.R. 40, 816 P.2d 892, the issue was "whether the existence of an oral joint venture or partnership agreement must be established by clear and convincing evidence or by a preponderance of the evidence." (54 C.3d 479.) *Held*, the correct standard is preponderance of the evidence.

(a) *Statutory law*. The general rule is that issues of fact in civil cases, except as otherwise provided by law, require proof by a preponderance of the evidence. (54 C.3d 483; see *Ev.C. 115, 1 Cal. Evidence (4th), Burden of Proof and Presumptions*, §35.) Many statutes require proof of an issue of fact by a higher degree of proof. However, no California statute requires that an oral joint venture or partnership agreement be established by clear and convincing evidence. (54 C.3d 484.)

(b) *Appellate decisions*. "[C]ertain appellate decisions have stated that proof of an oral joint venture or partnership agreement must be by clear and convincing evidence." (54 C.3d 485, citing numerous cases.) However, when this trail of citations is traced and the cases analyzed, the proposition that clear and convincing evidence is required "loses much of its persuasiveness." (54 C.3d 485.) In addition, the majority of other states that have considered the question hold that a preponderance of the evidence is the correct standard. (54 C.3d 486, and footnote 3.) Hence, decisional law does not justify or require a departure from the ordinary civil standard of preponderance of the evidence. (54 C.3d 486.)

(c) *Where higher standard is required*. Proof by clear and convincing evidence is required "where particularly important individual interests or rights are at stake," such as the termination of parental rights, involuntary commitment, and deportation. (54 C.3d 487; see *1 Cal. Evidence (4th), Burden of Proof and Presumptions*, §39.) However, imposition of even severe civil sanctions that do not implicate such interests has been permitted after proof by a preponderance of the evidence. (54 C.3d 487; see *1 Cal. Evidence (4th), Burden of Proof and Presumptions*, §35 et seq.) In addition, the higher degree of proof required to prove oral trusts of personal property "is derived from the special care that courts have historically shown in recognizing the creation of trusts," and is recognized by specific case law and statutes. (54 C.3d 489.)

(d) *Consequences flowing from erroneous determination*. Defendant lists a series of grave consequences that may follow an erroneous determination of oral joint venture or partnership. (54 C.3d 488.) "However, the serious consequences flowing from a finding that a contract of any kind exists, be it oral or written, are not a sound basis for

requiring a higher or lower burden of persuasion." (54 C.3d 488.)

(e) *Sufficiency of preponderance standard.* Nothing in the constitutional, statutory, or case law of California requires a departure from the ordinary civil standard of preponderance of the evidence when a party seeks to establish the existence and scope of an oral joint venture or partnership agreement. Proof of a joint venture or partnership agreement should not be subject to any higher standard of proof than any other ordinary oral contract in a civil dispute. (54 C.3d 490.) (See 19 *Pepperdine L. Rev.* 1585 [Weiner].)

SUPPLEMENT: [This section is current through the latest supplement]



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3. Incidents of Relation.

a. Sharing of Profits and Losses.

9 *Witkin Sum. Cal. Law Partn* § 11

[§ 11] Sharing of Profits and Losses.

Sharing profits and losses in a common enterprise is usually an indispensable feature of a joint venture, and in its absence, no finding of joint liability can be made. (*Enos v. Picacho Gold Mining Co.* (1943) 56 C.A.2d 765, 771, 133 P.2d 663; *Howard v. Societa di Unione e Beneficenza Italiana* (1944) 62 C.A.2d 842, 848, 145 P.2d 694; *Freedman v. Industrial Acc. Com.* (1945) 67 C.A.2d 629, 633, 154 P.2d 922; *Oakley v. Rosen* (1946) 76 C.A.2d 310, 313, 173 P.2d 55 [play producer's agreement with investors who were to take specified percentage interests in prospective profits]; *Krantz v. BT Visual Images, L.L.C.* (2001) 89 C.A.4th 164, 177, 107 C.R.2d 209, quoting the text [summary judgment based on absence of joint venture was improper where there was disputed issue of sharing profits]; see 46 *Am.Jur.2d* (1994 ed.), *Joint Ventures* §17; 71 *A.L.R.3d* 586 [agreement between real estate agents to share commissions].)

Even if the agreement does not specifically provide for the manner of sharing losses, the law implies an obligation to bear them in the same proportion as the agreement provides for division of profits. (*Stilwell v. Trutanich* (1960) 178 C.A.2d 614, 621, 3 C.R. 285; *Parker v. Trefry* (1943) 58 C.A.2d 69, 74, 136 P.2d 55 [obligation to share losses implied from agreement to share profits]; see 51 *A.L.R.4th* 371 [joint venturers' comparative liability for losses in absence of express agreement].)

However, this strict approach has not always been followed, and similar cooperative contractual arrangements may be loosely termed joint ventures, or akin to them. In *Universal Sales Corp. v. California Press Mfg. Co.* (1942) 20 C.2d 751, 128 P.2d 665, plaintiff distributor of animal feed and defendant manufacturer of presses entered into an agreement that defendant would develop a new press, and plaintiff would demonstrate and attempt to negotiate sales for a percentage. *Held*, this was a contractual relationship "akin to that of joint adventurers." (20 C.2d 764.) While in a technical joint venture there is usually a sharing of profits and losses in prosecution of the common enterprise, the mode of participating in the fruits of the undertaking may be left to the agreement of the parties; and whether they create the strict relation of joint adventurers or some other relation involving cooperative effort depends on their actual intention. (20 C.2d 764.) (See *April Enterprises v. KTTV* (1983) 147 C.A.3d 805, 830, 195 C.R. 421, citing *Universal Sales Corp.* [existence is question of fact, and conduct of parties may create joint venture despite express declaration to contrary].)

The general rule as to sharing losses properly applies where each party contributes capital (money or other property), or receives compensation for services before any computation of profits or losses. However, in the absence of

a special agreement, if one party contributes all the capital, and the other the services, neither is required to contribute to the other for losses sustained; i.e., one party loses capital and the other labor, thus in practical effect sharing their losses. (*Kovacik v. Reed* (1957) 49 C.2d 166, 169, 315 P.2d 314 [plaintiff contractor invested \$ 10,000 in remodeling jobs, defendant job superintendent ran the jobs]; *April Enterprises v. KTTV*, *supra*, 147 C.A.3d 819, citing *Kovacik* and the text.) Moreover, where the joint adventure has no capital, but is conducted solely on contributions of services, one member who carries on the business after dissolution is under no obligation to share profits with another. (*Griffeth v. Fehsel* (1943) 61 C.A.2d 600, 605, 143 P.2d 522.)

SUPPLEMENT: [This section is current through the latest supplement]

See 46 *Am.Jur.2d* (2006 ed.), *Joint Ventures* §14.



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3. Incidents of Relation.

b. Accounting Among Members.

9 *Witkin Sum. Cal. Law Partn* § 12

[§ 12] Accounting Among Members.

(1) *Right to Accounting.* Like partners, joint venturers are fiduciaries with a duty of disclosure and liability to account for profits. (*Nelson v. Abraham* (1947) 29 C.2d 745, 750, 177 P.2d 931; *Menefee v. Oxnam* (1919) 42 C.A. 81, 85, 183 P. 379; *Andrews v. Bush* (1930) 109 C.A. 511, 518, 293 P. 152; *Tufts v. Mann* (1931) 116 C.A. 170, 183, 2 P.2d 500; *San Francisco Iron & Metal Co. v. American Milling & Industrial Co.* (1931) 115 C.A. 238, 248, 1 P.2d 1008; *Ford & McNamara v. Wilson* (1931) 119 C.A. 475, 480, 6 P.2d 996; *Fink v. Weisman* (1933) 129 C.A. 305, 309, 18 P.2d 961; *Sime v. Malouf* (1949) 95 C.A.2d 82, 94, 97, 212 P.2d 946, 213 P.2d 788; *Boyd v. Bevilacqua* (1966) 247 C.A.2d 272, 290, 55 C.R. 610; on duties of fiduciaries generally, see Chodos, *Fiduciary Duties.*)

The rule can be stated much more broadly, however, as in *Milton Kauffman v. Superior Court* (1949) 94 C.A.2d 8, 210 P.2d 88: "The resemblance between a partnership and a joint venture is so close that the rights as between adventurers are governed practically by the same rules that govern partners. ... A partner has a right at all times of access to, and to inspect and copy, the partnership books. ... It is the duty of a partner to render on demand true and full information of all things affecting the partnership to any partner. ... *A fortiori* a joint adventurer has the same rights and obligations." (94 C.A.2d 17.)

In *Banks v. Puma* (1951) 37 C.2d 838, 841, 236 P.2d 369, plaintiffs and defendants engaged in a project to move buildings onto new land for resale, with profits shared. Plaintiffs had the option to buy the buildings and defendants were to finance the deals. Federal authorities later prevented removal of the buildings, and defendants, having bought the new land, secretly resold it. *Held*, plaintiffs were entitled to an accounting and their share of the profits. The court summarily rejected defendant's contention that commercial frustration, a defense in an action for breach of an ordinary contract, was an excuse for failure of a joint venturer to account.

(2) *Enforcement.* The former partnership rule that ordinarily required an equitable action for an accounting rather than an action at law (*infra*, §34) has not been applied with force to joint ventures, given the limited scope of the enterprise. Thus, an action for damages has frequently been the appropriate method for settling the controversy. (See *Elsbach v. Mulligan* (1943) 58 C.A.2d 354, 366, 369, 136 P.2d 651; *Mayo v. Pacific Project Consultants* (1969) 1 C.A.3d 1013, 1019, 82 C.R. 117 [joint venturer may sue for breach of contract and recover value of services rendered and amount of money advanced]; *Gherman v. Colburn* (1977) 72 C.A.3d 544, 557, 140 C.R. 330 [action for damages

where one excludes other and appropriates assets]; but see *Cunningham v. DeMordaigle* (1947) 82 C.A.2d 620, 186 P.2d 423 [accounting necessary].)

Where parties enter into a joint venture, but its purposes are to be carried out by a subsequently formed corporation, some courts refuse to allow an action for breach of the joint venture agreement on the theory that this is an improper disregard of the corporate entity. However, the majority and California views treat the joint venture as surviving incorporation and permit the action. (See *Elsbach v. Mulligan, supra*, 58 C.A.2d 368, 370.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Enforcement.* See *Pellegrini v. Weiss* (2008) 165 C.A.4th 515, 526, 81 C.R.3d 387 [damages awarded in action for breach of fiduciary duty; defendant coventurer took unilateral action to buy out plaintiff's share of profit, improperly attempted to oust plaintiff as CEO, cancelled plaintiff's stock certificate, withdrew and sequestered business funds, and offered false statements to Secretary of State about venture property in attempt to dissolve corporations].



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3. Incidents of Relation.

c. Duty To Share Business Opportunity.

9 Witkin Sum. Cal. Law Partn § 13

[§ 13] Duty To Share Business Opportunity.

The fiduciary relationship of joint venturers makes applicable the rule that, in corporation law, is known as the doctrine of "corporate opportunities" (9 *Summary* (10th), *Corporations*, §91).

In *MacIsaac v. Pozzo* (1947) 81 C.A.2d 278, 183 P.2d 910, plaintiffs and defendants were two separate partnerships engaged in construction. They made and performed a first agreement, as a joint venture, to build a housing project, sharing profits equally, the agreement contemplating other jobs by the combined firms. Subsequently, plaintiffs procured another job on the reputation and credit of the joint venture, but represented to defendants that it had been procured earlier on behalf of plaintiffs alone. A second agreement was thereupon made under which defendants received only 15% of the profits. In this action, plaintiffs sought declaratory relief as to their interest. *Held*, defendants were entitled to 50%.

(a) The second agreement was voidable for fraud, consisting of breach of plaintiffs' fiduciary duty of disclosure as well as actual misrepresentation of the facts of its negotiation on behalf of the combined firms. (81 C.A.2d 283.)

(b) With the express agreement annulled, the rights of the parties were controlled by the fact that the job was a business opportunity offered to the combined firms within the field where the parties expected to operate; it was the duty of each of the parties to conclude the negotiations for the benefit of all, without seeking any special personal advantage. The judgment for equal division of the proceeds was proper, and "[w]hether it be regarded as damages presumed to have been suffered through deprivation of a business opportunity or as profits unjustly received by plaintiff is immaterial." (81 C.A.2d 285.)

(c) While the rule "has been applied so generally in corporation cases as to have become known as the doctrine of corporate opportunity it is founded in the doctrine of loyalty in business which applies in all situations in which trust is reposed." (81 C.A.2d 285, citing Restatements of Agency, Restitution, and Trusts.) (See *Air Purification v. Carle* (1950) 99 C.A.2d 258, 264, 221 P.2d 700 [defendant, member of joint venture engaged in developing air cleaner, secretly obtained patent on his own device; constructive trust imposed].)

SUPPLEMENT: [This section is current through the latest supplement]



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3. Incidents of Relation.

d. Relations With Third Persons.

9 *Witkin Sum. Cal. Law Partn* § 14

[§ 14] Relations With Third Persons.

(1) *Contract Liability*. It has been said that the partnership doctrine of mutual agency (*infra*, §35) is not fully applicable to joint ventures. The venture may, e.g., be of such limited scope that it is inappropriate to imply broad authority of each joint venturer to bind the others contractually by acts relating to the enterprise. (See *Hansen v. Burford* (1931) 212 C. 100, 111, 297 P. 908; *Keyes v. Nims* (1919) 43 C.A. 1, 9, 184 P. 695 [dictum]; *Block v. D.W. Nicholson Corp.* (1947) 77 C.A.2d 739, 744, 176 P.2d 739; *Hayward's v. Nelson* (1956) 143 C.A.2d 807, 815, 299 P.2d 1013.)

The foregoing cases, however, appear to be decided on special facts of exceeding the scope of express and implied authority. Other decisions make it clear that each joint venturer is the agent of the others in making contracts reasonably necessary to carrying out the enterprise. (See *Engineering Service Corp. v. Longridge Inv. Co.* (1957) 153 C.A.2d 404, 411, 314 P.2d 563; *Smalley v. Baker* (1968) 262 C.A.2d 824, 837, 69 C.R. 521, citing the text; 46 *Am.Jur.2d* (1994 ed.), *Joint Ventures* §41 et seq.)

Thus, in *Lindner v. Friednash* (1958) 160 C.A.2d 511, 517, 325 P.2d 612, defendant and P were associated in a venture to buy wine from plaintiff. The warehouse receipt was issued in defendant's name, but P obtained the wine, sold it, and kept the proceeds together with other sums contributed by defendant. *Held*, defendant was liable for the price notwithstanding the misappropriations. The trial judge's theory that plaintiff was estopped because he relied on P's representation that defendant would pay was rejected. "Plaintiff may not be entitled to recover against defendant upon the basis of [P's] representation that defendant would pay for the wine, but this does not serve to preclude a recovery against defendant as a member of the joint venture." (160 C.A.2d 520.)

(2) *Tort Liability*. Members of a joint venture are, like partners, liable for torts of one member committed in furtherance of the enterprise. (*Hupfeld v. Wadley* (1948) 89 C.A.2d 171, 175, 200 P.2d 564 [plaintiff injured by negligent driving of one member]; *Grant v. Weatherholt* (1954) 123 C.A.2d 34, 45, 266 P.2d 185 [member liable for fraud of another member within scope and in furtherance of agreed purpose]; *Orosco v. Sun-Diamond Corp.* (1997) 51 C.A.4th 1659, 1669, 60 C.R.2d 179, 2 *Summary* (10th), *Workers' Compensation*, §160 [nonnegligent joint venture is not liable where coventurer negligently injures employee and coventurer has workers' compensation coverage]; see 46 *Am.Jur.2d* (1994 ed.), *Joint Ventures* §42; 30 *A.L.R.2d* 859 [assault]; 6 *Summary* (10th), *Torts*, §1235.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Contract Liability*. See 46 *Am.Jur.2d* (2006 ed.), *Joint Ventures* §34.(2) *Tort Liability*. See 46 *Am.Jur.2d* (2006 ed.), *Joint Ventures* §35 et seq.



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 II. GENERAL PARTNERSHIP
 A. Uniform Partnership Act of 1994.
 1. Statutory Development.

9 *Witkin Sum. Cal. Law Partn* § 15

[§ 15] Statutory Development.

(1) *Original Uniform Partnership Act.* In 1929, the Legislature enacted the Uniform Partnership Act (UPA) with some slight modifications. It differed in material respects from prior law and covered much ground formerly left untouched in California by either statute or case law. (See 9 *Cal. L. Rev.* 117, 206, 306, 391, 420; 17 *Cal. L. Rev.* 623.) In 1949, the UPA and the Uniform Limited Partnership Act (*infra*, §62 et seq.), formerly in the Civil Code, were made a part of the Corporations Code (former *Corp.C.* 15001 et seq.).

(2) *Adoption and Effect of Revised Uniform Partnership Act.* The National Conference of Commissioners on Uniform State Laws approved a new uniform act in 1992. Two years later, after many changes, the Act was given the name "Uniform Partnership Act (1994)." (See *infra*, §16 et seq.)

In 1996, the Legislature enacted the Revised Uniform Partnership Act (RUPA), with California modifications, entitled the Uniform Partnership Act of 1994 ("the 1994 Act") (*Corp.C.* 16100 et seq.). The Act was effective January 1, 1997, and generally governed partnerships formed on or after that date. Partnerships formed before January 1, 1997, continued to be governed by the original UPA for a 2-year transition period. Beginning January 1, 1999, the 1994 Act replaced the UPA with respect to *all* partnerships. (See *Corp.C.* 16111.)

The 1994 Act governs limited partnerships (*infra*, §62 et seq.), in those cases where the Revised Limited Partnership Act does not do so, in the same manner as general partnerships are governed under *Corp.C.* 16111. (*Corp.C.* 15722.)

(3) *Principal Changes to UPA.* The 1994 Act codified case law developed under the UPA in several significant areas. The principal differences include the following:

(a) The 1994 Act expressly treats a partnership as an entity distinct from its partners (see *Corp.C.* 16301; *infra*, §23), thus resolving the historic conflict between the aggregate and entity theories of partnership. However, the 1994 Act retains the aggregate approach for some purposes, such as partners' joint and several liability (*infra*, §39).

(b) The 1994 Act establishes a comprehensive definition of partnership fiduciary duties (see *Corp.C.* 16404; *infra*, §30 et seq.), and makes these duties nonwaivable (see *Corp.C.* 16103(b); *infra*, §§19, 30). This subject was dealt with

only sparsely by the UPA. (See Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 143; 18 C.E.B., California Business Law Reporter 92.)

(c) Under the UPA, a partner's dissociation triggered dissolution. However, the 1994 Act, under the entity theory, provides for partnership continuity and clearly distinguishes between a partner's dissociation and dissolution (see *Corp.C. 16601 et seq., 16701 et seq.; infra, §41 et seq.*).

SUPPLEMENT: [This section is current through the latest supplement]



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 A. Uniform Partnership Act of 1994.
 2. Organization.

9 Witkin Sum. Cal. Law Partn § 16

[§ 16] Organization.

Beginning January 1, 1999, the Uniform Partnership Act of 1994 ("the 1994 Act") applied to all partnerships formed and operating in California. (*Corp.C. 16111*; *supra*, §15.) The 1994 Act serves as default rules that may, in most circumstances, be varied by the partnership agreement (*infra*, §19). (*Corp.C. 16103(a)*; see C.E.B., *Advising California Partnerships* 3d, §§21.3, 21.4.)

The 1994 Act is organized as follows:

- (1) Article 1, General Provisions (*Corp.C. 16100 et seq.*; *infra*, §17 et seq.)
- (2) Article 2, Nature of Partnership (*Corp.C. 16201 et seq.*; *infra*, §§22, 23).
- (3) Article 3, Relations of Partners to Persons Dealing with Partnership (*Corp.C. 16301 et seq.*; *infra*, §35 et seq.).
- (4) Article 4, Relations of Partners to Each Other and to Partnership (*Corp.C. 16401 et seq.*; *infra*, §30 et seq.).
- (5) Article 5, Transferees and Creditors of Partner (*Corp.C. 16501 et seq.*; *infra*, §40).
- (6) Article 6, Partner's Dissociation (*Corp.C. 16601 et seq.*; *infra*, §41 et seq.).
- (7) Article 7, Partner's Dissociation When Business Not Wound Up (*Corp.C. 16701 et seq.*; *infra*, §§44, 45).
- (8) Article 8, Winding Up Partnership Business (*Corp.C. 16801 et seq.*; *infra*, §46 et seq.).
- (9) Article 9, Conversions and Mergers (*Corp.C. 16901 et seq.*; *infra*, §50 et seq.).
- (10) Article 10, Limited Liability Partnerships (*Corp.C. 16951 et seq.*; *infra*, §122 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



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 3. Definitions.

9 *Witkin Sum. Cal. Law Partn* § 17

[§ 17] Definitions.

The 1994 Act defines the following terms:

- (1) *Business*. A trade, occupation, or profession. (*Corp.C. 16101(1)*.)
- (2) *Debtor in bankruptcy*. A person who is the subject of either an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency. (*Corp.C. 16101(2)*.)
- (3) *Distribution*. A transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee. (*Corp.C. 16101(3)*.)
- (4) *Electronic transmission*. A communication delivered by electronic communication, such as facsimile, electronic mail, or posting on an electronic message board or network. When *from* a partnership, the recipient must have provided an unrevoked consent to the means of transmission, and the transmission must meet the requirements of the Electronic Signatures in Global and National Commerce Act (*15 U.S.C., §7001(c)(1)*). When *to* a partnership, the partnership must have a method to verify the partner status of the sender. In either case, the communication must create a record that may be retained and rendered into legible, tangible form. (*Corp.C. 16101(4), (5)*.)
- (5) *Partnership*. (See *Corp.C. 16101(9)*; *infra*, §22.) (For definition of registered limited liability partnership, see *Corp.C. 16101(8)*; for definition of foreign limited liability partnership, see *Corp.C. 16101(6)*.)
- (6) *Partnership agreement*. The partners' written, oral, or implied agreement, including amendments, concerning the partnership. (*Corp.C. 16101(10)*.)
- (7) *Partnership at will*. A partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking. (*Corp.C. 16101(11)*.)
- (8) *Partnership interest* or *partner's interest in the partnership*. A partner's interests in the partnership, including the partner's transferable interest and all management and other rights. (*Corp.C. 16101(12)*.)
- (9) *Person*. An individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability

partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or other legal or commercial entity. (*Corp.C. 16101(13).*)

(10) *Professional limited liability partnership services.* The practice of law, public accountancy, or architecture. (*Corp.C. 16101(14).*) The inclusion of architecture as a professional limited liability partnership service extends only until January 1, 2007. (*Corp.C. 16101(19).*)

(11) *Property.* Real, personal, or mixed property, tangible or intangible, or an interest in that property. (*Corp.C. 16101(15).*)

(12) *State.* A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. (*Corp.C. 16101(16).*)

(13) *Statement.* A statement includes all of the following statements and their amendments or cancellations (*Corp.C. 16101(17)*):

(a) A statement of partnership authority under *Corp.C. 16303* (infra, §36).

(b) A statement of denial under *Corp.C. 16304* (infra, §36).

(c) A statement of dissociation under *Corp.C. 16704* (infra, §41).

(d) A statement of dissolution under *Corp.C. 16805* (infra, §48).

(e) A statement of conversion or certificate of conversion under *Corp.C. 16906* (infra, §55).

(f) A statement of merger under *Corp.C. 16915* (infra, §60).

(14) *Transfer.* An assignment, conveyance, lease, mortgage, deed, and encumbrance. (*Corp.C. 16101(18).*)

SUPPLEMENT: [This section is current through the latest supplement]

(10) *Professional limited liability partnership services.* *Corp.C. 16101(19)* was amended in 2006 to extend the inclusion of architecture as a professional limited liability partnership service to January 1, 2012.



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 A. Uniform Partnership Act of 1994.
 4. Knowledge, Notice, and Notification.

9 *Witkin Sum. Cal. Law Partn* § 18

[§ 18] Knowledge, Notice, and Notification.

(1) *Knowledge*. A person *knows* a fact if the person has actual knowledge of it. (*Corp.C. 16102(a)*.)

(2) *Notice*. A person has *notice of a fact* under the following circumstances:

(a) The person knows of the fact. (*Corp.C. 16102(b)(1)*.)

(b) The person has received a notification of the fact. (*Corp.C. 16102(b)(2)*.)

(c) The person has reason to know the fact exists based on all facts known at the time. (*Corp.C. 16102(b)(3)*.)

(d) Either *Corp.C. 16953(f)* (duly filed registration for registered limited liability partnership) or *Corp.C. 16959(f)* (duly filed registration for foreign limited liability partnership) applies. (*Corp.C. 16102(b)(4)*.)

(3) *Notification*. A person *notifies or gives a notification* by taking reasonable steps to inform another person "in ordinary course," regardless whether the other person knows of it. (*Corp.C. 16102(c)*.)

A person *receives* a notification if either of the following conditions applies:

(a) The person knows of the notification. (*Corp.C. 16102(d)(1)*.)

(b) The notification is duly delivered at the person's place of business or other place the person has represented as a place for receiving communications. (*Corp.C. 16102(d)(2)*.)

(4) *Rules for Entity*. Generally, an entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or when the fact would have been brought to the individual's attention if the entity had exercised reasonable diligence. (*Corp.C. 16102(e)*.) For this purpose, an entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and has reasonably complied with the routine. Reasonable diligence does not require an individual acting for the entity to communicate information except in either of the following circumstances (*Corp.C. 16102(e)*):

(a) The communication is part of the individual's regular duties.

(b) The individual knows of the transaction and that it would be materially affected by the information.

(5) *Partner's Knowledge Imputed to Partnership.* A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is imputed immediately to the partnership, except when the partner has consented to or committed a fraud on the partnership. (*Corp.C. 16102(f).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 5. Partnership Agreement.

9 *Witkin Sum. Cal. Law Partn* § 19

[§ 19] Partnership Agreement.

(1) *General Rule.* Generally, the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the agreement fails to do so, however, the 1994 Act governs those relations. (*Corp.C. 16103(a).*) (See 22 California Lawyer 47 (May 2000) [partnership agreements].)

(2) *Limitations.* Although partners have the contractual freedom to define their relationship, their agreement may not do the following:

(a) Vary rights and duties with respect to statements under *Corp.C. 16105* (infra, §20), except to eliminate the duty to provide copies of statements to all partners. (*Corp.C. 16103(b)(1).*)

(b) Unreasonably restrict (1) access to books and records provided by *Corp.C. 16403(b)* (infra, §33), or (2) receipt of information concerning the partnership business and affairs available under *Corp.C. 16403(c)* (infra, §33). (*Corp.C. 16103(b)(2).*)

(c) Vary the power to dissociate as a partner under *Corp.C. 16602(a)* (infra, §42), except to require written notice. (*Corp.C. 16103(b)(6).*)

(d) Vary a court's right to expel a partner as specified in *Corp.C. 16601(5)* (infra, §43). (*Corp.C. 16103(b)(7).*)

(e) Vary the obligation to wind up the partnership business under circumstances specified in *Corp.C. 16801(4), (5), (6)* (infra, §47). (*Corp.C. 16103(b)(8).*)

(f) Restrict the rights of third parties under the 1994 Act. (*Corp.C. 16103(b)(9).*)

(g) Vary the law applicable to a registered limited liability partnership under *Corp.C. 16106(b)* (infra, §21). (*Corp.C. 16103(b)(10).*)

(3) *Fiduciary Duties.* The 1994 Act expressly and specifically enumerates a partner's fiduciary duties. (See *Corp.C. 16404*, infra, §30.) *Corp.C. 16103(b)* prohibits the partners from waiving the duties of loyalty (*Corp.C. 16103(b)(3)*) and of good faith and fair dealing (*Corp.C. 16103(b)(5)*), or "unreasonably reducing" the duty of care (*Corp.C.*

16103(b)(4)). However, if not "manifestly unreasonable," the agreement may specify activities that do not violate the duty of loyalty and allow, after full disclosure, ratification of an otherwise objectionable transaction. (*Corp.C. 16103(b)(3)(A), (b)(3)(B)*.) The agreement may also prescribe standards by which the obligation of good faith and fair dealing may be measured. (*Corp.C. 16103(b)(5)*.)

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 6. Statements.

9 *Witkin Sum. Cal. Law Partn* § 20

[§ 20] Statements.

(1) *Authorized Statements.* *Corp.C. 16105* provides rules for executing, filing, and recording various statements permitted under the 1994 Act, including the following:

- (a) A statement of partnership authority under *Corp.C. 16303* (infra, §36).
- (b) A statement of denial under *Corp.C. 16304* (infra, §36).
- (c) A statement of dissociation under *Corp.C. 16704* (infra, §41).
- (d) A statement of dissolution under *Corp.C. 16805* (infra, §48).
- (e) A statement of conversion under *Corp.C. 16906* (infra, §55).
- (f) A statement of merger under *Corp.C. 16915* (infra, §60).

(2) *Filing and Recording.* Permitted statements, as well as certified copies of statements filed in another state, may be filed with the Secretary of State, and these filings are effective with respect to partnership property or transactions in California. (*Corp.C. 16105(a).*) (On filing fees, see *Corp.C. 16113*; on partnership property, see infra, §27 et seq.)

(3) *Copies.* Unless the partnership agreement provides otherwise, a person filing a statement must promptly send a copy to every partner of record. However, failure to do so does not limit the effectiveness of the statement as to a nonpartner. (*Corp.C. 16105(e).*)

(4) *Execution.* A filed statement must be executed by at least two partners, but other statements may be executed by one partner or other authorized person. An individual executing a statement on behalf of another person must provide a declaration as to its accuracy. (*Corp.C. 16105(c).*)

(5) *Amendment and Cancellation.* A person authorized to file a statement may amend or cancel the statement by filing an amendment or cancellation that (a) names the partnership, (b) identifies the statement, and (c) states the substance of the amendment or cancellation. (*Corp.C. 16105(d).*)

(6) *Nature of Provisions.* Filings are optional and voluntary. (See *Corp.C. 16105(a)*; Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 80.) However, except for eliminating the duty to provide copies to partners, the partnership agreement may not vary the rights and duties set forth in *Corp.C. 16105*. (*Corp.C. 16103(b)(1)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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 7. Governing Law.

9 *Witkin Sum. Cal. Law Partn* § 21

[§ 21] Governing Law.

(1) *Internal Relations of General Partnerships.* The law of the jurisdiction in which a partnership has its chief executive office governs relationships among the partners and between the partners and the partnership. (*Corp.C. 16106(a).*)

(2) *Internal Relations and Liability of Limited Liability Partnerships.* With respect to a registered limited liability partnership, the law of California governs internal relations and the liability of partners for the partnership's obligations. With respect to a foreign limited liability partnership, the law of the jurisdiction where the foreign limited liability partnership is organized governs its internal affairs and the liability and authority of its partners. (*Corp.C. 16106(b), 16958(a)(1).*) (On limited liability partnerships, see *Corp.C. 16951* et seq., *infra*, §122 et seq.)

(3) *Supplemental Principles.* The principles of law and equity supplement the 1994 Act unless displaced by particular provisions of the Act. (*Corp.C. 16104(a).*)

(4) *Interest.* If an obligation to pay interest arises under the 1994 Act and the rate is unspecified, the rate is that provided by C.C. 3289. (*Corp.C. 16104(b).*) (On C.C. 3289, see 1 *Summary* (10th), *Contracts*, §896.)

SUPPLEMENT: [This section is current through the latest supplement]



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 1. In General.

9 *Witkin Sum. Cal. Law Partn* § 22

[§ 22] In General.

A partnership is "an association of two or more persons to carry on as coowners a business for profit." It includes a registered limited liability partnership (*infra*, §122 et seq.). (*Corp.C. 16101(9)*.) However, business associations formed under other statutes (e.g., corporations, limited liability companies), a predecessor statute, or under a comparable statute of another jurisdiction are not partnerships under the 1994 Act. (*Corp.C. 16202(b)*.) (See Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 93.) Moreover, the statutory definition expressly excludes a limited partnership formed under either *Corp.C. 15501* et seq. or *Corp.C. 15611* et seq. (*infra*, §62 et seq.). As was the case under the UPA, this definition also clearly excludes an *agency*, in which the agent may sometimes receive a share of the profits, but has no share in the ownership of the business. (See Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 93; C.E.B., *Advising California Partnerships* 3d, §4.5.) (On unincorporated associations governed by *Corp.C. 18000* et seq., see 9 *Summary* (10th), *Corporations*, §37 et seq.)

Except as provided in *Corp.C. 16202(b)*, "the association of two or more persons to carry on as coowners a business for profit forms a partnership," regardless whether the persons intended to form a partnership. (*Corp.C. 16202(a)*.) (See *Bank of California v. Connolly* (1973) 36 C.A.3d 350, 364, 111 C.R. 468 [existence of partnership is question of fact; implied finding rejecting partnership upheld]; *People v. Park* (1978) 87 C.A.3d 550, 564, 151 C.R. 146 [existence of partnership is question of fact].)

West's Key Number Digest, Partnership k. 1 et seq.

SUPPLEMENT: [This section is current through the latest supplement]



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 2. Distinct Entity.

9 *Witkin Sum. Cal. Law Partn* § 23

[§ 23] Distinct Entity.

The UPA followed the aggregate or common law theory regarding the nature of a partnership: a partnership was merely a group of individuals, not a distinct legal person or entity. (See *Reed v. Industrial Acc. Com.* (1937) 10 C.2d 191, 192, 73 P.2d 1212 ["Occasional suggestions of this 'entity' theory of partnership are found in statutes or decisions, but apart from exceptional situations, a partnership is not considered an entity, but an association of individuals"]; *Goss v. Security Ins. Co. of Calif.* (1931) 113 C.A. 577, 579, 298 P. 860 [automobile liability policy insuring "Pacific Motor Company" was held to cover liability of three partners]; *Heinfelt v. Arth* (1933) 135 C.A. 445, 450, 27 P.2d 420; *Park v. Union Mfg. Co.* (1941) 45 C.A.2d 401, 405, 114 P.2d 373; *Rudnick v. Delfino* (1956) 140 C.A.2d 260, 266, 294 P.2d 983.)

Under the 1994 Act, a partnership is an entity distinct from its partners. (*Corp.C. 16201.*) Thus, a change in membership will not be deemed to create a new partnership, and there is no longer the need to convey title from the old partnership to the new when there is a change in partners. (See Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 91; C.E.B., *Advising California Partnerships* 3d, §4.6.)

Under the distinct entity theory, the following rules apply:

- (1) A partnership may sue and be sued in the name of the partnership. (*Corp.C. 16307(a).*)
- (2) A partnership may sue a partner for breach of the partnership agreement or for violation of a duty to the partnership. (*Corp.C. 16405(a).*)
- (3) A partner's dissociation does not automatically trigger dissolution, as it did under the UPA (*infra*, §41 et seq.).
- (4) A partner is not a coowner of partnership property and has no transferable interest in it. (*Corp.C. 16501*; *infra*, §28.)

SUPPLEMENT: [This section is current through the latest supplement]



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 3. Determining Formation.
 a. Coownership and Revenue Sharing.

9 *Witkin Sum. Cal. Law Partn* § 24

[§ 24] Coownership and Revenue Sharing.

The 1994 Act restates and expands a series of rules used by the UPA to determine what circumstances and acts give rise to a partnership. These rules are substantially similar to those formerly applied by California decisions. (See *Westcott v. Gilman* (1915) 170 C. 562, 566, 150 P. 777; *Constans v. Ross* (1951) 106 C.A.2d 381, 386, 235 P.2d 113.)

Thus, the following elements, normally present in the usual partnership, do not necessarily indicate its existence:

(1) *Coownership*. Coownership of property does not by itself establish a partnership, even if the coowners share profits made by the use of the property. (*Corp.C. 16202(c)(1)*; see *Fischer v. Carey* (1916) 173 C. 185, 186, 159 P. 577 [partnership did not arise between part owners of ships merely because of their ownership; parties were tenants in common in ships, not partners].)

(2) *Sharing Gross Returns*. Sharing gross returns does not by itself establish a partnership, even if shared by persons having a joint interest in the property generating the returns. (*Corp.C. 16202(c)(2)*; see *Wheeler v. Farmer* (1869) 38 C. 203, 213 [contract for promotion by defendant of vending machines invented by plaintiff and division of proceeds was not partnership].)

(3) *Sharing Business Profits*. Sharing profits creates a rebuttable presumption of partnership. (See *Holmes v. Lerner* (1999) 74 C.A.4th 442, 453, 457, 88 C.R.2d 130 [regardless of absence of express agreement to share profits, acts and discussions of parties over many months created oral partnership agreement for cosmetics company].) Hence, a person receiving a share of the profits of a business is presumed to be a partner in the business unless the profits were in payment of one of the following:

- (a) A debt. (*Corp.C. 16202(c)(3)(A)*.)
- (b) Services of an independent contractor or wages or compensation of an employee. (*Corp.C. 16202(c)(3)(B)*.)
- (c) Rent. (*Corp.C. 16202(c)(3)(C)*.)
- (d) An annuity or other retirement benefit to a beneficiary, representative, or designee of a deceased or retired

partner. (*Corp.C. 16202(c)(3)(D).*)

(e) Interest on a loan, "including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral." (*Corp.C. 16202(c)(3)(E).*) This provision is designed to protect equity participation arrangements. Thus, contingent payments do not presumptively convert lending arrangements into partnerships. (Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 94.)

(f) Sale of the goodwill of a business or other property. (*Corp.C. 16202(c)(3)(F).*)

These exceptions make it clear that profit sharing does not necessarily indicate partnership. "[T]his feature of the agreement has long been held not to require a conclusion that a partnership relation existed where also there was no joint participation in the management and control of the business, and the proposed profit-sharing was contemplated only as compensation or interest for the use of the money advanced." (*Spier v. Lang (1935) 4 C.2d 711, 716, 53 P.2d 138*; see *Coward v. Clanton (1898) 122 C. 451, 454, 55 P. 147*; *Oscar Krenz Copper & Brass Works v. England (1930) 109 C.A. 747, 752, 293 P. 689.*)

In *Brockman v. Lane (1951) 103 C.A.2d 802, 230 P.2d 369*, there was an oral 5-year agreement under which defendants were to furnish capital and acquire farmland, and plaintiff was to manage it, receiving a drawing account and an equal share of the profits. *Held*, this was only a contract of employment and within the statute of frauds. It was not a partnership because defendants retained ownership of the land and bore the entire risk of loss. Plaintiff's salary and profit sharing were both merely compensation for his services. (*103 C.A.2d 805.*)

The mere contribution of capital to an enterprise is not significant; nor is it essential to the existence of a partnership that both parties contribute capital. (*Whitley v. Bradley (1910) 13 C.A. 720, 729, 110 P. 596.*)

West's Key Number Digest, Partnership k.1 et seq.

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 3. Determining Formation.
 b. Intention To Carry on Business.

9 *Witkin Sum. Cal. Law Partn* § 25

[§ 25] Intention To Carry on Business.

The intention of the parties to carry on as coowners a definite business is ultimately the test of partnership. This is reflected in *Corp.C. 16202(a)*: "association of two or more persons to carry on as coowners a business for profit forms a partnership." (See *supra*, §22.) Thus, if the parties associate together and carry on a business, a partnership is normally created. It is immaterial that they do not so designate the relationship, or do not know they are partners, for the intent may be implied from their acts. (*Thompson v. O.W. Childs Estate Co. (1928) 90 C.A. 552, 554, 266 P. 293; Associated Piping & Engineering Co. v. Jones (1936) 17 C.A.2d 107, 110, 61 P.2d 536; Lyon v. MacQuarrie (1941) 46 C.A.2d 119, 124, 115 P.2d 594; California Emp. Stabilization Com. v. Walters (1944) 64 C.A.2d 554, 558, 149 P.2d 17; Singleton v. Fuller (1953) 118 C.A.2d 733, 740, 259 P.2d 687; Greene v. Brooks (1965) 235 C.A.2d 161, 165, 45 C.R. 99; see Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 93; 59A Am.Jur.2d (2003 ed.), Partnership §140.*)

The designation of their relationship by the parties to an agreement is of course entitled to some weight. (*People v. Hotz (1927) 85 C.A. 450, 452, 259 P. 506; Cochran v. Board of Supervisors (1978) 85 C.A.3d 75, 81, 149 C.R. 304* ["the applicants regarded themselves as partners, concluded their business jointly, and distributed profits in proportion to their ownership interests"].) However, an attempt to avoid liability or other incidents of partnership by evasive language, or even by an express stipulation negating the relation, will fail if the evidence shows the essential elements. (See *Streeter & Riddell v. Bacon (1920) 49 C.A. 327, 331, 193 P. 285; San Joaquin Light & Power Corp. v. Costaloupes (1929) 96 C.A. 322, 332, 274 P. 84; California Emp. Stabilization Com. v. Walters, supra.*)

In *Constans v. Ross (1951) 106 C.A.2d 381, 235 P.2d 113*, defendants wanted to go into the business of erecting homes on properties owned by prospective homeowners. They took in D, a licensed contractor, in order to make valid agreements for construction. *Held*, the result was a joint venture or partnership, and on D's bankruptcy, defendants were liable to his creditors for money he owed on materials furnished for construction. The fact that the profits and losses were not equally shared was not significant. (*106 C.A.2d 389.*)

SUPPLEMENT: [This section is current through the latest supplement]

See *In re Marriage of Geraci (2006) 144 C.A.4th 1278, 1293, 51 C.R.3d 234*, citing the text [in marriage dissolution action, trial court erred in finding general partnership between husband and wife where wife had no knowledge that, for tax purposes, husband had filed fictitious business name statement showing wife as general partner, and there was no

agreement between them to form partnership or carry on mutual business].



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 3. Determining Formation.
 c. Partnership by Estoppel.

9 *Witkin Sum. Cal. Law Partn* § 26

[§ 26] Partnership by Estoppel.

The 1994 Act contains a detailed statement of partnership liability arising by estoppel. A person who purports to be a partner, or consents to being represented as a partner in an actual or purported partnership, is liable to anyone who enters into a transaction with that partnership on the faith of the representation. (*Corp.C. 16308(a)*; see generally, *Nofsinger v. Goldman* (1898) 122 C. 609, 613, 55 P. 425; *Dodd v. Tebbetts* (1926) 198 C. 333, 339, 244 P. 1081; *Moen v. Art's Cafe* (1950) 95 C.A.2d 577, 579, 213 P.2d 393 [no recovery on this theory where no pleading of facts to show estoppel]; *J & J Builders Supply v. Caffin* (1967) 248 C.A.2d 292, 298, 56 C.R. 365 [C stood by without objection when J represented that C and J were partners; C was properly held ostensible partner or partner by estoppel]; *Redman v. Walters* (1979) 88 C.A.3d 448, 452, 152 C.R. 42; *Armato v. Baden* (1999) 71 C.A.4th 885, 897, 84 C.R.2d 294 [physicians were not liable as ostensible partnership where they did not represent themselves or consent to another representing them as partners in existing partnership or with anyone else, and where there was no evidence that plaintiff relied on alleged representations or gave credit to apparent partnership]; Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 129; 59A *Am.Jur.2d* (2003 ed.), *Partnership* §432.)

SUPPLEMENT: [This section is current through the latest supplement]



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II. GENERAL PARTNERSHIP

C. Partnership Property.

1. Nature and Acquisition of Property.

9 *Witkin Sum. Cal. Law Partn* § 27

[§ 27] Nature and Acquisition of Property.

(1) *In General.* All property acquired by a partnership is property of the partnership and not of the partners individually. (*Corp.C. 16203.*) Thus, a partner may use or possess partnership property only on behalf of the partnership. (*Corp.C. 16401(g).*)

(2) *When Property Is Acquired by Partnership.* Property is partnership property when acquired either (a) in the name of the partnership, or (b) in the name of one or more partners when the transferring instrument indicates the person's capacity as a partner or the existence of partnership even if the name is not indicated. (*Corp.C. 16204(a).*) This provision reflects the entity theory of partnership and is intended to resolve problems arising from a conveyance to fewer than all partners that nevertheless indicates their partner status. (Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 98.)

Property is *acquired in the name of the partnership* by a transfer to either of the following:

(a) The partnership in its name. (*Corp.C. 16204(b)(1).*)

(b) One or more partners in their capacity as partners *if* the name of the partnership is indicated in the transferring instrument. (*Corp.C. 16204(b)(2).*)

(3) *Presumptions.* *Corp.C. 16204* sets out two rebuttable presumptions applicable when partners fail to express their intent regarding the ownership of property:

(a) Property is presumed to be partnership property if purchased with partnership assets, regardless of the name in which title is held. (*Corp.C. 16204(c).*) This presumption is intended to apply when partnership credit is used to obtain financing and when partnership cash or property is used for payment. (See Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 98.)

(b) Property is presumed to be the partners' separate property when acquired in the name of one or more partners without an indication of their capacity as partners, and not purchased with partnership assets, even if used for partnership purposes. (*Corp.C. 16202(d).*) Thus, it is presumed that the partners are contributing *only the use of* the property to the partnership. (Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 98.)

West's Key Number Digest, Partnership k. 70 et seq.

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C. Partnership Property.
2. Interest of Partner.

9 *Witkin Sum. Cal. Law Partn* § 28

[§ 28] Interest of Partner.

A partner is not a coowner of partnership property and has no transferable interest in the property. (*Corp.C. 16501.*) This provision abolishes the concept of tenant in partnership under the UPA and reflects the entity theory of the 1994 Act. (See Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 155.) A partner's only transferable interest is that partner's personal property interest in a share of the partnership's profits and losses and the right to receive distributions. (*Corp.C. 16502*; see *Tinseltown Video v. Transportation Ins. Co.* (1998) 61 C.A.4th 184, 196, 71 C.R.2d 371 [partner's partnership interest in video stores was interest in personalty; construing former Corp.C. 15026].) A partner may transfer that interest, and the transfer neither dissociates the partner nor causes a dissolution of the partnership business. (*Corp.C. 16503(a).*) (On rights acquired by transferee, see *Corp.C. 16503(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



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CHAPTER XII - Partnership

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 C. Partnership Property.
 3. Transfer.

9 *Witkin Sum. Cal. Law Partn* § 29

[§ 29] Transfer.

(1) *Statement of Authority.* A partnership may file a statement of partnership authority (*Corp.C. 16303*; *infra*, §36), which may specify the names of partners authorized to execute instruments transferring real property held in the partnership's name. (*Corp.C. 16303(a)(1)(D)*.) The statement affects a partner's authority to transfer partnership real property *only* if the property is held in the name of the partnership. It has no effect on the partner's authority to transfer partnership real property held otherwise. (See Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 109.)

(2) *Rules for Transferring Property.* The 1994 Act sets forth the following rules for the transfer of partnership property:

(a) Subject to a statement of authority, partnership property held in the partnership name may be transferred by a partner executing a transfer instrument in the partnership name. (*Corp.C. 16302(a)(1)*.)

(b) Partnership property held in the name or names of one or more partners under an instrument transferring the property to them indicating either their capacity as partners or the existence of a partnership but not naming the partnership may only be transferred by the person or persons in whose name the property is held. (*Corp.C. 16302(a)(2)*.)

(c) Partnership property held in a name or names other than the partnership name, with no indication of the named person's capacity as a partner or of the partnership's existence, may only be transferred by the person so named. (*Corp.C. 16302(a)(3)*.)

(3) *Recovery of Property.* *Corp.C. 16302(b)* permits a partnership to recover partnership property transferred by a partner lacking authority as an agent of the partnership under *Corp.C. 16301* (*infra*, §35) in specified circumstances where the partnership proves that the transferee knew that the transferor lacked authority to bind the partnership. (On allocation of burden of proof, see Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 105.)

SUPPLEMENT: [This section is current through the latest supplement]



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 D. Relations Between Partners.
 1. Fiduciary Relationship.

9 *Witkin Sum. Cal. Law Partn* § 30

[§ 30] Fiduciary Relationship.

(1) *UPA and Common Law*. Because the UPA gave sparse attention to fiduciary duties, the governing principles were primarily derived from the common law of agency. (See Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 143.) Although the 1994 Act treats the topic of fiduciary duties extensively, the Partnerships Committee of the State Bar, in reviewing California cases dealing with the fiduciary duties of partners, concluded that none would have been decided differently under the 1994 Act. (See Committee Comments; 18 C.E.B., California Business Law Reporter 92 [reviewing 1994 Act]; 18 C.E.B., California Business Law Reporter 69 [fiduciary duties under common law and 1994 Act]; Chodos, Fiduciary Duties, §2:12 et seq.) The following cases are illustrative:

Koyer v. Willmon (1907) 150 C. 785, 787, 90 P. 135 [partnership for land purchase placed partners in confidential relations toward each other in manner of agent and trustee with regard to all partnership transactions].

Leff v. Gunter (1983) 33 C.3d 508, 514, 189 C.R. 377, 658 P.2d 740 [partner's duty not to compete with partnership's active pursuit of partnership opportunity survives partner's withdrawal from partnership].

Neilsen v. Holmes (1947) 82 C.A.2d 315, 324, 186 P.2d 197 [right of partner to engage in another business not adverse to that of firm].

Smith v. Bull (1958) 50 C.2d 294, 301, 325 P.2d 463 [liability for wrongful appropriation of business].

Prince v. Harting (1960) 177 C.A.2d 720, 727, 2 C.R. 545 [liability for secret profits].

Cagnolatti v. Guinn (1983) 140 C.A.3d 42, 48, 49, 189 C.R. 151 [liability for profits from self-dealing].

Rosenfeld, Meyer & Susman v. Cohen (1983) 146 C.A.3d 200, 217, 194 C.R. 180 [partner of dissolved partnership may not take action with respect to unfinished business that leads to purely personal gain].

Rosenfeld, Meyer & Susman v. Cohen (1987) 191 C.A.3d 1035, 1051, 237 C.R. 14 [members of law partnership had fiduciary duty to account to withdrawing partners for unfinished fee income].

(2) *1994 Act*. A partner owes to the partnership and to other partners the fiduciary duties of loyalty and care as

follows:

(a) *Duty of Loyalty*. A partner's duty of loyalty includes the following:

(1) To account to the partnership, and hold as a trustee for it, any property, profit, or benefit derived by the partner in conducting and winding up partnership business, or derived from use of partnership property or information, including the appropriation of a partnership opportunity. (*Corp.C. 16404(b)(1)*.)

(2) To refrain from dealing with the partnership as or on behalf of a party having an interest adverse to the partnership. (*Corp.C. 16404(b)(2)*.)

(3) To refrain from competing with the partnership. (*Corp.C. 16404(b)(3)*.)

In *Bardis v. Oates* (2004) 119 C.A.4th 1, 14 C.R.3d 89, managing partner O used another of his companies as a dummy middleman to mark up invoices for goods and services furnished to the partnership. Thus, instead of paying the face amount of the invoices, the partnership was charged the secret mark up, and the money went directly into O's other company. O contended that the mark ups amounted to proper reimbursement for overhead expenses. The jury found otherwise and convicted O of intentional breach of fiduciary duty. *Held*, affirmed. O engaged in fraudulent self-dealing by marking up the invoices and enriching himself at the partnership's expense, acts that violated both the partnership agreement and O's fiduciary duty under *Corp.C. 16404* as managing partner. (119 C.A.4th 12.)

(b) *Duty of Care*. A partner's duty of care in conducting partnership business is limited to refraining from engaging in (1) grossly negligent or reckless conduct, (2) intentional misconduct, or (3) a knowing violation of law. (*Corp.C. 16404(c)*.)

(3) *Limitations on Partnership Agreement*. A partnership agreement may neither eliminate the duty of loyalty specified in *Corp.C. 16404(b)* nor unreasonably reduce the duty of care required under *Corp.C. 16404(c)*. (*Corp.C. 16103(b)*.)

(4) *Representative of Last Partner*. The duties under *Corp.C. 16404* apply to a person winding up the partnership business as the personal or legal representative of the last surviving partner. (*Corp.C. 16404(g)*.) (On winding up, see *infra*, §46 et seq.)

(5) *Duties on Continuation of Partnership*. If a partnership for a definite term or particular undertaking is continued, without an express agreement, after expiration of the term or once the undertaking is completed, the partners' duties remain the same as they were, so far as is consistent with a partnership at will. (*Corp.C. 16406(a)*.) (On partnership at will, see *Corp.C. 16101(11)*, *supra*, §17.)

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SUPPLEMENT: [This section is current through the latest supplement]

(2) 1994 Act.

(a) *Duty of Loyalty*. See *Persson v. Smart Inventions* (2005) 125 C.A.4th 1141, 1159, 23 C.R.3d 335, *Supp.*, *infra*, §54 [once partnership incorporates, former partners have no fiduciary duties to each other unless there is preincorporation agreement to assume duty or evidence that corporate form was disregarded].

In *Enea v. Superior Court* (2005) 132 C.A.4th 1559, 34 C.R.3d 513, defendants formed a general partnership whose sole asset was an office building, and plaintiff subsequently purchased a one-third interest in that partnership. Defendants leased office space in the building to themselves at below-market rent for a number of years. After plaintiff disassociated he brought an action against defendants for breaches of fiduciary duties consisting primarily of renting partnership property to themselves at less than fair market value. Defendants were granted summary adjudication on the

ground that they owed no fiduciary duty to plaintiff to pay fair market rent. The trial judge stated that because there was no agreement to collect market or maximum rents defendants were under no fiduciary duty to do so, and relied on *Corp.C. 16404(e)* (text, §32). *Held*, this was error.

(a) A partnership is a fiduciary relationship and partners may not take advantages for themselves at the expense of the partnership. This relationship is codified under *Corp.C. 16404*, and nothing in *Corp.C. 16404(e)* contradicts this duty but simply excuses partners from accounting for incidental benefits that are obtained without detriment to the partnership. *Corp.C. 16404(e)* does not authorize the conduct here, which deprived the partnership of valuable assets in the form of market-value rent. (*132 C.A.4th 1566.*)

(b) There is no merit to defendants' argument that they were entitled to engage in self-dealing and use the partnership asset for their benefit unless the partnership agreement declared otherwise. It is not necessary that the duties involved here be assigned by contract; they are imposed by law, and "their breach sounds in tort." (*132 C.A.4th 1566.*) Moreover, even if the primary purpose of the partnership was to hold the building for appreciation and eventual sale, this would not entitle defendants "to divert to their own advantage benefits that would otherwise flow to the partnership." (*132 C.A.4th 1567.*)



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2. Good Faith and Fair Dealing.

9 Witkin Sum. Cal. Law Partn § 31

[§ 31] Good Faith and Fair Dealing.

A partner has an obligation of good faith and fair dealing in discharging duties to the partnership and other partners. (*Corp.C. 16404(d)*.) Although this obligation may not be eliminated by the partnership agreement, the agreement may prescribe reasonable standards by which to measure good faith and fair dealing. (*Corp.C. 16103(b)(5)*.) As with other duties under *Corp.C. 16404*, the obligation applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner. (*Corp.C. 16404(g)*.)

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9 *Witkin Sum. Cal. Law Partn* § 32

[§ 32] Permissible Partner Activity.

A partner does not violate a duty or obligation under the 1994 Act or under the partnership agreement simply because the partner's conduct furthers the partner's own interest. (*Corp.C. 16404(e)*.) In addition, a partner may lend money to and transact business with the partnership, and in so doing enjoys the same rights and obligations as a nonpartner. (*Corp.C. 16404(f)*); Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 146.) (See *Jones v. Wagner (2001) 90 C.A.4th 466, 473, 108 C.R.2d 669* [former partner did not violate fiduciary duty by purchasing former partnership property at foreclosure sale].)

SUPPLEMENT: [This section is current through the latest supplement]

On fiduciary duty of loyalty barring partners from leasing partnership property to themselves at below-market rate, see *Enea v. Superior Court (2005) 132 C.A.4th 1559, 34 C.R.3d 513, Supp., supra, §30.*



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 4. Rights and Entitlements of Partners.

9 *Witkin Sum. Cal. Law Partn* § 33

[§ 33] Rights and Entitlements of Partners.

Subject to contrary agreement by the parties, partners have the following rights and entitlements:

(1) *Management of Business*. Each partner has equal rights in the management and conduct of the partnership business. (*Corp.C. 16401(f)*; see C.E.B., *Advising California Partnerships* 3d, §4.19; *59A Am.Jur.2d (2003 ed.), Partnership* §274.) Differences arising in the ordinary course of partnership business may be decided by a majority of the partners. (*Corp.C. 16401(j)*.) Unanimous consent is needed for the following:

- (a) Acts outside the ordinary course of partnership business. (*Corp.C. 16401(j)*.)
- (b) Amendment to the partnership agreement. (*Corp.C. 16401(j)*.)
- (c) Admission of a new partner. (*Corp.C. 16401(i)*.)

(2) *Remuneration*. A partner is not entitled to remuneration for services rendered, except in winding up the partnership. (*Corp.C. 16401(h)*; see *Nevills v. Moore Mining Co.* (1902) 135 C. 561, 564, 67 P. 1054 [express or implied contract may alter general rule against remuneration]; *Cook v. Bryson* (1928) 89 C.A. 445, 447, 265 P. 289 [no remuneration without agreement]; *Estate of McConnell* (1936) 6 C.2d 493, 497, 58 P.2d 639 [same]; *Neilsen v. Holmes* (1947) 82 C.A.2d 315, 324, 186 P.2d 197 [agreement may be established by parol evidence or by parties' conduct]; *59A Am.Jur.2d (2003 ed.), Partnership* §310 et seq.)

(3) *Sharing Profits and Losses*. A partner shares equally in partnership profits and, subject to provisions on joint and several liability (*Corp.C. 16306*, infra, §39) and distributions by limited liability partnerships (*Corp.C. 16957*, infra, §131), must contribute to partnership losses in proportion to the partner's profits. (*Corp.C. 16401(b)*.) (See *Wall v. Siegel* (1998) 62 C.A.4th 875, 879, 73 C.R.2d 102 [under partnership agreement allocating percentages of profits and losses to three general partners and addendum splitting that percentage equally between one partner and other two, single partner was entitled to half of profits and under former Corp.C. 15018 was obligated for half of partnership losses, including obligation on promissory note]; C.E.B., *Advising California Partnerships* 3d, §§432, 433.)

(4) *Reimbursement and Indemnity*. A partnership must reimburse a partner for payments made, and indemnify the partner for liability incurred, in conducting ordinary partnership business. (*Corp.C. 16401(c)*; *Goldring v. Chudacoff*

(1936) 15 C.A.2d 741, 742, 60 P.2d 135.) The partnership must also reimburse a partner for an advance to the partnership beyond the agreed capital contribution. (*Corp.C. 16401(d)*.) These payments or advances constitute loans to the partnership and accrue interest from the date of the transaction. (*Corp.C. 16401(e)*.)

(5) *Account*. A partner is deemed to have an account that must be credited with the partner's contributions and share of profits, and charged with distributions to the partner and the partner's share of partnership losses. (*Corp.C. 16401(a)*.)

(6) *Distribution in Kind*. A partner is neither entitled to receive nor required to accept a distribution in kind. (*Corp.C. 16402*.)

(7) *Books and Records*. Partners and former partners, for the period in which they were partners, are entitled to inspect and copy partnership books and records. (*Corp.C. 16403(b)*; *Price v. Briggs (1958) 160 C.A.2d 524, 527, 325 P.2d 573*; see *Milton Kauffman v. Superior Court (1949) 94 C.A.2d 8, 17, 210 P.2d 88* [joint venturers have same right]; 59A *Am.Jur.2d (2003 ed.)*, *Partnership* §§611, 612.) In addition, a partnership must furnish partners, without demand, partnership business information reasonably required by the partner to exercise the rights and duties under the partnership agreement or under the 1994 Act. It must also furnish, on reasonable demand, other information concerning the partnership's business and affairs. The information may be transmitted by electronic transmission (*supra*, §17). (*Corp.C. 16403(c)*.)

(8) *Rights on Continuation of Partnership*. If a partnership for a definite term or particular undertaking is continued without an express agreement after expiration of the term or once the undertaking is completed, the partners' rights remain the same as they were, so far as is consistent with a partnership at will. (*Corp.C. 16406(a)*.) (On partnership at will, see *Corp.C. 16101(11)*, *supra*, §17.)

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 5. Actions Between Partners.

9 *Witkin Sum. Cal. Law Partn* § 34

[§ 34] Actions Between Partners.

(1) *Former Rule.* At one time, a partner had to sue other partners in equity for dissolution and accounting in order to enforce partnership rights. (See *Mosher v. Helfend* (1935) 7 C.A.2d 48, 51, 44 P.2d 1050; *Malott v. Seymour* (1950) 101 C.A.2d 245, 246, 225 P.2d 310; *Cunningham v. DeMordaigle* (1947) 82 C.A.2d 620, 622, 186 P.2d 423 [joint venture]; *Hosking v. Spartan Properties* (1969) 275 C.A.2d 152, 156, 79 C.R. 893.) Moreover, although subject to a number of exceptions, a partner could not maintain an action at law regarding a partnership transaction. (See *Prince v. Harting* (1960) 177 C.A.2d 720, 736, 2 C.R. 545; on exceptions under prior law, see *Arnheim v. Gordon* (1913) 21 C.A. 754, 756, 132 P. 840 [transaction not connected to partnership business]; *Estes v. Delpech* (1925) 73 C.A. 643, 647, 238 P. 1085 [same]; *Collins v. Meis* (1934) 139 C.A. 233, 236, 33 P.2d 472 [same]; *Van Fleet-Durkee v. Oyster* (1952) 112 C.A.2d 739, 748, 247 P.2d 403 [no complex account involved]; *Security Pac. Nat. Bank v. Lyons* (1994) 25 C.A.4th 706, 711, 30 C.R.2d 623 [where statute authorized suit; C.C.P. 883 (procedure by judgment debtor to compel contribution or repayment)]; *Oakdale Village Group v. Fong* (1996) 43 C.A.4th 539, 544, 50 C.R.2d 810 [conversion; treating partnership as separate entity]; 59A *Am.Jur.2d* (2003 ed.), *Partnership* §348 et seq.)

(2) *1994 Act.* The 1994 Act takes a significantly different approach. A partner may sue another partner for legal or equitable relief, with or without an accounting regarding partnership business, to do the following:

(a) Enforce the partner's rights under the partnership agreement. (*Corp.C. 16405(b)(1)*.)

(b) Enforce the partner's rights under the 1994 Act, including rights under *Corp.C. 16401* (account reimbursement; supra, §33), *Corp.C. 16403* (access to books and records; supra, §33), or *Corp.C. 16404* (partner's fiduciary duties; supra, §30 et seq.). (*Corp.C. 16405(b)(2)(A)*.)

(c) Enforce the right to have the partner's partnership interest purchased on dissociation, enforce other dissociation rights, or compel a dissolution and winding up. (*Corp.C. 16405(b)(2)(B)* [dissociation]; *Corp.C. 16405(b)(2)(C)* [dissolution].) (On dissociation, see infra, §41 et seq.; on dissolution, see infra, §46 et seq.)

(d) Enforce rights and interests arising independently of the partnership relationship. (*Corp.C. 16405(b)(3)*.) Thus, one partner may recover against other partners for personal injuries or damage to the injured partner's property. (See Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 151.)

If one partner repudiates a partnership, the aggrieved partner may elect to have the partnership dissolved rather than accept damages. In *Navarro v. Perron* (2004) 122 C.A.4th 797, 19 C.R.3d 198, N and P formed a partnership to purchase a duplex. Because of N's poor credit, title was in P's name only. When P repudiated the partnership, N brought an action for breach of contract and specific performance. The court found for N, but had difficulty fashioning a remedy, ultimately awarding N damages and leaving title to the property in P. *Held*, reversed. A nonbreaching partner may sue for damages but need not do so. N could elect to dissolve the partnership as a more adequate remedy (infra, §46). A judgment awarding damages to N but leaving title with P essentially grants P a distribution in kind, a result prohibited by *Corp.C. 16402* (supra, §33). However, if the partnership were dissolved, the property would be sold, partnership debts satisfied, and the surplus distributed to the partners according to their contributions. (122 C.A.4th 802.)

Nonpartnership law governs both the accrual of a cause of action and the statute of limitations on a claim under *Corp.C. 16405(b)*, and the right to an accounting on dissolution does not revive a barred claim. (*Corp.C. 16405(c)*.)

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SUPPLEMENT: [This section is current through the latest supplement]



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 1. Partner as Agent.

9 *Witkin Sum. Cal. Law Partn* § 35

[§ 35] Partner as Agent.

(1) *UPA*. Under the UPA, each partner was an agent of the partnership with the apparent authority to bind the partnership in ordinary partnership transactions. (See former *Corp.C.* 15009; *Milazo v. Gulf Ins. Co. (1990) 224 C.A.3d 1528, 1538, 274 C.R. 632* [status of partner, without more, provides only authority to bind partnership by acts that are apparently within usual course of partnership's business].)

(2) *1994 Act*. The 1994 Act retains the principle of a partner's apparent agency authority, but with the qualification that the rule may be affected by a filed statement of partnership authority under *Corp.C.* 16303 (*infra*, §36). (*Corp.C.* 16301; see Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 101.)

Thus, each partner is an agent of the partnership for the purpose of partnership business. An act of a partner, including execution of an instrument in the partnership name for apparently carrying on in the ordinary course the partnership business, or *business of the kind carried on by the partnership*, binds the partnership. However, the partnership is not bound when (a) the partner had no authority to act for the partnership, and (b) the person the partner was dealing with knew or had received notification that the partner lacked authority. (*Corp.C.* 16301(1); see *California Canning Peach Growers v. Bardell & Oregoni (1933) 132 C.A. 153, 167, 22 P.2d 764*; *De Santis v. Miller Petroleum Co. (1938) 29 C.A.2d 679, 683, 85 P.2d 489*; *Refinite Sales Co. v. Fred R. Bright Co. (1953) 119 C.A.2d 56, 62, 258 P.2d 1116*; *59A Am.Jur.2d (2003 ed.)*, *Partnership* §207 et seq.) In addition, when an act of a partner is not apparently for carrying on in the ordinary course the partnership business, the partnership is only bound if the act was authorized by the other partners. (*Corp.C.* 16301(2).)

(3) *Rules of Agency*. As under the UPA, the rules of agency apply in many situations. (*Jacobson v. Lamb (1928) 91 C.A. 405, 411, 267 P. 114.*) Thus, for example, a secret limitation on the apparent authority of a partner would not affect a third party who relied on that authority. (*Stitzinger v. Truitt (1927) 81 C.A. 502, 506, 253 P. 971.*) Nor would a dormant partner (i.e., an actual partner whose connection is kept secret) escape liability though the creditor dealt with the firm without knowing that the party was a partner. (*Bissell v. King (1928) 91 C.A. 420, 423, 267 P.356*; *Schwaegler Co. v. Marchesotti (1948) 88 C.A.2d 738, 743, 199 P.2d 331.*) (See generally *Rest.2d, Agency* §1 et seq.; 3 *Summary (10th), Agency and Employment*, §1 et seq.)

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SUPPLEMENT: [This section is current through the latest supplement]

(2) 1994 Act. See *Elias Real Estate, LLC v. Tseng* (2007) 156 C.A. 4th 425, 433, 67 C.R.3d 360 [sale of real property was act outside ordinary course of partnership's clothing business; thus, under *Corp.C. 16301*, one partner's authority to sell property on behalf of absent partners had to be in writing, and because it was not, purchase agreement signed only by one partner was not enforceable against nonsignatory partners].



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2. Statement of Authority.

9 *Witkin Sum. Cal. Law Partn* § 36

[§ 36] Statement of Authority.

(1) *In General.* A partnership may file a statement of partnership authority. If filed, the statement (a) must name partners authorized to transfer partnership real property (*Corp.C. 16303(a)(1)(D)*), and (b) may specify the extent of authority of partners to enter into other transactions or matters on behalf of the partnership (*Corp.C. 16303(a)(2)*). (On execution, filing, and recording of statements, see *Corp.C. 16105*, *supra*, §20.)

(2) *Contents.* The statement must include the following information:

(a) The name of the partnership. (*Corp.C. 16303(a)(1)(A)*.)

(b) The street address of the partnership's chief executive office and of one office in California, if applicable. (*Corp.C. 16303(a)(1)(B)*.)

(c) The names and mailing addresses of the partners or of an agent appointed to maintain and provide that information when so requested. (*Corp.C. 16303(a)(1)(C)*, *16303(b)*.)

The statement may designate an agent for service of process subject to the requirements of *Corp.C. 16309*. (*Corp.C. 16309*.) (On service of process on designated agent, see *Corp.C. 16310*.)

(3) *Statement Supplements Authority.* A filed statement supplements a partner's authority to enter into transactions on behalf of the partnership as follows:

(a) Except for transfers of real property, authority granted in a filed statement is *conclusive* in favor of a person giving value without knowledge to the contrary, provided there is no other filed statement limiting that authority. A filed cancellation of a limitation on authority revives the previous grant of authority. (*Corp.C. 16303(d)(1)*.)

(b) A recorded grant of authority to transfer partnership real property is *conclusive* in favor of a person giving value without knowledge to the contrary, provided there is no recorded certified copy of a statement limiting that authority. Recording a certified copy of a cancellation of a limitation on authority revives the previous grant of authority. (*Corp.C. 16303(d)(2)*.)

(4) *Limitations on Authority.* A third person is deemed to know of a limitation on a partner's authority to transfer partnership real property if a certified copy of the filed statement containing the limitation has been recorded. (*Corp.C. 16303(e).*) However, a third person is not deemed to know of the limitation merely because it is contained in a filed statement, except as otherwise provided in *Corp.C. 16303, 16704* (statement of dissociation; *infra*, §41) and *Corp.C. 16805* (statement of dissolution; *infra*, §48). (*Corp.C. 16303(f).*)

(5) *Effect of Incomplete Information.* A properly filed statement naming the partnership but not containing all the information required by *Corp.C. 16303(a)* is nevertheless effective as to third persons under *Corp.C. 16303(d)* and (e). (*Corp.C. 16303(c).*)

(6) *Statement of Denial.* A partner or other person named as a partner in a filed statement of authority may file a statement denying facts, including a person's authority or status as a partner. The statement is a limitation of authority under *Corp.C. 16303(d)* and (e). (*Corp.C. 16304.*)

(7) *Designation of Agent for Service of Process.* The statement may designate an agent for service of process, and the agent may be an individual residing in California, or a corporation that has met the certification requirements of *Corp.C. 1505.* (*Corp.C. 16309.*) (On service of process, see *Corp.C. 16310.*)

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 3. Purported Partner.

9 *Witkin Sum. Cal. Law Partn* § 37

[§ 37] Purported Partner.

(1) *In General.* A person who purports to be a partner, or consents to being represented as a partner in an actual or purported partnership, is liable for transactions with that partnership entered into based on the representation. If the representation is made in a public manner, the purported partner is liable for reliances based on the purported partnership even if the purported partner is unaware of the representation. (*Corp.C. 16308(a).*) However, a person is not liable as a partner merely by being named by another in a statement of partnership authority (*supra*, §36). (*Corp.C. 16308(c).*) Nor does a person continue to be liable merely by failing to indicate dissociation (*infra*, §44). (*Corp.C. 16308(d).*)

If partnership liability results, the purported partner is as liable as an actual partner; if no partnership liability results, the purported partner is liable jointly and severally with persons consenting to the representation. (*Corp.C. 16308(a).*)

(2) *Agency.* A person represented to be a partner in an existing partnership is an agent of persons consenting to the representation to bind them as if the person were actually a partner, with respect to persons entering into transactions based on the representation. If all partners consent to the representation, a partnership act or obligation results; if fewer than all partners consent, the purported partner and those consenting are jointly and severally liable. (*Corp.C. 16308(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



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E. Relations With Third Parties.
4. Liability of Partnership for Wrongful Acts.

9 Witkin Sum. Cal. Law Partn § 38

[§ 38] Liability of Partnership for Wrongful Acts.

A partnership is liable for injury, loss, or penalty caused by a partner's wrongful act or conduct when the partner is acting in the ordinary course of partnership business or with partnership authority. (*Corp.C. 16305(a)*; see *Zemelman v. Boston Ins. Co. (1970) 4 C.A.3d 15, 18, 84 C.R. 206* [false statements of partner to fire insurance company].) In addition, a partnership is liable for a partner's misapplication of money or property received in the course of partnership business or when acting with partnership authority. (*Corp.C. 16305(b)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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 5. Joint and Several Liability.

9 *Witkin Sum. Cal. Law Partn* § 39

[§ 39] Joint and Several Liability.

(1) *UPA*. Under the *UPA*, partners were *jointly and severally* liable for torts and breaches of trust, but only *jointly* liable on contracts. (See former *Corp.C.* 15013 et seq.; *Iwanaga v. Hagopian* (1919) 39 *C.A.* 584, 585, 179 *P.* 523; *Schwaegler Co. v. Marchesotti* (1948) 88 *C.A.2d* 738, 742, 199 *P.2d* 331; *Mirabile v. Smith* (1953) 119 *C.A.2d* 685, 688, 260 *P.2d* 179; *Hobgood v. Glass* (1958) 161 *C.A.2d* 208, 211, 326 *P.2d* 546.)

(2) *1994 Act*. Under *Corp.C.* 16306(a), all partners are *jointly and severally liable* for all partnership obligations except as "agreed by the claimant or provided by law." (See *Jans v. Nelson* (2000) 83 *C.A.4th* 848, 855, 100 *C.R.2d* 106 [when all partners execute guaranties of partnership's debt and there is no express agreement concerning rights of contribution, proportionate obligation for contribution must be based on partners' ownership interests]; *Great Western Bank v. Kong* (2001) 90 *C.A.4th* 28, 31, 108 *C.R.2d* 266 [partnership and partners were liable to lender as co-obligors where partnership was maker of original note].) Incoming partners are excused from obligations incurred before admission as a partner. (*Corp.C.* 16306(b).)

Partners in registered limited liability partnerships (*infra*, §122 et seq.) are insulated from partnership obligations except under specified conditions. (See *Corp.C.* 16306(c), (d), (e), (f), (g), (h).)

Although joint and several liability normally permits a creditor to proceed immediately against any of the joint and several judgment debtors, a creditor must first exhaust partnership assets before enforcing a judgment against a partner. (See *Corp.C.* 16307(d), *infra*, §40; Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 117.) (On satisfying judgment from partners' personal assets, see *infra*, §40.)

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 6. Remedies of Creditors.

9 *Witkin Sum. Cal. Law Partn* § 40

[§ 40] Remedies of Creditors.

(1) *Actions.* Except with respect to a partner in a registered limited liability partnership under *Corp.C. 16306(g)*, an action may be brought against the partnership and any or all of the partners in the same action or in separate actions. (*C.C.P. 369.5; Corp.C. 16307(b).*) However, a judgment against a partnership, standing alone, is not a judgment against a partner and cannot be satisfied from the partner's assets without a judgment against that partner. (*Corp.C. 16307(c).*) Thus, although a partner need not be named individually in an action against a partnership, the partner must be individually named and served in the action or in a later suit, and judgment entered against that partner, in order to reach the partner's personal assets. (See *Fazzi v. Peters (1968) 68 C.2d 590, 597, 68 C.R. 170, 440 P.2d 242* [personal judgment against partner is proper only if partner is joined and served]; Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 125; C.E.B., *Advising California Partnerships* 3d, §13.46 et seq.)

In *Nicholls v. Anders (1936) 13 C.A.2d 440, 56 P.2d 1289*, the complaint named the individual members *and the partnership*. The individuals, after trial, were successful in their defense, but meanwhile plaintiff had secretly obtained a default judgment against the *partnership*. *Held*, judgment vacated and its execution quashed; the "entity theory" could not justify the inconsistent judgments, and the last judgment on the merits, in favor of defendant partners, prevailed. (*13 C.A.2d 443.*) (See *Minehan v. Silveria (1936) 11 C.A.2d 266, 53 P.2d 770* [where action is brought against individuals and judgment is for less than amount sought, satisfaction of judgment is bar to further action against partnership].)

(2) *Levying on Assets of Partner.* A judgment creditor of a partner may not levy against the partner's assets to satisfy a judgment against the partnership except under any of the following circumstances:

(a) A writ of execution for a judgment based on the same claim against the partnership has been returned unsatisfied. (*Corp.C. 16307(d)(1).*)

(b) The partnership is a debtor in bankruptcy. (*Corp.C. 16307(d)(2).*)

(c) The partner has agreed that the creditor need not exhaust partnership assets. (*Corp.C. 16307(d)(3).*)

(d) A court permits the judgment creditor to levy against the partner's assets after determining that (1) partnership assets are clearly insufficient to satisfy the judgment, (2) exhaustion of partnership assets is excessively burdensome, or

(3) granting permission is an appropriate exercise of the court's equitable powers. (*Corp.C. 16307(d)(4)*.)

(e) The partner is liable by law or contract independent of the existence of the partnership. (*Corp.C. 16307(d)(5)*.)

(3) *Use of Transferable Interest To Satisfy Judgment.* A judgment creditor of a partner or of the partner's transferee may ask the court to charge a partner's transferable interest (see *Corp.C. 16502*, supra, §28) to satisfy the judgment, and the court may appoint a receiver for the partner's interest. (*Corp.C. 16504(a)*; *Sherwood v. Jackson (1932) 121 C.A. 354, 356, 8 P.2d 943*; *Baum v. Baum (1959) 51 C.2d 610, 613, 335 P.2d 481*.) The charging order constitutes a lien on the partner's interest that may be foreclosed at any time or, under specified conditions, redeemed by the partner. (*Corp.C. 16504(b), (c)*.) (See C.E.B., *Advising California Partnerships* 3d, §§13.72, 13.73; on sale under charging order of partner's interest, see *Crocker Nat. Bank v. Perroton (1989) 208 C.A.3d 1, 5, 255 C.R. 794*; *Hellman v. Anderson (1991) 233 C.A.3d 840, 843, 284 C.R. 830*.)

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 F. Dissociation of Partner.
 1. In General.

9 Witkin Sum. Cal. Law Partn § 41

[§ 41] In General.

Under the UPA and the aggregate view, a partner's withdrawal from the partnership meant dissolution of the partnership. (See former Corp.C. 15029, 15031(7).)

Adopting the entity theory of partnership (*supra*, §23), the 1994 Act introduced the concept of "dissociation" to describe the change in relationship caused by a partner ceasing to be associated with the partnership business. Thus, the law governing partnership dissolution was comprehensively revised, and a partner's dissociation does not necessarily cause a dissolution and winding up of the partnership business. (See Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 164.) The 1994 Act treats this subject as follows:

(1) Article 6 (*Corp.C. 16601 et seq.*, *infra*, §§42, 43) identifies events that cause a partner's dissociation.

(2) Article 7 (*Corp.C. 16701 et seq.*, *infra*, §§44, 45) deals with the effects of dissociation and the buyout of a dissociated partner by a continuing entity.

(3) Article 8 (*Corp.C. 16801 et seq.*, *infra*, §46 et seq.) governs dissolution and winding up of the partnership business.

A partner who wrongfully dissociates is liable to the partnership and other partners for damages arising from the dissociation. (*Corp.C. 16602(c)*.) The dissociation is wrongful if it (1) breaches an express provision of the partnership agreement or (2) is premature under specified conditions in a partnership for a definite term or a particular undertaking. (*Corp.C. 16602(b)*.) (See *O'Flaherty v. Belgum (2004) 115 C.A.4th 1044, 1057, 9 C.R.3d 286* [proper remedy for wrongful dissociation is damages; thus, arbitrator improperly ordered forfeiture of dissociating partners' capital account].)

A dissociating partner or the partnership may file a statement of dissociation when the business is not wound up (*infra*, §46 et seq.). (*Corp.C. 16704*.) The filing acts as a limitation on the authority of the dissociated partner under specified conditions. (*Corp.C. 16704(b), (c)*.)

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 a. In General.

9 *Witkin Sum. Cal. Law Partn* § 42

[§ 42] In General.

A partner is dissociated on the occurrence of any of the following events:

(1) The partnership has notice of the partner's "express will to withdraw as a partner or on a later date specified by the partner." (*Corp.C. 16601(1)*.) A partner has the power to dissociate at any time, even though the dissociation is wrongful. (*Corp.C. 16602(a)*; see *Corp.C. 16103(b)(6)* [partnership agreement may not vary right to dissociate but may require written notice].)

(2) A dissociating event agreed to in the partnership agreement occurs. (*Corp.C. 16601(2)*.)

(3) The partner acts or fails to act in any of the following instances:

(a) By becoming a debtor in bankruptcy. (*Corp.C. 16601(6)(A)*.)

(b) By executing an assignment for the benefit of creditors. (*Corp.C. 16601(6)(B)*.)

(c) By seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator concerning that partner or all or substantially all of that partner's property. (*Corp.C. 16601(6)(C)*.)

(d) By failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated. (*Corp.C. 16601(6)(D)*.)

(4) Termination of a partner who is not an individual, partnership, corporation, trust, or estate. (*Corp.C. 16601(10)*.)

(5) When a partner is a trust, trustee, estate, or personal representative, and there is a distribution of the trust's or estate's entire transferable interest in the partnership for reasons other than the substitution of a successor trustee or personal representative. (*Corp.C. 16601(8), (9)*.)

- (6) In the case of a partner who is an individual, under the following circumstances:
- (a) The partner's death. (*Corp.C. 16601(7)(A).*)
 - (b) The appointment of a guardian or general conservator for the partner. (*Corp.C. 16601(7)(B).*)
 - (c) A judicial determination that the partner has become incapable of performing under the partnership agreement. (*Corp.C. 16601(7)(C).*)
- (7) Expulsion. (See *infra*, §43.)

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2. Events Causing Dissociation.

b. Expulsion.

9 *Witkin Sum. Cal. Law Partn* § 43

[§ 43] Expulsion.

A partner's expulsion results in dissociation. Expulsion may occur under the following circumstances:

(1) *Partnership Agreement*. Pursuant to the partnership agreement. (*Corp.C. 16601(3)*.)

(2) *Vote of Partners*. By the unanimous vote of the other partners if any of the following applies:

(a) It is unlawful to carry on the partnership business with that partner. (*Corp.C. 16601(4)(A)*.)

(b) There has been (1) a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or (2) a court order charging the partner's interest, which has not been foreclosed (*supra*, §40). (*Corp.C. 16601(4)(B)*.)

(c) The partnership notifies a corporate partner that it will be expelled because (1) it has filed a certificate of dissolution or the equivalent, (2) its charter has been revoked, or (3) its right to conduct business has been suspended by the jurisdiction of its incorporation, and there is no cure within 90 days. (*Corp.C. 16601(4)(C)*.)

(d) A partnership, limited partnership, or limited liability company that is a partner has been dissolved. (*Corp.C. 16601(4)(D)*.)

(3) *Judicial Determination*. By a judicial determination, on application by the partnership or a partner, because of any of the following:

(a) The partner's wrongful conduct adversely and materially affected the partnership business. (*Corp.C. 16601(5)(A)*.)

(b) The partner wilfully or persistently committed a material breach of the partnership agreement or a fiduciary duty under *Corp.C. 16404* (*supra*, §30 et seq.). (*Corp.C. 16601(5)(B)*.)

(c) The partner's business conduct makes it impracticable to carry on the business in partnership with the partner. (

Corp.C. 16601(5)(C.)

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 3. Effect of Dissociation.

9 *Witkin Sum. Cal. Law Partn* § 44

[§ 44] Effect of Dissociation.

(1) *Rights and Duties of Dissociated Partner.* A partner's dissociation affects that partner's partnership rights and duties as follows:

(a) The partner's right to manage or conduct partnership business terminates. (*Corp.C. 16603(1).*)

(b) The partner's duty to refrain from competing with the partnership before dissolution terminates. (*Corp.C. 16603(2).*) (See *Corp.C. 16404(b)(3)*, supra, §30.)

(c) The partner's remaining duties of loyalty and care continue only as to matters or events that occurred before the partner dissociated. (*Corp.C. 16603(3).*)

(2) *Liability for Partnership Obligations.* Dissociation does not of itself discharge the partner for a partnership liability incurred *before* dissociation. (*Corp.C. 16703(a).*) However, a dissociated partner may be released from liability for a partnership obligation by agreement with the partnership creditor and the remaining partners. (*Corp.C. 16703(c).*) A dissociated partner is also released from liability if a partnership creditor, with notice of the dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation. (*Corp.C. 16703(d).*)

For an obligation incurred *after* dissociation, a partner remains liable as a partner for transactions the partnership enters into within 2 years following dissociation if, at the time of transacting, the other party (a) does not have notice of the partner's dissociation, and (b) reasonably believes that the dissociated partner is still a partner. (*Corp.C. 16703(b).*) However, a dissociated partner is not liable for obligations of the ongoing business merely because the business continues to use the partnership name or the dissociated partner's name in its operation. (*Corp.C. 16705.*) The liability provisions of *Corp.C. 16703(b)* do not apply to registered or foreign limited liability partnerships. (*Corp.C. 16703(b).*)

(3) *Indemnification.* Under the general buyout provisions (infra, §45), the partnership must indemnify a dissociated partner against all partnership liabilities, whether incurred before or after dissociation, except for liabilities incurred by the dissociated partner under *Corp.C. 16702* (binding acts under specified conditions). (*Corp.C. 16701(d).*)

(4) *Binding Acts of Dissociated Partner.* Although a dissociated partner has no *actual* authority to act for the

partnership, there may be lingering *apparent* authority. Thus, in order to protect innocent third parties, for 2 years following a partner's dissociation, a partnership remains bound for that partner's acts that would have, before dissociation, bound the partnership under *Corp.C. 16301* (partner as agent; supra, §35). This rule applies only if, at the time of the transaction, the other party (a) reasonably believed the dissociated partner was then a partner, and (b) the other party neither had notice of the partner's dissociation nor was deemed to have had knowledge due to filed or recorded limitations on authority. (*Corp.C. 16702(a)*; see Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 181.)

(5) *Liability to Partnership.* A dissociated partner is liable to the partnership for damages arising from an obligation incurred by the partner after dissociation for which the partnership is liable under *Corp.C. 16702(a)*. (*Corp.C. 16702(b)*.)

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F. Dissociation of Partner.

4. Buyout of Dissociating Partner's Interest.

9 *Witkin Sum. Cal. Law Partn* § 45

[§ 45] Buyout of Dissociating Partner's Interest.

(1) *In General. Corp.C. 16701* et seq., following the entity approach, deal with a partner's dissociation that does not result in a dissolution and winding up of the partnership business. Remaining partners may continue the business and the dissociating partner has the right to be paid the value of that partner's partnership interest. (On dissociating partner's continuing relationship with partnership and third parties, see *supra*, §44.)

(2) *When Buyout Is Required.* Ordinarily, a partnership must purchase a dissociating partner's interest in the partnership as provided by *Corp.C. 16701*. However, the buyout provisions do not apply to a dissociation occurring within 90 days prior to a dissolution under *Corp.C. 16801* (*infra*, §47). In that instance, the dissociating partner is treated as a partner according to the rules applicable to winding up the partnership business (*Corp.C. 16807*, *infra*, §49). (*Corp.C. 16701.5.*)

(3) *Buyout Price.* The buyout price is the amount that would have been distributable to the dissociating partner under *Corp.C. 16807(b)* (excess of credits over charges following winding up and liquidation of partnership assets) if, on the date of dissociation, the partnership's assets were sold at a price equal to the greater of (a) liquidation value, or (b) going concern value without the departing partner, plus interest from the date of dissociation to the date of payment. (*Corp.C. 16701(b).*) (On mandatory indemnification of dissociated partner, see *Corp.C. 16701(d)*, *supra*, §44.)

The partnership may offset against the buyout amount (a) damages for the departing partner's wrongful dissociation (*supra*, §41), and (b) other amounts the dissociated partner owes the partnership. (*Corp.C. 16701(c).*)

(4) *Payment of Estimated Price.* If no agreement for purchasing a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership must pay in cash to the dissociated partner the amount the partnership estimates to be the net buyout price plus interest. (*Corp.C. 16701(e).*) Payment must be accompanied by (a) a statement of partnership assets and liabilities as of the date of dissociation, (b) a current partnership balance sheet and income statement, (c) an explanation of how the amount of the payment was calculated, and (d) written notice that the payment fully satisfies the obligation to purchase unless, within 120 days after the notice, the dissociated partner sues to determine all buyout issues. (*Corp.C. 16701(g).*)

(5) *Deferred Payment.* A partner who wrongfully dissociates before the expiration of a definite term or the

completion of a particular undertaking is not entitled to any part of the buyout price until the term expires or the undertaking is completed. A deferred payment must be adequately secured and bear interest. However, if the partner proves that earlier payment will not cause undue hardship to the partnership business, a court may so order. (*Corp.C. 16701(h).*)

If a deferred payment is authorized, the partnership may tender a written offer to pay the amount it estimates to be the net buyout price plus interest, less any damages arising from wrongful dissociation, stating all terms and conditions of the obligation. (*Corp.C. 16701(f).*) (On information that must accompany tender, see *Corp.C. 16701(g)*, supra.)

(6) *Action To Determine Price.* A dissociated partner may sue the partnership under *Corp.C. 16405(b)(2)(B)* (supra, §34) to determine the buyout price and terms. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay, or within 1 year after written demand for payment, in the absence of payment or an offer to pay. The court may assess attorneys' fees and other expenses against a party acting "arbitrarily, vexatiously, or not in good faith." (*Corp.C. 16701(i).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 1. In General.

9 Witkin Sum. Cal. Law Partn § 46

[§ 46] In General.

Under the UPA, a partnership was dissolved whenever there was a change in the relation of the partners caused by any partner ceasing to be associated in the activity of the business (e.g., when a partner died, was expelled, transferred an interest, etc.), as distinguished from the winding up of the business. This reflected the aggregate nature of partnerships under the UPA, and even though the business might have continued with new partners, it was technically a new partnership. (See former Corp.C. 15029; Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 190; C.E.B., *Advising California Partnerships* 3d, §15.3.)

Adoption of the entity theory derived in part from the need to prevent a technical dissolution or its consequences. Thus, under the 1994 Act, a dissociation does not necessarily cause a dissolution. A partnership is dissolved, and its business must be wound up, only on the occurrence of an event enumerated in *Corp.C. 16801* (infra, §47). (*Corp.C. 16801*; see Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 190.) Moreover, under the 1994 Act, a partner seeking dissolution may bring an action for legal or equitable relief, with or without an accounting as to partnership business. (*Corp.C. 16405(b)(2)(C)*.)

With three exceptions, the provisions of *Corp.C. 16801* are default rules, and may by agreement be varied or eliminated as grounds for dissolution. The exceptions involve (1) dissolution resulting from carrying on an illegal business (*Corp.C. 16801(4)*), (2) judicial dissolution on application by a partner (*Corp.C. 16801(5)*), and (3) dissolution on application by the transferee of a partner's transferable interest (*Corp.C. 16801(6)*). (See infra, §47; Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 190.)

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 2. Conditions for Dissolution.

9 Witkin Sum. Cal. Law Partn § 47

[§ 47] Conditions for Dissolution.

A partnership is dissolved *only* on the occurrence of one of the following events:

(1) *Partnership at Will*. In a partnership at will, by the express will of at least half of the partners to dissolve and wind up the partnership business. This includes partners, other than wrongfully dissociating partners, who have dissociated within the preceding 90 days, and for whom dissociation under *Corp.C. 16601(1)* (supra, §42) constitutes an expression of that partner's will to dissolve and wind up the partnership business. (*Corp.C. 16801(1)*.) (See *Page v. Page* (1961) 55 C.2d 192, 196, 10 C.R. 643, 359 P.2d 41 [partner failed to defeat dissolution by contending, but not proving, that although no term was specified, partnership was for implied term reasonably necessary to repay money he had advanced].)

(2) *Partnership for Term or Undertaking*. In a partnership for a definite term or particular undertaking, when any of the following events occurs:

(a) After the expiration of 90 days following a partner's dissociation by death or otherwise under *Corp.C. 16601(6)-(10)* (supra, §§42, 43), or a partner's wrongful dissociation (supra, §41), unless a majority in interest of the partners, including rightfully dissociated partners, agree to continue the partnership. (*Corp.C. 16801(2)(A)*.)

(b) The express will of all the partners to wind up the partnership business. (*Corp.C. 16801(2)(B)*.)

(c) The term expires or the undertaking is completed. (*Corp.C. 16801(2)(C)*.)

(d) On application by the transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business after the expiration of the term or completion of the undertaking. (*Corp.C. 16801(6)*.)

(3) *Partnership Agreement*. An event agreed to in the partnership agreement. (*Corp.C. 16801(3)*.)

(4) *Illegality*. An event that makes it unlawful for all or substantially all of the partnership's business to be continued. However, cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event. (*Corp.C. 16801(4)*.)

(5) *Judicial Determination.* On application by a partner, a judicial determination that any of the following circumstances apply:

(a) The partnership's economic purpose is likely to be unreasonably frustrated. (*Corp.C. 16801(5)(A).*)

(b) Another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to continue the business with that partner. (*Corp.C. 16801(5)(B)*); see *Owen v. Cohen (1941) 19 C.2d 147, 152, 119 P.2d 713* [antagonism between partners was sufficient to warrant dissolution]; *Wallace v. Sinclair (1952) 114 C.A.2d 220, 228, 250 P.2d 154* [failure to attend to business and attempt to coerce plaintiff into selling out at cost without disclosing profit and loss]; *Vangel v. Vangel (1953) 116 C.A.2d 615, 619, 254 P.2d 919* [exclusion of other partners from management and refusal to contribute agreed capital]; *Jacoby v. Feldman (1978) 81 C.A.3d 432, 440, 443, 146 C.R. 334* [questionable accounting practices affecting partners' tax liability were grounds for dissolution]; C.E.B., *Advising California Partnerships 3d, §15.10.*)

(c) It is not reasonably practicable to continue the partnership business in conformity with the partnership agreement. (*Corp.C. 16801(5)(C).*) (See *Navarro v. Perron (2004) 122 C.A.4th 797, 801, 19 C.R.3d 198* [in breach of contract action where one partner had repudiated partnership, aggrieved partner's request that partnership property be sold was equivalent to application for dissolution and court should have dissolved corporation under *Corp.C. 16801(5)(C)* rather than award plaintiff damages].)

West's Key Number Digest, Partnership k.259 et seq.

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9 *Witkin Sum. Cal. Law Partn* § 48

[§ 48] Effect of Dissolution.

(1) *In General.* Unless waived, a partnership continues after dissolution *only* for purposes of winding up its business. When the winding up is completed the partnership is terminated. (*Corp.C. 16802(a)*; see *Cotten v. Perishable Air Conditioners (1941) 18 C.2d 575, 577, 116 P.2d 603* [dissolution operates prospectively; partnership continues until preexisting matters are terminated; thus, service of process on one partner, after dissolution but before winding up, was sufficient to give jurisdiction over partnership]; *Freese v. Smith (1952) 114 C.A.2d 283, 289, 250 P.2d 261* [predissolution business handled by partner during winding up period belonged to partnership, and provisions for division of net profits remained in effect]; *Principal Mut. Life Ins. Co. v. Vars, Pave, McCord & Freedman (1998) 65 C.A.4th 1469, 1489, 77 C.R.2d 479* [lease breached by partnership was partnership obligation that came into being before dissolution and was matter in which all partners had common interest and liability; thus, departing partner was bound by breach as act within scope of winding up partnership's affairs]; C.E.B., *Advising California Partnerships* 3d, Chap. 15.)

(2) *Statement of Dissolution.* Following dissolution, a partner may file a statement of dissolution stating that the partnership has dissolved and is winding up its business. (*Corp.C. 16805(a)*; on filing of statement, see *supra*, §20.) The statement cancels a previously filed statement of partnership authority relating to the transfer of real property and acts as a limitation on authority for purposes of notice to third persons. (*Corp.C. 16805(b)*.)

(3) *Participation in Winding Up.* Persons eligible to wind up the partnership business include (a) a partner who has not dissociated, or (b) the legal representative of the last surviving partner. (*Corp.C. 16803(a), (b)*.) A court may order judicial supervision of the process on application and good cause shown by a proper participant or transferee. (*Corp.C. 16803(a)*.)

(4) *Powers of Person Winding Up.* Under *Corp.C. 16803(c)*, a person winding up the partnership business may perform any necessary act including the following:

- (a) Preserve the partnership business or property as a going concern for a reasonable time.
- (b) Prosecute and defend actions and proceedings.

- (c) Settle and close the partnership's business.
- (d) Dispose of and transfer partnership property.
- (e) Discharge partnership liabilities and distribute its assets.
- (f) Mediate or arbitrate disputes.

A partner rendering services in winding up the partnership business is entitled to reasonable compensation. (*Corp.C. 16401(h)*.) In addition, because the liquidating partner acts as a quasi-trustee in defending against adverse claims and preserving the partnership assets for all partners or beneficiaries, that partner is entitled to reimbursement for attorneys' fees so incurred. (*Metzenbaum v. Metzenbaum (1953) 115 C.A.2d 395, 400, 252 P.2d 31, 966.*) However, postdissolution income generated through winding up of unfinished partnership business is allocated to the former partners according to their respective interests. (*Jewel v. Boxer (1984) 156 C.A.3d 171, 176, 203 C.R. 13, 1 Cal. Proc., (4th), Attorneys, §§46, 57* [law partnership; allocated to former partners according to their right to fees in former partnership, regardless of which former partner provided legal services after dissolution]; see *Grossman v. Davis (1994) 28 C.A.4th 1833, 1835, 34 C.R.2d 355* [applying *Jewel* to determine what constitutes "unfinished business" for dissolved law partnership].)

(5) *Binding Acts of Partner.* A partner's act following dissolution binds the partnership if the act (a) is appropriate for winding up the partnership business (*Corp.C. 16804(1)*), or (b) would have been binding before the dissolution if the other party did not know of the dissolution (*Corp.C. 16804(2)*).

(6) *Liability of Partner.* Except for registered and foreign limited liability partnerships, a partner is liable to the other partners for a share of partnership liability incurred under *Corp.C. 16804*. (*Corp.C. 16806(a)*.) A partner incurring a partnership liability under *Corp.C. 16804(2)* by an act not appropriate for winding up the business is liable to the partnership for resulting damage to the partnership. (*Corp.C. 16806(b)*.)

(7) *Waiver.* At any time after dissolution and before winding up the business, all partners, including those rightfully dissociated, may waive winding up and termination. (*Corp.C. 16802(b)*.) In that case, the partnership resumes as if dissolution had not occurred, and any liability incurred after dissolution and before waiver is determined as if there were no dissolution. (*Corp.C. 16802(b)(1)*.) In addition, rights of a third party accruing from a partner's act after dissolution and before the third party knew or was notified of the waiver may not be adversely affected. (*Corp.C. 16802(b)(2)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Statement of Dissolution.*

(*New*) *Reinstatement by Secretary of State:* The Secretary of State must reinstate a business entity to active status when a court finds that (a) the factual representations supporting a termination document are materially false, (b) the submission of the termination document is fraudulent, or (c) other grounds exist warranting reinstatement. (*Govt.C. 12261*, added in 2006.) "Termination document" means the final certificate or document required by the Corporations Code to be filed with the Secretary of State to effect the final dissolution, surrender, or cancellation of a business entity. (*Govt.C. 12260*, added in 2006.)

(4) *Powers of Person Winding Up.* *Jewel case:*

Cross-Reference: 1 *Cal. Proc.* (5th), *Attorneys*, §21.



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 G. Dissolution and Winding Up.
 4. Settlement of Accounts and Contributions.

9 *Witkin Sum. Cal. Law Partn* § 49

[§ 49] Settlement of Accounts and Contributions.

(1) *Application of Assets.* A partnership's assets must first be used to discharge its obligations to creditors. For this purpose, required partner contributions (infra, this section) are considered partnership assets; a surplus must then be used to pay the net amount due to the partners under a liquidation distribution (infra, this section). (*Corp.C. 16807(a).*)

(2) *Liquidated Distribution.* Profits and losses resulting from the liquidation of partnership assets must be credited and charged to the partners' accounts. The partnership then distributes to a partner an amount equaling the excess of credits in the partner's account. (*Corp.C. 16807(b).*)

(3) *Contributions.* If there is an excess of charges in a partner's account, the affected partner must contribute that amount to the partnership. Registered and foreign limited liability partnerships are excepted from this obligation. (*Corp.C. 16807(b).*) If a partner fails to contribute the full amount, the other partners must contribute to the shortfall proportionately. A partner may recover from the other partners a contribution in excess of that partner's share of partnership liabilities. (*Corp.C. 16807(c).*)

The obligation to contribute exists independently of the partnership's books. Thus, after accounts are settled, a partner must contribute proportionately to satisfy partnership obligations unknown during settlement for which the partner is personally liable under *Corp.C. 16306* (supra, §39). (*Corp.C. 16807(d)*; see Official Comment, 6 (Part I) U.L.A. (Master Ed.), p. 208.)

A deceased partner's estate is liable for the partner's contribution obligation. (*Corp.C. 16807(e).*) An assignee for the benefit of creditors or a court-appointed representative of creditors may enforce a partner's contribution obligation. (*Corp.C. 16807(f).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 1. In General.

9 *Witkin Sum. Cal. Law Partn* § 50

[§ 50] In General.

(1) *Statutory Scheme.* Article 9 (*Corp.C. 16901* et seq.) of the 1994 Act governs permissible conversions and mergers involving a partnership and another designated entity. It differs from RUPA in the following manner:

(a) California permits conversion to an "other business entity," which includes limited partnerships, limited liability companies, corporations, business trusts, real estate investment trusts, and unincorporated associations, as specified. (*Corp.C. 16902* et seq.) Article 9 of RUPA provides specific authority only for conversion between partnerships and limited partnerships. (See 6 (Part I) U.L.A. (Master Ed.), p. 213 et seq.)

(b) California requires an approved conversion plan (*Corp.C. 16903*, *infra*, §53); RUPA does not.

(c) California, unlike RUPA, contains detailed provisions for a merger agreement. (*Corp.C. 16911*, *infra*, §58.) (On comprehensive scheme for conversion of California corporations into domestic limited liability companies, limited partnerships, or general partnerships, see *Corp.C. 1150* et seq.; 9 *Summary* (10th), *Corporations*, §206 et seq.)

(2) *Nonexclusivity.* Article 9 is not exclusive. Thus, partnerships, except limited liability partnerships, may convert or merge as otherwise provided by law. (*Corp.C. 16917*; see 6 (Part I) U.L.A. (Master Ed.), p. 236; C.E.B., *Advising California Partnerships* 3d, Chap. 17.)

(3) *Definitions.* Related terms are defined in *Corp.C. 16901* (*infra*, §51).

SUPPLEMENT: [This section is current through the latest supplement]



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 2. Definitions.

9 *Witkin Sum. Cal. Law Partn* § 51

[§ 51] Definitions.

Article 9 defines the following terms:

- (1) *Constituent other business entity*. An "other business entity" that is merged with or into one or more partnerships. The term includes a surviving other business entity. (*Corp.C. 16901(1).*)
- (2) *Constituent partnership*. A partnership that is merged with or into one or more other partnerships or other business entities. The term includes a surviving partnership. (*Corp.C. 16901(2).*)
- (3) *Disappearing other business entity*. A constituent other business entity that is not the surviving other business entity. (*Corp.C. 16901(3).*)
- (4) *Disappearing partnership*. A constituent partnership that is not the surviving partnership. (*Corp.C. 16901(4).*)
- (5) *Domestic*. Organized under California law. (*Corp.C. 16901(5).*)
- (6) *Foreign other business entity*. An other business entity formed in another state or a foreign country. (*Corp.C. 16901(6).*)
- (7) *Foreign partnership*. A partnership formed under the laws of another state or a foreign country. (*Corp.C. 16901(7).*)
- (8) *General partner*. A partner in a partnership and a general partner in a limited partnership. (*Corp.C. 16901(8).*)
- (9) *Limited liability company*. A limited liability company created under *Corp.C. 17000 et seq.* (infra, §136 et seq.). (*Corp.C. 16901(9).*)
- (10) *Limited partner*. A limited partner in a limited partnership. (*Corp.C. 16901(10).*)
- (11) *Limited partnership*. A limited partnership created under *Corp.C. 15611 et seq.* (infra, §62 et seq.), prior law, or comparable law of another jurisdiction. (*Corp.C. 16901(11).*)

(12) *Other business entity*. A limited partnership, limited liability company, corporation, business trust, real estate investment trust, or an unincorporated association, other than a nonprofit association, but excluding a partnership. (*Corp.C. 16901(12)*.)

(13) *Partner*. Both a general partner and a limited partner. (*Corp.C. 16901(13)*.)

(14) *Surviving other business entity*. An other business entity into which one or more partnerships are merged. (*Corp.C. 16901(14)*.)

(15) *Surviving partnership*. A partnership into which one or more other partnerships or other business entities are merged. (*Corp.C. 16901(15)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(11) *Limited partnership*. *Corp.C. 16901(11)* was amended in 2006 to include limited partnerships formed under *Corp.C. 15900 et seq.*



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3. Conversion.

a. In General.

9 *Witkin Sum. Cal. Law Partn* § 52

[§ 52] In General.

(1) *Permitted Conversions.* A partnership, other than a registered limited liability partnership, may convert to a domestic other business entity or a foreign other business entity. (*Corp.C. 16902(a).*) A domestic limited partnership, domestic limited liability company, domestic corporation, or foreign other business entity may convert to a domestic partnership as long as the laws under which it is organized do not prohibit conversion. (*Corp.C. 16908(a).*)

(2) *Partner's Interests.* A partnership may convert to a domestic or foreign limited partnership or limited liability company only if each of the partners of the converting partnership will receive a percentage interest in profits and capital of the other entity equal to the partner's percentage interest in the profits and capital of the converting partnership as of the time of conversion. In addition, if conversion is to an other business entity or foreign other business entity, each partnership interest of the same class must be treated equally with respect to distribution of the converted entity's property. (*Corp.C. 16902(a).*)

(3) *Governing Law Permits Conversion.* Conversion is permitted only if (a) the law under which the converted entity will exist expressly permits the conversion to and formation of that entity, and (b) the partnership complies with that law's conversion requirements. (*Corp.C. 16902(b).*)

(4) *Foreign Other Business Entity.* A partnership's conversion to a foreign other business entity must be done according to the laws of that entity's place of organization and in compliance with *Corp.C. 16902.* (*Corp.C. 16905(a), (b).*)

(5) *Service of Process.* Unless a statement of conversion has been filed (*infra*, §55), the converted entity must promptly notify the Secretary of State of the mailing address of its agent for service of process, its chief executive office, and any change of address. Under specified conditions (e.g., designated agent cannot be located, no agent designated) and procedures, the Secretary of State acts as the agent for service of process where enforcement of an obligation of a converted partnership is involved. (*Corp.C. 16905(c).*)

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b. Plan.

9 *Witkin Sum. Cal. Law Partn* § 53

[§ 53] Plan.

(1) *Content.* A converting partnership must have a plan of conversion stating the following information:

(a) The terms and conditions of the conversion. (*Corp.C. 16903(a)(1).*)

(b) The places of organization of both the converted entity and converting partnership, and the name of the converted entity after conversion, if different from that of the converting partnership. (*Corp.C. 16903(a)(2).*)

(c) The manner of converting the partnership interests of each of the partners into securities of or interests in the converted entity. (*Corp.C. 16903(a)(3).*)

(d) The provisions of the governing documents for the converted entity, including the limited partnership agreement, limited liability company articles of organization and operating agreement, or articles or certificate of incorporation, to which the holders of interest in the converted entity are to be bound. (*Corp.C. 16903(a)(4).*)

(e) Other information required by the law under which the converted entity is operated. (*Corp.C. 16903(a)(5).*)

(f) Other provisions that are desired. (*Corp.C. 16903(a)(6).*)

The converted entity must maintain the plan at either its principal place of business or records repository, depending on the entity, and make it available on request to specified parties. (*Corp.C. 16903(g).*)

(2) *Approval and Amendment.* The plan must be approved as provided in the partnership agreement. If the agreement fails to specify, approval is by the number or percentage of partners required under the agreement to approve an amendment. If the agreement does not so provide, approval must be by all partners. (*Corp.C. 16903(b).*)

If the partnership is converting to a *limited partnership*, all partners who will become general partners of the converted limited partnership must approve the plan. (*Corp.C. 16903(c).*)

A conversion plan may be amended before conversion takes effect if approved in the same manner required for the

original plan. (*Corp.C. 16903(e).*)

(3) *Parties to Governing Document.* All nondissociating partners of the converting partnership are considered parties to the partnership agreement or other organic document for the converted entity adopted under the conversion plan, whether or not they have executed the conversion plan or the partnership agreement or other organic document for the converting entity. (*Corp.C. 16903(d).*)

(4) *Abandonment.* Partners of the converting partnership may abandon a conversion prior to its effective date in the same manner required for approval of the original plan, subject to contractual rights of third parties. (*Corp.C. 16903(f).*)

(5) *Conversion to Domestic Partnership.* An entity converting to a domestic partnership under *Corp.C. 16908* (supra, §52) must also approve a conversion plan or similar instrument required by the laws under which it is organized. Approval must be by the number or percentage required by the converting entity's organic document or the laws under which it is organized. (*Corp.C. 16908(b), (c).*)

Filing a certificate of conversion (infra, §55) or a statement of partnership authority containing a statement of conversion has the effect of the converting entity filing a certificate of cancellation. Thus, the converting entity is not required to specifically file a certificate of cancellation as a result of the conversion. (*Corp.C. 16908(e).*)

(6) *Effective Date of Conversion.* Conversion to a domestic limited liability partnership or limited liability company is effective on the earliest date that all the following events have occurred:

- (a) The converting partnership partners have approved the plan. (*Corp.C. 16904(a)(1).*)
- (b) All documents required to create the converted entity have been filed. (*Corp.C. 16904(a)(2).*)
- (c) The effective date, if set forth in the conversion plan, has occurred. (*Corp.C. 16904(a)(3).*)

SUPPLEMENT: [This section is current through the latest supplement]



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c. Effect.

9 *Witkin Sum. Cal. Law Partn* § 54

[§ 54] Effect.

(1) *The Entity*. An entity that converts into another entity is "for all purposes" the same entity that existed before the conversion. (*Corp.C. 16909(a)*.) Thus, when a conversion takes effect, the following rules apply:

(a) The converting entity's rights and property remain vested in the converted entity. (*Corp.C. 16909(b)(1)*.)

(b) The converting entity's debts, liabilities, and obligations continue with respect to the converted entity. (*Corp.C. 16909(b)(2)*.)

(c) All rights of creditors and liens on the converting entity's property are preserved unimpaired and remain enforceable. (*Corp.C. 16909(b)(3)*.)

(d) Pending actions or proceedings by or against the converting entity may be continued as if no conversion occurred. (*Corp.C. 16909(b)(4)*.)

(2) *Liability of Partners*. A partner of a converting partnership is liable for the following obligations:

(a) Obligations of the converting partnership for which the partner was personally liable before the conversion. (*Corp.C. 16909(c)(1)*.)

(b) Obligations of the converted entity incurred after the conversion takes effect. However, those obligations may be satisfied only out of property of the entity if the converted entity (1) is a limited partnership and the partner becomes a limited partner, (2) is a limited liability company and the partner becomes a member, unless the articles of organization or the operating agreement of the limited liability company provide otherwise, or (3) is a corporation and the partner becomes a shareholder. (*Corp.C. 16909(c)(2)*.)

A partner of a partnership that converted *from* another business entity is liable for the obligations of the converting entity for which the partner was personally liable before the conversion. (*Corp.C. 16909(d)*.)

(3) *Dissociation of Partner*. A partner not voting in favor of conversion and not agreeing to become a partner,

member, shareholder, or holder of interest of the converted entity may dissociate from the partnership (supra, §41 et seq.) as of the conversion's effective date. Within 10 days after the partners approve a conversion, the converting partnership must notify each nonapproving partner of the approval, accompanied by a copy of *Corp.C. 16701* (buyout provisions, supra, §45) and a brief description of the buyout procedure. A partner wishing to dissociate must do so within 30 days after the date of that communication, and the converting partnership must then buy out the partner's interest. (*Corp.C. 16909(e)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(4) (*New*) *Former Fiduciary Duties*. In *Persson v. Smart Inventions* (2005) 125 C.A.4th 1141, 23 C.R.3d 335, partners P and N formed a corporation as equal shareholders to develop household products. After differences arose and following protracted negotiations, P sold his shares to N in a buyout agreement at their true value. Later, P sued N and defendant corporation for fraud and breach of fiduciary duty, alleging concealment of the existence of a promising new product about to be marketed when the agreement was made. The trial court concluded that N owed and breached a fiduciary duty to P. *Held*, reversed. After forming the corporation, P and N observed all the corporate formalities, i.e., issuance of shares, appointment of directors and officers, filing of corporate tax returns, holding of directors' meetings, etc. Thus, the partnership ceased to exist, and the partners no longer had the fiduciary duties imposed by the former partnership, and none could be imposed absent a preincorporation agreement to assume those duties or evidence of disregard of the corporate form. (125 C.A.4th 1159.)



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d. Statement.

9 *Witkin Sum. Cal. Law Partn* § 55

[§ 55] Statement.

(1) *Conversion to Domestic Limited Partnership or Limited Liability Company.* If a partnership converting to a domestic limited partnership, limited liability company, or corporation has filed a statement of authority (see *Corp.C. 16303*, supra, §36) in effect at the time of conversion, the converted entity *must* file a statement of conversion with the Secretary of State, along with its certificate or articles. If no previous statement of authority was filed, the entity may, but need not, file a statement of conversion. The statement must be executed and acknowledged by two partners, unless a lesser number is provided in the partnership agreement. (*Corp.C. 16906(a).*)

A statement of conversion, in a form that may be prescribed by the Secretary of State, must contain the following information:

(a) The name of the converting partnership, and the Secretary of State's file number, if applicable. (*Corp.C. 16906(a)(1).*)

(b) A statement that the principal terms of the conversion plan were approved by a vote of the partners that equaled or exceeded the vote required under *Corp.C. 16903* (supra, §53). (*Corp.C. 16906(a)(2).*) (For form of statement of conversion, see Secretary of State website, www.ss.ca.gov/business/business.htm.)

(2) *Conversion to Foreign Other Business Entity.* A partnership converting to a foreign other business entity that has previously filed a statement of partnership authority in effect at the time of conversion *may* file a certificate of conversion with the Secretary of State. (*Corp.C. 16906(b).*) The certificate must contain the following information:

(a) The names of the converting partnership and the converted entity. (*Corp.C. 16906(b)(1).*)

(b) The street address of the entity's chief executive office and of an office in this state. (*Corp.C. 16906(b)(2).*)

(c) The form of organization. (*Corp.C. 16906(b)(3).*)

(3) *Previous Statement of Partnership Authority.* A statement or certificate filed under *Corp.C. 16906(a)* or (b) cancels a statement of partnership authority previously filed by the converting partnership. (*Corp.C. 16906(c).*) (For

form of statement of partnership authority, see Secretary of State website, www.ss.ca.gov/business/business.htm.)

SUPPLEMENT: [This section is current through the latest supplement]



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e. Record Ownership of Real Property.

9 *Witkin Sum. Cal. Law Partn* § 56

[§ 56] Record Ownership of Real Property.

Whenever a partnership or other business entity having real property in California converts to another entity, and the laws of the place of organization of the converting entity provide that conversion vests the real property of the *converting* entity in the *converted* entity, record ownership may be established by filing in the recorder's office in the county in which any of the real property is located either of the following documents (*Corp.C. 16907(a)*):

(1) A certificate of conversion, certificate of limited partnership, articles of organization, or articles of incorporation complying with *Corp.C. 16906* (*supra*, §55).

(2) A copy of a certificate of conversion, certificate of limited partnership, articles of organization, articles or certificate of incorporation, or other certificate evidencing the creation of a foreign other business entity by conversion, containing a statement of conversion certified by the Secretary of State or the authorized official of the place under the laws of which the conversion is effected.

SUPPLEMENT: [This section is current through the latest supplement]



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4. Merger.

a. In General.

9 *Witkin Sum. Cal. Law Partn* § 57

[§ 57] In General.

(1) *Permitted Mergers.* Article 9 permits the following mergers:

(a) Two or more partnerships into one partnership. (*Corp.C. 16910(a)(1).*)

(b) One or more partnerships and one or more other business entities into one of the other business entities. (*Corp.C. 16910(a)(2).*)

(c) One or more partnerships, other than a limited liability partnership, and one or more other business entities into one partnership. (*Corp.C. 16910(a)(3).*)

All jurisdictions in which the various entities are organized must either authorize merger or not prohibit it. (*Corp.C. 16910(b).*)

(2) *Merger With Foreign Entity.* A merger of one or more domestic partnerships with foreign partnerships or other business entities must comply with *Corp.C. 16910.* (*Corp.C. 16913(a).*)

If the surviving entity is a domestic partnership or other business entity, *Corp.C. 16901* et seq. govern mergers between those entities and any domestic disappearing partnership. (*Corp.C. 16913(b).*) If a domestic other business entity is also a party, a certificate of merger must be filed as provided by *Corp.C. 16915(b)* (infra, §60). (*Corp.C. 16913(c).*)

If the surviving entity is a foreign partnership or other business entity, the merger *may* be governed by the laws of the place of organization of that surviving entity. (*Corp.C. 16913(b).*)

(3) *Abandonment.* The partners of a constituent partnership may abandon a merger, subject to contractual rights of third parties, if abandonment is approved in the same manner as required for approval of the original merger agreement. (*Corp.C. 16911(d).*)

SUPPLEMENT: [This section is current through the latest supplement]



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4. Merger.

b. Agreement.

9 *Witkin Sum. Cal. Law Partn* § 58

[§ 58] Agreement.

(1) *Nature and Contents of Agreement.* Merging entities must have an agreement of merger. (*Corp.C. 16911(a).*) The agreement is analogous to the plan required for conversions (*supra*, §53) and must contain the following information:

(a) The terms and conditions of the merger. (*Corp.C. 16911(a)(1).*)

(b) The name and place of organization of the surviving partnership or other business entity, and of each disappearing partnership and other business entity. The agreement may change the name of the surviving partnership, and the new name may be the same as or similar to that of the disappearing partnership. (*Corp.C. 16911(a)(2).*)

(c) The manner of converting the partnership interests of each of the constituent partnerships into interests or other securities of the surviving partnership or other business entity, or manner of exchange for those rights, or that the partnership interests are canceled without consideration. (*Corp.C. 16911(a)(3).*)

(d) Other provisions required by the laws under which any constituent entity is organized. (*Corp.C. 16911(a)(4).*)

The agreement may also contain provisions that are not mandatory, yet nevertheless desired. (*Corp.C. 16911(a)(5).*)

The surviving partnership or other business entity must maintain the merger agreement at its principal place of business or records repository, depending on the entity, and make it available on request to specified parties. (*Corp.C. 16911(f).*)

(2) *Approval and Amendment of Agreement.* The agreement must be approved as provided in the partnership agreement of the constituent partnership. If that agreement fails to specify, approval is by the number or percentage of partners required under the partnership agreement to approve an amendment. If the agreement does not so provide, approval must be by all partners. In addition, the merger agreement must be approved for each constituent other business entity by the persons required to approve the merger by the laws under which the entity is organized. Other persons may be parties to the agreement of merger. (*Corp.C. 16911(a).*)

If the partnership is merging into a *limited partnership*, all partners who will become general partners of the surviving limited partnership must approve the agreement. (*Corp.C. 16911(b).*)

The merger agreement may be amended before the merger takes effect if approved (a) by the partners of each constituent partnership in the same manner required for approval of the original merger agreement and (b) by each constituent other entity. (*Corp.C. 16911(c).*)

A properly executed merger agreement may either amend an existing domestic partnership's agreement, or effect adoption of a new partnership agreement, if the domestic constituent partnership is the surviving partnership. (*Corp.C. 16911(e).*)

SUPPLEMENT: [This section is current through the latest supplement]



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c. Effect.

9 *Witkin Sum. Cal. Law Partn* § 59

[§ 59] Effect.

(1) *Effective Date.* If no domestic other business entity is a party to the merger, the merger is effective on the later of either (a) approval of the merger agreement by all parties, (b) filing of all required documents, or (c) a date specified in the merger agreement. (*Corp.C. 16912(a)(1).*) If a domestic other business entity is a party, the merger is effective when the certificate of merger is filed (*infra*, §60). (*Corp.C. 16912(a)(2).*)

(2) *Surviving Entity.* The separate existence of the disappearing partnerships and other business entities ceases. The surviving partnership or other business entity succeeds to all the rights and property of each of the disappearing partnerships and other business entities, and is subject to all their debts and liabilities. (*Corp.C. 16914(a)(1).*)

(3) *Creditors.* Rights of creditors and liens on the property of the constituent partnerships and other business entities are preserved and may be enforced against the surviving entity. Liens are limited to property affected immediately prior to the merger's effective date. (*Corp.C. 16914(a)(2).*)

(4) *Pending Actions.* Pending actions by or against a disappearing entity may be prosecuted to judgment and are binding on the surviving entity. (*Corp.C. 16914(a)(3).*)

(5) *Partners.* A partner of the surviving partnership or limited partnership or a member of the surviving limited liability company is liable for all of the following obligations:

(a) Obligations for which the partner or member was personally liable before the merger. (*Corp.C. 16914(c)(1).*)

(b) Obligations of the surviving entity incurred before the merger by a party to the merger. These may be satisfied out of entity property only. (*Corp.C. 16914(c)(2).*)

(c) Obligations of the surviving entity incurred after the merger takes effect. These may be satisfied only out of property of the entity if the partner is a limited partner or, unless expressly provided otherwise in the articles of organization, a member of a limited liability company. (*Corp.C. 16914(c)(3).*)

If the obligations incurred by a party before the merger are not satisfied out of the property of the surviving

partnership or other business entity, the general partners of the obligor party must, immediately before the effective date of the merger, to the extent the obligor was a partnership or a limited partnership, contribute the amount necessary to satisfy the obligations in the manner provided in either *Corp.C. 16807* (supra, §49) or the limited partnership act of the jurisdiction in which the obligor partnership was formed, as the case may be, as if the merged party were dissolved. (*Corp.C. 16914(d)*.)

(6) *Buyout*. A partner of a domestic disappearing partnership not voting in favor of the merger and not agreeing to become a partner, member, or holder of interest of the surviving partnership or other business entity may dissociate (supra, §41 et seq.) and must be bought out in the same manner as provided for conversions (supra, §54). (*Corp.C. 16914(e)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Surviving Entity*.

(*New Taxes*): A surviving partnership or other business entity is deemed to have assumed the California tax liability of the disappearing entity and must file the required tax and information returns and pay taxes due. The Secretary of State must notify the Franchise Tax Board of the merger when the surviving entity is a domestic limited liability company, corporation, or registered limited liability partnership, or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California. (*Corp.C. 16915.5*, added in 2005 and amended in 2006.)



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CHAPTER XII - Partnership

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II. GENERAL PARTNERSHIP

H. Reorganization.

4. Merger.

d. Certificate, Statement, or Merger Agreement.

9 *Witkin Sum. Cal. Law Partn* § 60

[§ 60] Certificate, Statement, or Merger Agreement.

(1) *When Certificate Is Required.* In a merger involving a domestic partnership in which a domestic other business entity is also a party, after approval of the merger, the constituent partnerships and other business entities must file a properly executed *certificate of merger* with the Secretary of State. The certificate must contain the following information:

(a) The names and the Secretary of State's file numbers of each of the constituent entities, separately identifying the disappearing partnerships and other business entities and the surviving partnership or other business entity. (*Corp.C. 16915(b)(1).*)

(b) If a vote of the partners was required, a statement that the principal terms of the agreement of merger were approved by the vote of the partners, which equaled or exceeded the vote required. (*Corp.C. 16915(b)(2).*)

(c) If the surviving entity is a domestic partnership and not another business entity, any change to the information in a filed statement of partnership authority of the surviving partnership resulting from the merger, including any change in the name of the surviving partnership. The filing has the effect of filing a certificate of amendment of the statement of partnership authority. (*Corp.C. 16915(b)(3).*)

(d) The future effective date or time of the merger, which must be a date or time certain not more than 90 days subsequent to the date of filing, if the merger is not effective on the date of filing. (*Corp.C. 16915(b)(4).*)

(e) If the surviving entity is an other business entity or a foreign partnership, the full name, type of entity, legal jurisdiction where organized and by the laws of which its internal affairs are governed, and the address of its principal place of business. (*Corp.C. 16915(b)(5).*)

(f) Other information required by the laws under which each constituent other business entity is organized. (*Corp.C. 16915(b)(6).*)

(2) *Optional Statement.* In mergers involving only partnerships or in which a domestic partnership and foreign other business entity are parties but no other domestic business entity is a party, the surviving entity *may* file a statement

of merger. If so, the statement must specify (a) the names of each party to the merger, (b) the name of the surviving entity, (c) the street address of the surviving entity's chief executive office and of an office in California, and (d) the form of the surviving entity. (*Corp.C. 16915(a).*)

(3) *Copy of Merger Agreement.* If the surviving entity is a domestic or foreign corporation in a merger in which a domestic corporation is a constituent party, the surviving corporation must file a copy of the merger agreement and required attachments. (*Corp.C. 16915(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



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H. Reorganization.

4. Merger.

e. Record Ownership of Real Property.

9 Witkin Sum. Cal. Law Partn § 61

[§ 61] Record Ownership of Real Property.

If a domestic or foreign partnership or other business entity having real property in California merges with another partnership or other business entity, and the laws of the place of organization of the *disappearing* entity provide that filing a statement, certificate, or agreement of merger (supra, §60) vests the real property of any disappearing entity in the *surviving* entity, record ownership may be established by filing in the recorder's office in any county where any of the real property is located either (1) a certificate or agreement of merger, or (2) a certified copy of a statement, certificate, or agreement of merger from the place where the merger is effected. (*Corp.C. 16916(a).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 III. LIMITED PARTNERSHIP
 A. California Revised Limited Partnership Act.
 1. Statutory Development.

9 *Witkin Sum. Cal. Law Partn* § 62

[§ 62] Statutory Development.

(1) *Original Uniform Limited Partnership Act (1916)*. In 1916, the National Conference of Commissioners on Uniform State Law approved the original Uniform Limited Partnership Act. In 1949, California adopted the Uniform Limited Partnership Act (*Corp.C. 15501 et seq.*), which superseded the former law on special partnerships. (See generally, 2 *U.C.L.A. L. Rev.* 105.)

(2) *Revised Limited Partnership Act (1976)*. In 1976, the Commissioners on Uniform State Laws approved the Revised Uniform Limited Partnership Act. Amendments were adopted in 1985. (See 6A *U.L.A. (Master Ed.)*, p. 125 et seq.) California adopted the Revised Limited Partnership Act (Revised Act) in 1983 (*Corp.C. 15611 et seq.*), effective July 1, 1984. However, the Uniform Limited Partnership Act as adopted in California in 1949 still applies to partnerships existing on July 1, 1984, that have not elected to be governed by the Revised Act. (*Corp.C. 15711, 15712* [limited partnerships under prior law required to file new conforming certificates of limited partnership]; on transition provisions generally, see *Corp.C. 15710 et seq.*) Limited partnerships formed on or after July 1, 1984, are governed by the Revised Act. (See C.E.B., *Advising California Partnerships* 3d, §5.7; *Cal. Civil Practice, 2 Business Litigation*, §19:2; *Cal Transactions Forms, 4 Business Entities, Limited Partnerships*, §18:1 et seq.; *infra*, §63 et seq.)

(3) *California's Revised Uniform Partnership Act of 1994*. California's Revised Uniform Partnership Act of 1994 (*Corp.C. 16100 et seq.*; *supra*, §15 et seq.) governs limited partnerships with respect to matters not provided for under the Revised Limited Partnership Act. (*Corp.C. 15722*; see C.E.B., *Selecting and Forming Business Entities*, §8.3.)

(4) *Uniform Limited Partnership Act (2001)*. The Commissioners on Uniform State Laws promulgated the Uniform Limited Partnership Act (2001) (6A *U.L.A. (Master Ed.)*, p. 9 et seq.), published in 2003, as a "stand alone" act distinct from both the original and revised uniform general partnership acts, and yet incorporating provisions from the Revised Act and from the Uniform Limited Liability Company Act. The 2001 Act targets the following enterprises: (a) "sophisticated, manager-entrenched commercial deals whose participants commit for the long term," and (b) "estate planning arrangements (family limited partnerships)." (Prefatory Note, 6A *U.L.A. (Master Ed.)*, p. 2.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Revised Limited Partnership Act (1976)*. See 6B *U.L.A. (Master Ed.)*, p. 1 et seq. (4) *Uniform Limited Partnership Act (2001)*. See 6A *U.L.A. (Master Ed.)*, p. 325 et seq.

(5) *(New) California Uniform Limited Partnership Act of 2008.* The 2006 Legislature enacted the Uniform Limited Partnership Act of 2008 (2008 Act) (*Corp.C. 15900 et seq.*; Supp., infra, §121A et seq.), California's version of the Uniform Limited Partnership Act (2001) (Uniform Act; 6A U.L.A. (Master Ed.), p. 325 et seq.). (See C.E.B., *Selecting and Forming Business Entities* 2d, §6.4.)

(a) *Application and Effect.* The 2008 Act is effective January 1, 2008. Limited partnerships formed before January 1, 2008, will continue to be governed by the California Revised Limited Partnership Act (*Corp.C. 15611 et seq.*), and the law governing general partnerships (*Corp.C. 16100 et seq.*; text, §15 et seq.) unless the limited partnership elects to be governed by the 2008 Act, or until January 1, 2010, when the 2008 Act will govern all limited partnerships. (*Corp.C. 15912.06.*) Thus, as of January 1, 2010, *Corp.C. 15611 et seq.* are repealed. (For special rules applicable to partnerships formed before January 1, 2008, that elect to be governed by the 2008 Act, see Supp., infra, §121A.)

(b) *Existing Law.* The 2008 Act does not affect or overturn existing case or statutory law regarding the liability of limited partners. Nor does the 2008 Act permit the formation in California generally of limited liability limited partnerships. (See Stats. 2006, Chap. 495, §37.) (On permissible limited liability partnerships in law and accounting, see *Corp.C. 16951 et seq.*; text, §122 et seq.)

(c) *Principal Changes.* California's Revised Limited Partnership Act (Revised Act) provided that in cases not covered by the Revised Act, "limited partnerships shall be governed in the same manner as general partnerships would be governed" under California's Revised Uniform Partnership Act of 1994. (*Corp.C. 15722.*) Thus, the Revised Act was designed to default to, or link to, California's general partnership law, just as the Uniform Limited Partnership Act of 2001 was so linked to the Uniform Partnership Act.

The 2008 Act generally follows the format and substance of the Uniform Act (6A U.L.A. (Master Ed.), p. 325 et seq.), and like the Uniform Act, is a stand-alone act that expressly states provisions previously applicable through California's Uniform Partnership Act. For example, the 2008 Act now specifically addresses the fiduciary duties of general partners (Supp., infra, §121V) and tracks generally *Corp.C. 16404* (text, §30 et seq.). Also, the 2008 Act generally adopts the Uniform Partnership Act's dissociation provisions verbatim except where inappropriate to limited partners (Supp., infra, §121BB).



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III. LIMITED PARTNERSHIP

A. California Revised Limited Partnership Act.

2. Agreement Varying Effect of Act.

9 *Witkin Sum. Cal. Law Partn* § 63

[§ 63] Agreement Varying Effect of Act.

Generally, the provisions of the Revised Act (*Corp.C. 15611 et seq.*) may be varied among the partners by the partnership agreement, except where expressly provided to the contrary in the Revised Act. (*Corp.C. 15618.*) However, the following provisions may be varied only as those provisions expressly provide:

- (1) *Corp.C. 15462* (termination of general partner's status; *infra*, §85.)
- (2) *Corp.C. 15694* (information and rights of limited partners of foreign limited partnership; *infra*, §101).
- (3) *Corp.C. 15701* (right of action and pleading; *infra*, §104).
- (4) *Corp.C. 15702* (motion to furnish security; *infra*, §105).
- (5) *Corp.C. 15621 et seq.* (formation of limited partnership; *infra*, §69 et seq.).
- (6) *Corp.C. 15678.1* (mergers; *infra*, §110 et seq.).
- (7) *Corp.C. 15681 et seq.* (dissolution; *infra*, §95 et seq.).

The presence in certain provisions of the Revised Act of the words "unless otherwise provided in the partnership agreement" or words of similar import does not imply that the effect of other provisions may not be varied among the partners. (*Corp.C. 15618.*)

SUPPLEMENT: [This section is current through the latest supplement]



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 3. Definitions.

9 *Witkin Sum. Cal. Law Partn* § 64

[§ 64] Definitions.

Corp.C. 15611 defines various terms that govern the construction of the Revised Act, unless the context requires otherwise, including the following:

(1) *Capital account*. A partner's capital account is the amount of the partner's capital interest in the partnership. (*Corp.C. 15611(b)*; *infra*, §87.)

(2) *Contribution*. Money, property, or services rendered, or agreed to be rendered, that a partner contributes to a limited partnership as capital. (*Corp.C. 15611(g)*; *infra*, §87.)

(3) *Distribution*. The transfer of money or property by a partnership to its partners without consideration. (*Corp.C. 15611(j)*; *infra*, §88.)

(4) *Foreign limited partnership*. A partnership formed under the laws of a state other than California, or under the laws of a foreign country, and having as partners at least one general partner and limited partner. (*Corp.C. 15611(l)*; *infra*, §101.)

(5) *Foreign other business entity*. An other business entity formed under the laws of a state other than California, or under the laws of a foreign country. (*Corp.C. 15611(m)*.)

(6) *General partner*. A person admitted to a limited partnership as a general partner in accordance with the partnership agreement, or with the written consent of the partners under *Corp.C. 15641*. (*Corp.C. 15611(n)*; *infra*, §84 et seq.)

(7) *Interests of all partners*. The aggregate interests of all partners in the current profits derived from business operations of the partnership. (*Corp.C. 15611(o)*.)

(8) *Interest of limited partners*. The aggregate interests of all limited partners in their respective capacities as limited partners in the current profits derived from operation of the partnership business. (*Corp.C. 15611(p)*.)

(9) *Limited partner*. A person who has been admitted to a limited partnership as a limited partner in accordance

with the partnership agreement, or an assignee of a limited partnership interest who has become a limited partner pursuant to *Corp.C. 15674* (infra, §93), or, to the extent provided in *Corp.C. 15662(b)*, a former general partner who has ceased to be a general partner. (*Corp.C. 15611(q)*; infra, §75 et seq.)

(10) *Limited partnership and domestic limited partnership.* A partnership formed by two or more persons under California law and having one or more general partners and one or more limited partners. (*Corp.C. 15611(r)*.)

(11) *Other business entity.* A corporation, general partnership, limited liability company, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a limited partnership. (*Corp.C. 15611(v)*.)

(12) *Partner.* A limited or general partner; "partner of record" is a partner named as a partner on the list maintained under *Corp.C. 15615(a)* (required documents and records; infra, §66). (*Corp.C. 15611(x)*.)

(13) *Partnership agreement.* A valid oral or written agreement of the partners as to the affairs of a limited partnership and the conduct of its business. (*Corp.C. 15611(y)*; infra, §70.)

(14) *Person.* An individual, partnership, limited partnership (domestic or foreign), trust, estate, association, corporation, limited liability company, or other entity. (*Corp.C. 15611(z)*.)

(15) *Transact intrastate business.* Entering into repeated and successive transactions of business in California, other than interstate or foreign commerce. (*Corp.C. 15611(ag)(1)*.) (On status that foreign limited partnerships may maintain without being considered to be transacting intrastate business, see *Corp.C. 15611(ag)(2)*; on activities that foreign limited partnership may carry on without conducting intrastate business, see *Corp.C. 15611(ag)(3)*.)

A person does not transact intrastate business in California merely because the person is a limited partner of a domestic limited partnership or a foreign limited partnership registered to transact intrastate business in the state. (*Corp.C. 15611(ag)(4)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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 A. California Revised Limited Partnership Act.
 4. Name.

9 *Witkin Sum. Cal. Law Partn* § 65

[§ 65] Name.

(1) *Requisites and Conditions.* The name of a limited partnership, as set forth in its certificate of limited partnership, is subject to the following conditions:

(a) It must contain the words "limited partnership" or the abbreviation "L.P." at the end of its name. (*Corp.C. 15612(a).*)

(b) It may contain the name of a limited partner. (*Corp.C. 15612(b).*)

(c) It may not be a name that the Secretary of State determines is likely to mislead the public. Nor may it be the same as, or resemble so closely as to tend to deceive, (1) a name that is under reservation for another limited partnership or (2) the name of a limited partnership that has previously filed a certificate of limited partnership under *Corp.C. 15621*, or of a foreign limited partnership registered pursuant to *Corp.C. 15692*. However, a limited partnership may adopt a name that is substantially the same as that of an existing domestic limited partnership or registered foreign limited partnership on proof of consent by that entity, and a finding by the Secretary of State that the public is not likely to be misled. (*Corp.C. 15612(c).*)

(d) It may not contain the words "bank," "insurance," "trust," "trustee," "incorporated," "inc.," "corporation," or "corp." (*Corp.C. 15612(d).*)

The use by a limited partnership of a name in violation of *Corp.C. 15612* may be enjoined despite the filing of a certificate or registration with the Secretary of State. (*Corp.C. 15612(e).*)

(2) *Reservation of Name.* On payment of the prescribed fee, an applicant may obtain from the Secretary of State a certificate of reservation of a name not prohibited by *Corp.C. 15612*. The name is reserved for 60 days. The same name cannot be reserved for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person; nor may consecutive reservations be made by or for the use or benefit of the same person of names so similar as to fall within the prohibitions of *Corp.C. 15612(c)*. (*Corp.C. 15613.*) (On fees, see *Govt.C. 12188*; for name reservation request form, see Secretary of State website www.ss.ca.gov/business/business.htm.)

SUPPLEMENT: [This section is current through the latest supplement]



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III. LIMITED PARTNERSHIP
A. California Revised Limited Partnership Act.
5. Office and Records.

9 Witkin Sum. Cal. Law Partn § 66

[§ 66] Office and Records.

A limited partnership must continuously maintain an office in California, where the records required by *Corp.C. 15615* must be kept. (*Corp.C. 15614(a).*)

A limited partnership must keep at its mandated office all of the following:

- (1) A current, alphabetical list of each partner's full name and last known business or residence address, together with the partner's contribution and the share in profits and losses. (*Corp.C. 15615(a).*)
- (2) A copy of the certificate of limited partnership and all certificates of amendments, together with executed copies of powers of attorney pursuant to which certificates have been executed. (*Corp.C. 15615(b).*)
- (3) Copies of the limited partnership's federal, state, and local income tax or information returns and reports for the 6 most recent taxable years. (*Corp.C. 15615(c).*)
- (4) Copies of the original partnership agreement and amendments. (*Corp.C. 15615(d).*)
- (5) Financial statements for the 6 most recent fiscal years. (*Corp.C. 15615(e).*)
- (6) The books and records, as they relate to the internal affairs of the partnership for at least the current and past 3 fiscal years. (*Corp.C. 15615(f).*) (On rights of limited partner to information, see *infra*, §78.)

SUPPLEMENT: [This section is current through the latest supplement]



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 6. Agent and Service of Process.

9 *Witkin Sum. Cal. Law Partn* § 67

[§ 67] Agent and Service of Process.

A limited partnership must continuously maintain an agent for service of process on the limited partnership in California. (*Corp.C. 15614(b).*)

The certificate of limited partnership must designate as its agent for service of process an individual residing in California or a corporation that has complied with *Corp.C. 1505*, requiring the filing of a certificate before a corporation may be designated as agent for service of process (see 9 *Summary* (10th), *Corporations*, §76). If an individual is designated, the person's complete business or residence address must be set forth. (*Corp.C. 15627(d)(1).*)

The agent's authority to receive process ceases on filing a signed and acknowledged written statement of *resignation* with the Secretary of State. The Secretary of State must then give written notice of the filing to the limited partnership or foreign limited partnership by mail addressed to the principal executive office. (*Corp.C. 15627(d)(2).*) (For resignation of agent form, see Secretary of State website www.ss.ca.gov/business/business.htm.)

On the death, resignation, or termination of state residency of an individual agent or the resignation, dissolution, corporate suspension, or withdrawal from the state of a corporate agent, the limited partnership must file an amendment to its certificate designating a new agent. (*Corp.C. 15627(d)(3).*) (On certificate of amendment see *infra*, §72.)

Process may be served on limited and foreign limited partnerships in accordance with *C.C.P. 413.10* et seq. (see 3 *Cal. Proc.*, (4th) *Actions*, §920 et seq.) and *Corp.C. 15627*. (*Corp.C. 15627(a).*)

Corp.C. 15627 provides for personal service of a copy of a process against a limited or foreign limited partnership by delivery to the designated agent, general partner, or officer of the general partner. If the agent has resigned or cannot be found, and it is shown that service cannot be made on the agent or a general partner, service may be made by delivering a copy of the process to the Secretary of State, who must then give notice of service to the partnership.

SUPPLEMENT: [This section is current through the latest supplement]
C.C.P. 413.10 et seq.:

Cross-Reference: 3 *Cal. Proc.* (5th), *Actions*, §1002.



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7. Authorized Activity.

9 *Witkin Sum. Cal. Law Partn* § 68

[§ 68] Authorized Activity.

(1) *Nature of Business.* A limited partnership may carry on any business that a general partnership might, with the exception of banking, insurance, or trust company business. (*Corp.C. 15616.*)

(2) *Partner's Transaction of Business With Partnership.* A partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect to those transactions as a person who is not a partner. (*Corp.C. 15617.*)

SUPPLEMENT: [This section is current through the latest supplement]



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III. LIMITED PARTNERSHIP

B. Nature and Formation of Limited Partnership.

1. Nature of Limited Partnership.

9 Witkin Sum. Cal. Law Partn § 69

[§ 69] Nature of Limited Partnership.

A limited partnership or domestic limited partnership is a partnership formed under the Corporations Code and having one or more limited partners and one or more general partners. (See *Corp.C. 171.5, 15501, 15611(r)*; C.E.B., *Advising California Partnerships* 3d, §5.2; C.E.B., *Selecting and Forming Business Entities*, §8.1 et seq.; *Cal. Civil Practice*, 2 *Business Litigation*, §19:3 et seq.; *Cal Transactions Forms*, 4 *Business Entities*, §18:4; *59A Am.Jur.2d (2003 ed.)*, *Partnership* §773 et seq.; *29 San Diego L. Rev.* 399 [limited partnership as means of achieving benefits of corporation while avoiding corporate taxes].)

A limited partner does not participate in the control of the business and is not generally liable for the obligations of the partnership, so that his or her only risk is the capital contribution. (See C.E.B., *Advising California Partnerships* 3d, §5.2 et seq.; *59A Am.Jur.2d (2003 ed.)*, *Partnership* §863 et seq.; *infra*, §76.)

A limited partner has no property interest in the specific assets of the partnership, and assets of the partnership are not available to satisfy a judgment against limited partners in their individual capacities. (*Evans v. Galardi (1976) 16 C.3d 300, 307, 128 C.R. 25, 546 P.2d 313, 8 Cal. Proc. (4th), Enforcement of Judgment*, §287.)

A limited partnership is regarded as an entity separate from its partners when it is sued, when it is served with process, and when execution is levied on its assets. It is similarly regarded as an entity that, like a corporation, is considered to be permanently within California, regardless of the whereabouts of its principals. Hence, the statute of limitations on claims against it is not tolled under *C.C.P. 351* when the general partner is absent from the state. (*Epstein v. Frank (1981) 125 C.A.3d 111, 177 C.R. 831.*)

West's Key Number Digest, Partnership k.349 et seq.

SUPPLEMENT: [This section is current through the latest supplement]
 See C.E.B. *Selecting and Forming Business Entities* 2d, §6.1 et seq.

Evans case:

Cross-Reference: 8 *Cal. Proc. (5th), Enforcement of Judgment*, §296.



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III. LIMITED PARTNERSHIP

B. Nature and Formation of Limited Partnership.

2. Partnership Agreement.

9 *Witkin Sum. Cal. Law Partn* § 70

[§ 70] Partnership Agreement.

To form a limited partnership, the general partners must (1) execute, acknowledge, and file a certificate of limited partnership and (2) either before or after the filing, enter into a partnership agreement. (*Corp.C. 15621(a)*; on certificate of limited partnership, see *infra*, §71.) The agreement consists of a valid oral or written agreement of the partners, including all amendments, as to the affairs of a limited partnership and the conduct of its business. (*Corp.C. 15611(y)*.) If a dispute arises concerning the terms and conditions of an oral agreement, the burden of proof is on the general partner. (*Corp.C. 15611(y)*.)

The certificate of limited partnership is principally concerned with the identity of the partnership and the general partners; other issues are left to be covered in a more comprehensive partnership agreement, and it is the agreement that is the authoritative document. (See Official Comment, 6A U.L.A. (Master Ed.), p. 268.)

SUPPLEMENT: [This section is current through the latest supplement]
See Official Comment, 6B U.L.A. (Master Ed.), p. 127.



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B. Nature and Formation of Limited Partnership.

3. Certificate of Limited Partnership.

9 *Witkin Sum. Cal. Law Partn* § 71

[§ 71] Certificate of Limited Partnership.

(1) *Necessity*. Formation requires that the general partners execute, acknowledge, and file a certificate of limited partnership. (*Corp.C. 15621(a)*.) (On execution, see *infra*, §74; on certificate of dissolution, see *infra*, §100.)

(2) *Content and Form*. *Corp.C. 15621(a)* provides that the certificate of limited partnership must set forth the following:

(a) The name of the limited partnership.

(b) The street address of the principal executive office.

(c) The names and addresses of the general partners.

(d) The name and address of the agent for service of process required under *Corp.C. 15614* (*supra*, §67), unless a corporate agent is designated, in which case only the name of the agent need be stated.

The limited partners need not be identified, the character of the business need not be stated, and the amount of cash and property contributed need not be listed. (See *infra*, §87.) These, and other requirements as to the rights of the partners, are left to the partnership agreement. (See Official Comment, 6A U.L.A. (Master Ed.), p. 268.) In addition, many of the rights and duties of limited partners are controlled by *Corp.C. 15636*, in the absence of contrary provisions in the partnership agreement.

(3) *Certification and Filing*. The certificate of limited partnership must be filed in the office of the Secretary of State on a form prescribed by the Secretary. (*Corp.C. 15621(a)*.) (On filing fee, see *Govt.C. 12188(b)*.) In conjunction with the necessary form, the Secretary of State must provide a notice regarding the limited partnership's obligation to pay an annual tax under Rev.C. 17935. (*Corp.C. 15621(f)*.) (For certificate of limited partnership form, see Secretary of State website, www.ss.ca.gov/business/business.htm.)

The limited partnership is formed at the time of filing the certificate. (*Corp.C. 15621(b)*.) The filing is essential for the limited partnership's existence, and failure to file renders the entity a general partnership. (*American Alternative Energy Partners II v. Windridge* (1996) 42 C.A.4th 551, 560, 49 C.R.2d 686.) Thus, for all purposes, a copy of the

certificate of limited partnership duly certified by the Secretary of State is conclusive evidence of the formation of a limited partnership and prima facie evidence of its existence. (*Corp.C. 15621(c)*.)

The Secretary of State may cancel the filing of a certificate of limited partnership if a check or other remittance accepted in payment of the filing fee is not honored upon presentation, after giving notice and a further opportunity to pay as specified. (*Corp.C. 15621(e)*.)

(4) *Liability*. General partners or limited partners executing a certificate pursuant to *Corp.C. 15633* (infra, §76) are liable for statements materially inconsistent with the partnership agreement or material misstatements of fact contained in the certificate if the partner knew or should have known that the statement was false when made and an amendment was not filed, and the person suffering the loss relied on the statement or misstatement. (*Corp.C. 15624(c)*.) Otherwise, a limited partner does not incur liability for misstatements in the certificate. (*Corp.C. 15624(e)*.)

(5) *Recordation*. A limited partnership may record with any county recorder in California a certified copy of certificates or amendments, filed with the Secretary of State; and a foreign limited partnership may similarly record a certified copy of its application for registration, with its certificate of registration or amendments. (*Corp.C. 15621(d)*.)

The recording creates a *conclusive presumption* in favor of a bona fide purchaser or encumbrancer for value of the partnership real property located in the county in which the certified copy has been recorded, that the persons named as general partners are the general partners of the partnership named and that they are all of the general partners of the partnership. (*Corp.C. 15621(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Content and Form*. See Official Comment, 6B U.L.A. (Master Ed.), p. 127.



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B. Nature and Formation of Limited Partnership.

4. Certificate of Amendment.

9 *Witkin Sum. Cal. Law Partn* § 72

[§ 72] Certificate of Amendment.

(1) *Necessity*. An amendment to a certificate of limited partnership *must* be filed by the general partners within 30 days after the occurrence of any of the following events:

- (a) A change in the name of the limited partnership. (*Corp.C. 15622(b)(1)*.)
- (b) A change in the street address of the principal executive office. (*Corp.C. 15622(b)(2)*.)
- (c) A change in the address of a general partner or the agent for service of process, or the appointment of a new agent. (*Corp.C. 15622(b)(3)*.)
- (d) The admission of a general partner. (*Corp.C. 15622(b)(4)*.)
- (e) The cessation of a general partner to be a general partner. (*Corp.C. 15622(b)(5)*.)
- (f) The discovery by a general partner of a false or erroneous material statement in the certificate or in its amendments. (*Corp.C. 15622(b)(6)*.)
- (g) On dissolution, if someone other than a general partner is authorized to wind up the affairs of the limited partnership. (*Corp.C. 15622(c)*.)

A certificate of limited partnership may be amended at any time in any other respect that the general partners determine. (*Corp.C. 15622(d)*.) (On substitute execution where general partner fails to execute required certificate, see *infra*, §74.)

(2) *Liability*. Except as provided in *Corp.C. 15624(c)* (*infra*, §76), no limited partner incurs liability for misstatements contained in the certificate or for the failure to file an amendment to a certificate pursuant to *Corp.C. 15622(b)*. (*Corp.C. 15624(e)*.) Moreover, except as provided in *Corp.C. 15642* (*infra*, §85), no person is liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of an event referred to in *Corp.C. 15622(b)* if the amendment is filed within 30 days after the event. (*Corp.C. 15624(d)*.) (On liability of partners for misstatements in certificates, see *infra*, §§76, 86.)

(3) *Content and Form.* The certificate of amendment must be executed and acknowledged according to *Corp.C. 15624* (infra, §74) on a form prescribed by the Secretary of State. It must set forth (a) the name and the Secretary of State's file number of the limited partnership, and (b) the text of the amendment. (*Corp.C. 15622(a)*.) (For certificate of amendment form, see Secretary of State website, www.ss.ca.gov/business/business.htm.)

(4) *Effective on Filing.* The certificate of amendment is effective on its filing with the Secretary of State. (*Corp.C. 15626*.) (On filing fee, see *Govt.C. 12188(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(4) *Effective on Filing.* *Govt.C. 12188* was repealed in 2006 and a new *Govt.C. 12188* was added. The filing fee for the certificate of amendment is now in *Govt.C. 12188(d)*.



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B. Nature and Formation of Limited Partnership.

5. Restated Certificate of Limited Partnership.

9 Witkin Sum. Cal. Law Partn § 73

[§ 73] Restated Certificate of Limited Partnership.

Corp.C. 15622(e) authorizes the filing of a restated certificate of limited partnership that includes in a single certificate all the operative and in-effect provisions contained in the certificates filed with the Secretary of State under *Corp.C. 15621 et seq.* (supra, §§71, 72). (*Corp.C. 15622(e)(1)*.) The restated certificate replaces the original certificate of limited partnership and all previously filed amendments. (*Corp.C. 15622(e)(3)*.)

A restated certificate may include an amendment of the certificate of limited partnership not previously filed with the Secretary of State. (*Corp.C. 15622(e)(2)*.) An amendment made in connection with the restatement and integration of the certificate of limited partnership is subject to any other provision of *Corp.C. 15611 et seq.*, not inconsistent with *Corp.C. 15622*, that would apply if a separate certificate of amendment were filed to effect that change. (*Corp.C. 15622(e)(4)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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B. Nature and Formation of Limited Partnership.

6. Execution of Certificates.

9 Witkin Sum. Cal. Law Partn § 74

[§ 74] Execution of Certificates.

(1) *In General.* Except as provided in *Corp.C. 15633* (infra, §76), an original *certificate of limited partnership* must be executed by all of the named general partners, or by a person authorized under *Corp.C. 15625* (infra, this section). (*Corp.C. 15624(a)(1)*.) A *certificate of amendment* must be executed by all general partners, unless a lesser number is provided for in the certificate of limited partnership, and by each general partner designated in the certificate as a new partner. However, if the amendment states the *cessation* of a general partner as a general partner, it need not be signed by the former general partner. (*Corp.C. 15624(a)(2)*.) A certificate filed by a *limited partner* pursuant to *Corp.C. 15633* must be signed by the limited partner. (*Corp.C. 15624(a)(7)*.) (On execution of certificates of dissolution, cancellation, and continuation, see infra, §100.)

(2) *Execution by Attorney-in-Fact.* A person may execute an original certificate of limited partnership or certificate of amendment by an attorney-in-fact. (*Corp.C. 15624(b)*.)

(3) *Failure or Refusal To Execute.* If a general partner required to execute or file a certificate of limited partnership fails to do so within a reasonable time after demand, or refuses to do so, any other partner or a person appointed by the court may do so. (*Corp.C. 15625(a)*.) If a general partner required to execute *any certificate* fails to do so within a reasonable time or refuses to do so, or if there is a dispute concerning the filing of a certificate of amendment, continuation, dissolution, or cancellation, or a failure to file any of those certificates, any partner may petition the superior court to direct the execution of the certificate. (*Corp.C. 15625(b)*.) *Corp.C. 15625(b)* also provides for the reimbursement of reasonable expenses, including attorneys' fees, where the failure to file was unjustified.

(4) *Restated Certificate of Limited Partnership.* A restated certificate of partnership must be executed as any other certificate of amendment under *Corp.C. 15624(a)(2)*. (*Corp.C. 15624(a)(8)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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C. Limited Partners.

1. Admission of Additional Limited Partners.

9 Witkin Sum. Cal. Law Partn § 75

[§ 75] Admission of Additional Limited Partners.

After the filing of a limited partnership's original certificate of limited partnership, a person may become a limited partner under the following circumstances:

(1) In the case of a person acquiring a limited partnership interest directly from the limited partnership, on compliance with the partnership agreement or, if the partnership agreement does not so provide, on the written consent of all of the partners. (*Corp.C. 15631(a)(1).*)

(2) In the case of an assignee of a partnership interest, on compliance with *Corp.C. 15674(a)* (infra, §93) and at the time provided in and on compliance with the partnership agreement. If the partnership agreement does not so provide, then when the person's admission is reflected in the records of the limited partnership in accordance with *Corp.C. 15631(b)*. (*Corp.C. 15631(a)(2).*)

When a limited partner is admitted, the person's name must be added to the list of partners required by *Corp.C. 15615(a)* (supra, §66). (*Corp.C. 15631(b)*; see Official Comment, 6A U.L.A. (Master Ed.), p. 316.)

SUPPLEMENT: [This section is current through the latest supplement]
See Official Comment, 6B U.L.A. (Master Ed.), p. 173.



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2. Personal Liability.

9 *Witkin Sum. Cal. Law Partn* § 76

[§ 76] Personal Liability.

(1) *General Rule of Nonliability.* A limited partner is not liable for the obligations of a limited partnership unless the limited partner is named as a general partner in the certificate, or the limited partner participates in the control of the business in addition to the exercise of the rights and powers of a limited partner. (*Corp.C. 15632(a).*)

(2) *Liability When Participating in Control.* A limited partner who participates in the control of the business *may* be liable for obligations of the limited partnership. However, if the limited partner participates without being named as a general partner, the liability is limited to persons who transact business with the limited partnership with actual knowledge of that partner's participation in control and with a reasonable belief that the partner is a general partner at the time of the transaction. Regardless, the limited partner remains liable to third parties for the limited partner's participation in tortious conduct. (*Corp.C. 15632(a).*)

A limited partner may engage in the following activities without participating in the control of the business:

(a) Being (1) an independent contractor, agent, or employee, or transacting business with the limited partnership or a general partner; (2) an officer, director, or shareholder of a corporate general partner of the limited partnership; (3) a member, manager, or officer of a limited liability company (*infra*, §136 et seq.) that is a general partner of the limited partnership; (4) a limited partner of a partnership that is a general partner of the limited partnership; (5) a trustee, administrator, executor, custodian, or other fiduciary or beneficiary of an estate or trust that is a general partner; or (6) a trustee, officer, advisor, shareholder, or beneficiary of a business trust that is a general partner. (*Corp.C. 15632(b)(1).*)

(b) Consulting with and advising a general partner with respect to the business of the limited partnership. (*Corp.C. 15632(b)(2).*)

(c) Acting as a surety for the limited partnership or for a general partner; guaranteeing one or more specific debts of the limited partnership; providing collateral for the limited partnership or general partner; borrowing money from the limited partnership or a general partner; or lending money to the limited partnership or a general partner. (*Corp.C. 15632(b)(3).*)

(d) Approving or disapproving an amendment to the partnership agreement. (*Corp.C. 15632(b)(4).*)

(e) Voting on, proposing, or calling a meeting of the partners for one or more matters specified in *Corp.C. 15636(f)* (infra, §80). (*Corp.C. 15632(b)(5)*.)

(f) Winding up the partnership pursuant to *Corp.C. 15683* (infra, §97). (*Corp.C. 15632(b)(6)*.)

(g) Executing and filing certain required certificates. (*Corp.C. 15632(b)(7)*.)

(h) Serving on an audit committee or committee performing the functions of an audit committee. (*Corp.C. 15632(b)(8)*.)

(i) Serving on a committee of the limited partnership or the limited partners for approving actions of the general partners. (*Corp.C. 15632(b)(9)*.)

(j) Calling, requesting, attending, or participating at meetings of the partners or the limited partners. (*Corp.C. 15632(b)(10)*.)

(k) Taking action required or permitted by law to bring, pursue, settle, or terminate a derivative action on behalf of the limited partnership. (*Corp.C. 15632(b)(11)*.)

(l) Serving on the board of directors or a committee, consulting with or advising, being or acting as an officer, director, stockholder, partner, member, manager, agent, or employee of, or being or acting as a fiduciary for, a person in which the limited partnership has an interest. (*Corp.C. 15632(b)(12)*); see *Gruendl v. Oewel Partnership* (1997) 55 C.A.4th 654, 659, 64 C.R.2d 217 [individual, sole shareholder of corporation that was general partner of limited partnership in which that individual was sole limited partner was not as matter of law alter ego of both corporation and limited partnership, given limited partnership status and *Corp.C. 15632* limitations on liability].)

(m) Exercising rights or powers permitted to limited partners under the California Revised Limited Partnership Act and not specifically enumerated in *Corp.C. 15632(b)*. (*Corp.C. 15632(b)(13)*.) The enumeration in *Corp.C. 15632(b)* is not exclusive. (*Corp.C. 15632(c)*.)

(3) *Erroneous Belief of Limited Partner Status*. Except as provided in *Corp.C. 15633(b)* (infra, this section), if a certificate of limited partnership *has not been filed*, a person making a contribution to the purported limited partnership in the good faith belief that the person has become a limited partner is not liable for the obligations of the purported limited partnership if, on ascertaining that the certificate has not been filed and after a failure of the general partner or partners to file the certificate within a reasonable time after request, that person promptly files the certificate of limited partnership. A limited partner executing and filing a certificate must send a copy to each general partner. (*Corp.C. 15633(a)*.)

A person described in *Corp.C. 15633(a)* is liable only to a third party who transacted business with the purported limited partnership before the certificate was filed and who reasonably believed that the person was a general partner at the time of the transaction. (*Corp.C. 15633(b)*.)

(4) *Liability for Misstatements in Certificates*. A limited partner who executes a certificate pursuant to *Corp.C. 15633* is liable for statements materially inconsistent with the partnership agreement or for material misstatements of fact contained in the certificate if (a) the partner knew or should have known that the statement was false when made and an amendment required by *Corp.C. 15622(b)* (supra, §72) was not filed, and (b) the person suffering the loss relied on the statement or misstatement. (*Corp.C. 15624(c)*); on general partner's liability for statements inconsistent with partnership agreement or misstatements of fact, see infra, §86.) Otherwise, a limited partner does not incur liability for misstatements contained in the certificate. (*Corp.C. 15624(e)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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C. Limited Partners.

3. Fiduciary Duty to Limited Partnership.

9 Witkin Sum. Cal. Law Partn § 77

[§ 77] Fiduciary Duty to Limited Partnership.

A limited partner normally is not involved in the management or participation of a partnership so as to incur fiduciary obligations to other partners or to the partnership. However, when a limited partner is involved in a manner that allows the limited partner access to confidential information, this may create fiduciary duties.

In *Tri-Growth Centre City, Ltd. v. Silldorf, Burdman, Duignan & Eisenberg* (1989) 216 C.A.3d 1139, 1150, 265 C.R. 330, citing the text, plaintiff limited partnership was formed to acquire real property on which to construct and operate a motel. B, a partner in defendant law firm, became a limited partner. The law firm had represented other partnerships formed by the individual plaintiffs. At the time B became a limited partner, he learned of plaintiffs' interest in acquiring a specific parcel that would give plaintiffs ownership of an entire block for development. Plaintiffs made unsuccessful offers on the parcel and incurred financial setbacks. The parcel was ultimately bought by defendants. Plaintiffs sued to impose a constructive trust and for damages alleging breach of fiduciary duty and interference with prospective economic advantage. *Held*, summary judgment for defendants reversed; whether defendants breached a fiduciary duty to plaintiffs was a triable issue of fact.

(a) A fiduciary or confidential relationship may arise when one person places confidence in another, and if the latter voluntarily accepts or assumes to accept the confidence, he or she cannot take advantage of the other's interests without the other's knowledge or consent. (216 C.A.3d 1150.)

(b) A limited partner would ordinarily not incur fiduciary obligations to other partners, but when a limited partner has access to confidential information, fiduciary duties may arise. (216 C.A.3d 1150.) Here, the general partner could have reasonably relied on B's limited partnership status when disclosing plaintiffs' confidential acquisition plans. "In the unique context of the transaction involved here, there is a factual question as to the existence of a fiduciary relationship." (216 C.A.3d 1151.)

SUPPLEMENT: [This section is current through the latest supplement]



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4. Rights of Limited Partners.

a. Information and Inspection.

9 *Witkin Sum. Cal. Law Partn* § 78

[§ 78] Information and Inspection.

(1) *In General.* At the expense of the partnership, the general partners must deliver to a limited partner on request a copy of the information required to be maintained by *Corp.C. 15615(a)*, (b), and (d) (*supra*, §66). (*Corp.C. 15634(a)*); see 6A U.L.A. (Master Ed.), p. 349.) On reasonable request, each limited partner has a right to do the following:

(a) Inspect and copy during normal business hours the partnership records required to be maintained by *Corp.C. 15615* (*supra*, §66). (*Corp.C. 15634(b)(1)*.)

(b) Obtain from the general partners, promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax or information returns for each year. (*Corp.C. 15634(b)(2)*.)

In addition, the general partners must promptly furnish to a limited partner a copy of amendments to the partnership agreement executed by a general partner pursuant to a power of attorney from the limited partner. (*Corp.C. 15634(d)*.) The general partners must also send to each of the partners within 90 days after the end of each taxable year information necessary to complete federal and state income tax or information returns, and a copy of the limited partnership's federal, state, and local income tax or information returns for the year. (*Corp.C. 15634(e)*.) (See *McCain v. Phoenix Resources* (1986) 185 C.A.3d 575, 579, 230 C.R. 25 [absent restriction by statute or partnership agreement, limited partner has right to inspect all documents and papers affecting partnership, including those held by partnership's attorney].)

(2) *Annual Report and Financial Statements.* Where a *limited partnership has more than 35 limited partners*, the general partners must send an annual report to each of the partners. (*Corp.C. 15634(c)(1)*.) Limited partners representing at least 5% of the interests of limited partners may make a written request for an income statement and balance sheet for parts of the year. (*Corp.C. 15634(c)(2)*.) The financial statements must be accompanied by the report of the independent accountants engaged by the partnership. If there is no report, a general partner must provide a certificate that the financial statements were prepared without audit from the books and records of the limited partnership. (*Corp.C. 15634(c)(3)*.)

(3) *Waiver.* A waiver by a partner of the rights provided in *Corp.C. 15634* is unenforceable. (*Corp.C. 15634(h)*.)

SUPPLEMENT: [This section is current through the latest supplement]
(1) *In General.* See 6B U.L.A. (Master Ed.), p. 206.



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4. Rights of Limited Partners.

b. Meetings.

9 *Witkin Sum. Cal. Law Partn* § 79

[§ 79] Meetings.

Meetings of partners may be held within or outside of California at a place selected by the person or persons calling the meeting or as may be provided in partnership agreement. (*Corp.C. 15637(a).*) Meetings may be called by the general partners, or by limited partners holding more than 10% of the interest of limited partners for any matters on which the limited partners may vote. (*Corp.C. 15637(b).*) Written notice of meetings must be given whenever the partners are required or permitted to take action at a meeting. (*Corp.C. 15637(c)*; see *Corp.C. 15637(d)-(j)* [relating to notices, adjournment, quorum, conferences by telephone, taking action without meeting, proxies and determination of partners entitled to notice].) (On establishing record date to determine partners entitled to receive notice, vote, or receive distributions, see *Corp.C. 15637(k).*)

"Interests of limited partners" means the aggregate interests of all limited partners in their respective capacities as limited partners in the current profits derived from business operations of the partnership. (*Corp.C. 15611(p).*)

SUPPLEMENT: [This section is current through the latest supplement]



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4. Rights of Limited Partners.

c. Voting.

9 *Witkin Sum. Cal. Law Partn* § 80

[§ 80] Voting.

(1) *In General.* Limited partners have the right to vote on the following matters:

(a) The dissolution and winding up of the limited partnership. (*Corp.C. 15636(f)(1)(A).*)

(b) The merger of the limited partnership, or the sale, exchange, lease, mortgage, pledge, or other transfer of all or a substantial part of the assets of the limited partnership other than in the ordinary course of its business. (*Corp.C. 15636(f)(1)(B).*)

(c) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business. (*Corp.C. 15636(f)(1)(C).*)

(d) A change in the nature of the business. (*Corp.C. 15636(f)(1)(D).*)

(e) Transactions in which the general partners have an actual or potential conflict of interest with the limited partners or the partnership. (*Corp.C. 15636(f)(1)(E).*)

(f) An election to continue the business other than under the circumstances described in *Corp.C. 15636(f)(3)* (infra, this section). (*Corp.C. 15636(f)(1)(F).*)

(g) The admission of a general partner other than under the circumstances described in *Corp.C. 15636(f)(3)* (infra, this section). (*Corp.C. 15636(f)(1)(G).*)

(h) In a limited partnership that is a registered investment company under the Investment Company Act of 1940, as amended, or the rules and regulations of the Securities and Exchange Commission under the Act, matters to be approved by holders of beneficial interest in an investment company, including electing directors or trustees, approving or terminating investment advisory or underwriting contracts, and approving auditors. (*Corp.C. 15636(f)(4)(A).*)

(i) Matters related to the business of the limited partnership not otherwise enumerated that the partnership agreement states may be subject to the approval or disapproval of limited partners. (*Corp.C. 15636(f)(4)(B).*)

The actions specified in *Corp.C. 15632(f)(1)(A)-(G)* may be taken only with the affirmative vote of a majority in interest of the limited partners. (*Corp.C. 15636(f)(1)*.) Unless otherwise provided in the partnership agreement, "majority-in-interest" means more than 50% of the interests of limited partners. (*Corp.C. 15611(u)*.)

The actions specified in *Corp.C. 15636(f)(4)* require the affirmative vote of those partners as provided under the partnership agreement. (*Corp.C. 15636(f)(4)*.)

(2) *Removal of General Partner.* Limited partners have the right to vote on the removal of a general partner. This action is effective without further action on the vote or written consent of a majority in interest of all partners. If the action is taken by written consent, it is effective on written notice to the general partners, including a general partner being removed, that the action has been taken. (*Corp.C. 15636(f)(2)*.)

(3) *Admission of General Partner or Election to Continue Business.* Limited partners may vote on the admission of a general partner or an election to continue the business of the limited partnership after a general partner ceases to be a general partner where there is no remaining or surviving general partner. This action may only be taken by the affirmative vote of a majority in interest of the limited partners or a greater interest provided in the partnership agreement. (*Corp.C. 15636(f)(3)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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4. Rights of Limited Partners.

d. Enforcement of Rights.

9 *Witkin Sum. Cal. Law Partn* § 81

[§ 81] Enforcement of Rights.

(1) *Actions by Partners.* In addition to other remedies, the court may enforce the duties of making and delivering the information and financial statements required by *Corp.C. 15634* (supra, §78) and, for good cause shown, may extend the time. (*Corp.C. 15634(f)*.) In actions under *Corp.C. 15634*, the court may award reimbursement of reasonable expenses incurred by the partner or partners bringing the action, including attorneys' fees, if it finds that the failure of the partnership to comply with *Corp.C. 15634* was without justification. (*Corp.C. 15634(g)*.) (See *McCain v. Phoenix Resources* (1986) 185 C.A.3d 575, 579, 230 C.R. 25 [preliminary injunction to produce information for inspection].)

(2) *Proceedings by Attorney General.* On complaint that a limited partnership is failing to comply with *Corp.C. 15634* or to afford the rights under the partnership agreement, the Attorney General may send notice of the complaint to the limited partnership. (*Corp.C. 15635(a)*.) If an answer is not received within 30 days or is not satisfactory, and if enforcement of the rights by private civil action would be too burdensome or expensive, the Attorney General may institute or intervene in the actions or proceedings for relief by injunction, dissolution of entities, the appointment of receivers, or other provisional or final remedies necessary to protect the rights of partners or to restore their position for the failure to comply with *Corp.C. 15634* or the partnership agreement. (*Corp.C. 15635(b)*.) All responsible or affected persons and entities may be joined as parties. (*Corp.C. 15635(b)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Actions by Partners.* See *Berti v. Santa Barbara Beach Properties* (2006) 145 C.A.4th 70, 76, 51 C.R.3d 364 [attorneys' fees were available under *Corp.C. 15634(g)* to enforce stipulated judgment that arose out of enforcement of rights action].



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4. Rights of Limited Partners.

e. Protection of Rights in Rollup Transactions.

9 *Witkin Sum. Cal. Law Partn* § 82

[§ 82] Protection of Rights in Rollup Transactions.

(1) *In General.* The Thompson-Killea Limited Partner Protection Act of 1992 (Stats. 1992, Chap. 1183, §1) protects limited partners from abusive or unfair treatment in rollup transactions. It does so by limiting the exemption from registration requirements (see 9 *Summary* (10th), *Corporations*, §417) and the "25%" exemption (see 9 *Summary* (10th), *Corporations*, §422) to "eligible rollup transactions" in which the rights of limited partners are protected. (See 47 *Stanf. L. Rev.* 85 [general partners' fiduciary duty under Limited Partnership Rollup Reform Act of 1993].)

(2) *Rollup Transaction.* A rollup transaction is a transaction or series of transactions that involves the combination or reorganization of one or more rollup participants and is (a) the offer or sale of securities by a successor entity, whether newly formed or previously existing, to one or more investors of the rollup participants to be combined or reorganized, or (b) the acquisition of the successor entity's securities by the rollup participants being combined or reorganized, but excluding specified transactions that provide investor protection. (*Corp.C. 25014.6.*)

(3) *Rollup Participant.* A rollup participant is a finite-life limited partnership, which is one that, except as provided in *Corp.C. 25014.6(b)*, operates as a conduit for investors to participate in owning assets for a limited period. The partnership has a policy or purpose of distributing to investors substantially all proceeds from the sale, financing, or refinancing of assets, for a specific period, rather than reinvesting the proceeds in the business. (*Corp.C. 25014.5.*)

(4) *Eligible Rollup Transaction.* An eligible rollup transaction is one that is listed or approved for listing on a national securities exchange or designated or approved for designation on notice of issuance as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, where the exchange and system have been certified under *Corp.C. 25100(o)* (see 9 *Summary* (10th), *Corporations*, §417). The exchange or association must require as a condition to listing or designation that the rollup transaction is conducted in accordance with procedures to protect the rights of limited partners. (*Corp.C. 25014.7(a)*); on circumstances in which limited partners' rights are presumed to be, or are presumed not to be, protected, see *Corp.C. 25014.7(b)-(f)*; on payment of solicitation expenses, see *Corp.C. 25014.7(g), (h).*)

SUPPLEMENT: [This section is current through the latest supplement]



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C. Limited Partners.
5. Certificate of Interest.

9 *Witkin Sum. Cal. Law Partn* § 83

[§ 83] Certificate of Interest.

Under *Corp.C. 15638*, the partnership agreement may provide for the following:

- (1) The issuance of a certificate of interest evidencing the interest of a partner or assignee in a limited partnership.
- (2) The assignment or transfer of an interest represented by a certificate.
- (3) The admission of transferees of certificates as additional or substituted limited partners.

The partnership agreement may contain other provisions concerning the form of certificates not inconsistent with the Revised Act, and the certificate may be, but is not required to be, a "security" as defined in U.C.C. 8102. (*Corp.C. 15638*.) (On assignment of partnership interest, see *infra*, §91 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



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D. General Partners.

1. Admission of Additional General Partners.

9 Witkin Sum. Cal. Law Partn § 84

[§ 84] Admission of Additional General Partners.

After filing the original certificate of limited partnership under *Corp.C. 15621* (supra, §71), a general partner may be admitted only with the written consent of each remaining general partner and the affirmative vote of limited partners as required by *Corp.C. 15636(f)* (supra, §80). (*Corp.C. 15641*; see 6A U.L.A. (Master Ed.), p. 356.)

SUPPLEMENT: [This section is current through the latest supplement]
See 6B U.L.A. (Master Ed.), p. 213.



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D. General Partners.

2. Termination of General Partner's Status.

9 *Witkin Sum. Cal. Law Partn* § 85

[§ 85] Termination of General Partner's Status.

(1) *Withdrawal or Removal.* A person ceases to be a general partner on either withdrawal as provided in *Corp.C. 15662* (infra, §89), or removal from the limited partnership. (*Corp.C. 15642(a)*, (b); on interest of former general partner, see infra, §89.)

Corp.C. 15642 recognizes "that the general partner's agency relationship is terminable at will, although it may result in a breach of the partnership agreement giving rise to an action for damages." (Official Comment, 6A U.L.A. (Master Ed.), p. 359; on right of limited partnership to recover damages from withdrawing general partner, see infra, §89.) However, a person who ceases to be a general partner of a limited partnership is deemed to be acting as a general partner with respect to third parties doing business with the partnership until a certificate of amended partnership is filed pursuant to *Corp.C. 15622* (supra, §72). (*Corp.C. 15642*.)

(2) *Bankruptcy and Other Financial Problems.* Unless otherwise provided in the partnership agreement, a person ceases to be a general partner if an order for relief against the partner is entered under Chapter 7 of the federal bankruptcy law, or the partner (a) makes a general assignment for the benefit of creditors, (b) files a voluntary petition under the federal bankruptcy law, (c) files a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, (d) files an answer or other pleading admitting or failing to contest the material allegations of a petition in a proceeding of this nature, or (e) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of that partner's property. (*Corp.C. 15642(c)*.)

In addition, and subject to the agreement, a general partner's status terminates if (a) 60 days after the commencement of proceedings against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief, the proceeding has not been dismissed, or (b) within 60 days after the nonconsensual appointment of a trustee, receiver, or liquidator of the general partner or of that partner's properties, the appointment is not vacated or stayed, or (c) within 60 days after the expiration of a stay, the appointment is not vacated. (*Corp.C. 15642(d)*.)

(3) *Death or Incompetency.* A general partner who is an individual ceases to be a general partner on death or an adjudication of incompetency. (*Corp.C. 15642(e)*.)

(4) *Other Events*. Unless the partnership agreement states otherwise, the status of a general partner terminates when (a) the general partner is acting as a general partner by virtue of being a *trustee of a trust* and the trust terminates, unless a new trustee is substituted (*Corp.C. 15642(f)*), or (b) the general partner is a *separate partnership* and that partnership dissolves (*Corp.C. 15642(g)*).

The status of a general partner that is an *estate* ceases on the distribution by the fiduciary of the estate's entire interest in the limited partnership. (*Corp.C. 15642(i)*.)

The status of a *corporate general partner* terminates on the filing of a certificate of dissolution, or its equivalent. (*Corp.C. 15642(h)*.) Similarly, where the general partner is a limited liability company, general partner status ceases on the filing of a certificate of dissolution for the limited liability company. (*Corp.C. 15642(j)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Withdrawal or Removal*. See Official Comment, 6B U.L.A. (Master Ed.), p. 217.



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D. General Partners.

3. Rights, Powers, and Liabilities.

9 *Witkin Sum. Cal. Law Partn* § 86

[§ 86] Rights, Powers, and Liabilities.

(1) *General Powers and Liabilities.* Except as otherwise provided in *Corp.C. 15611* et seq., a general partner of a limited partnership has the rights, powers, restrictions, and liabilities of a partner in a general partnership (supra, §27 et seq.). (*Corp.C. 15643.*) Thus, the general partner may make contributions to the limited partnership and share in the partnership's profits, losses, and distributions as a general partner. (*Corp.C. 15644*; on form of contribution, see infra, §87.) (See *Eisenbaum v. Western Energy Resources (1990) 218 C.A.3d 314, 321, 322, 324, 267 C.R. 5* [general partner soliciting investment in limited partnership owed fiduciary duty to potential investor which postponed accrual of cause of action until investor had knowledge or notice of act constituting breach]; *Keller Const. Co. v. Kashani (1990) 220 C.A.3d 222, 228, 269 C.R. 259* [sole general partner of limited partnership was bound by arbitration agreement between partnership and third party].)

A general partner is liable for a statement that is materially inconsistent with the partnership agreement or a material misstatement of fact contained in the certificate if the general partner knew or should have known that the statement was false when made or became false and a required amendment was not filed, and the person suffering the loss relied on the statement or misstatement. (*Corp.C. 15624(c).*)

(2) *General Partner as Both General and Limited Partner.* A general partner may make contributions, and share in the profits and losses and distributions, as a limited partner, if the general partner's interest as a limited partner is separately designated in the partnership agreement. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner. The general partner also has the powers, and is subject to the restrictions, of a limited partner to the extent of participation as a limited partner. (*Corp.C. 15644.*)

SUPPLEMENT: [This section is current through the latest supplement]



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 E. Capital, Contributions, and Distributions.
 1. Capital Account and Contributions.

9 *Witkin Sum. Cal. Law Partn* § 87

[§ 87] Capital Account and Contributions.

(1) *Capital Account.* Unless otherwise provided in the partnership agreement, the "capital account" of a partner means the amount of the capital interest of that partner in the partnership, consisting of that partner's original contribution as (a) increased by additional contributions and by that partner's share of the partnership's profits, and (b) decreased by distributions to that partner and by that partner's share of the partnership's losses. (*Corp.C. 15611(b).*)

(2) *Return of Capital.* Return of capital refers to a distribution to a partner to the extent that the partner's capital account, immediately after the distribution, is less than the amount of that partner's contributions to the partnership as reduced by prior distributions that were a return of capital. (*Corp.C. 15611(ab).*)

(3) *Contribution Defined.* A contribution is money, property, or services rendered, or some binding obligation (e.g., promissory note) to provide those items, which a partner contributes to a limited partnership as capital in that partner's capacity as a partner pursuant to an agreement between the partners, including an agreement as to value. (*Corp.C. 15611(g).*)

(4) *Other Aspects of Contribution.* A partner need not make contributions in order to acquire a partnership interest. (*Corp.C. 15651.*)

A limited partner may not be required to make additional contributions to the limited partnership. (*Corp.C. 15636(a).*) Except for distributions made under *Corp.C. 15664* (infra, §90), a limited partner may not have *priority* over any other limited partner as to the return of contributions or as to compensation as a limited partner by way of income. (*Corp.C. 15636(b).*)

The obligation of a partner to make a contribution or return money or property distributed in violation of *Corp.C. 15611* et seq. may be compromised only by the written consent of all the partners, unless otherwise provided in the partnership agreement. (*Corp.C. 15636(c).*) Notwithstanding the compromise of a claim referred to in *Corp.C. 15636(c)*, a person whose claim arises before the receipt of notice of the compromise may enforce the original obligation of a partner to make a contribution or return a distribution, if the person had knowledge of the original obligation prior to the time the claim arose, and if the compromise occurred after the claim arose. Other claimants may only enforce a partner's existing obligation to make a contribution or return a distribution. A claimant may not enforce a

limited partner's conditional obligation unless the conditions have been satisfied or waived. (*Corp.C. 15652* [conditional obligations include, without limitation, capital contribution payable on discretionary call of partnership or general partner prior to time call occurs].)

Corp.C. 15652 does not affect the rights of third-party creditors of the partnership, nor any rights existing under the Uniform Fraudulent Transfer Act, C.C. 3439 et seq. (*Corp.C. 15652.*)

(5) *Allocation of Profits and Losses.* Unless the partnership agreement provides otherwise, profits and losses of the partnership must be allocated in proportion to the contributions of each partner. (*Corp.C. 15653.*)

SUPPLEMENT: [This section is current through the latest supplement]



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 2. Distributions to Partners.

9 *Witkin Sum. Cal. Law Partn* § 88

[§ 88] Distributions to Partners.

(1) *Definition.* "Distribution" means the transfer of money or property by a partnership to its partners without consideration. (*Corp.C. 15611(j).*)

(2) *Sharing of Distributions.* Distributions of money or property assets of a limited partnership must be made to the partners in the manner provided in the partnership agreement. If the agreement does not otherwise provide, distributions that are a return of capital must be made in proportion to the contributions of each partner, and distributions that are not a return of capital must be made in proportion to the allocation of profits. (*Corp.C. 15654*; see Official Comment, 6A U.L.A. (Master Ed.), p. 420.)

(3) *Interim Distributions.* A partner is entitled to receive distributions from a limited partnership before withdrawing from the partnership and before dissolution and winding up, subject to the limitations of *Corp.C. 15666* (return of distribution), to the extent and at the times or on the happening of the event specified in the partnership agreement. (*Corp.C. 15661.*)

(4) *Partner as Creditor of Limited Partnership.* Subject to the provisions of *Corp.C. 15684* (infra, §98), a partner entitled to receive a distribution has the status of a creditor of the limited partnership and is entitled to all available creditor remedies with respect to the distribution. (*Corp.C. 15665.*) *Corp.C. 15665* makes it clear that the right of a partner to receive a distribution, as between the partners, is not subject to the equity risks of the enterprise. Nor does a limited partner need to have the partnership dissolved after an unsuccessful demand for the return of the partner's contribution. Rather, the partner may sue as an ordinary creditor and obtain a judgment. (See Official Comment, 6A U.L.A. (Master Ed.), p. 438.)

(5) *Return of Distribution.* A partner must return a distribution from a limited partnership when, at the time of the distribution, the partner knew that immediately after giving effect to the distribution, and notwithstanding the compromise of a claim referred to in *Corp.C. 15636(c)*, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interest and liabilities to which recourse of creditors is limited to specified partnership property, exceed the fair value of the partnership assets. The fair value of property that is subject to liability to which the recourse of creditors is limited is included in the partnership assets, but only to the extent that the fair value exceeds the liability. (*Corp.C. 15666(a)*; see 6A U.L.A. (Master Ed.), p. 440.)

A cause of action with respect to an obligation to return a distribution must be brought within 4 years after the distribution is made. (*Corp.C. 15666(b).*)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Sharing of Distributions.* See 6B U.L.A. (Master Ed.), p. 278.

(4) *Partner as Creditor of Limited Partnership.* See Official Comment, 6B U.L.A. (Master Ed.), p. 297.

(5) *Return of Distribution.* See 6B U.L.A. (Master Ed.), p. 301.



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F. Withdrawal and Termination.

1. Withdrawal or Termination of General Partner.

9 Witkin Sum. Cal. Law Partn § 89

[§ 89] Withdrawal or Termination of General Partner.

A partnership agreement may provide that a general partner may withdraw from a limited partnership at a time or on the happening of specified events, or that a general partner does not have the right to withdraw. Notwithstanding restrictions, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners. However, if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and, in addition to other remedies, may offset the damages against amounts otherwise distributable to the general partner. In the case of a partnership for a fixed term, a withdrawal by a general partner prior to the expiration of that term is considered a breach of the partnership agreement. (*Corp.C. 15662(a).*)

Subject to the liability created under *Corp.C. 15662(a)*, the interest of a general partner who has ceased being a general partner under *Corp.C. 15642* (*supra*, §85) essentially becomes that of a limited partner. The general partner retains the same interest in capital, profits, losses, and distributions, but the interest is that of a limited partner. (*Corp.C. 15662(b).*)

The general partner is not personally liable for partnership debts incurred after ceasing to be a general partner, other than debts incurred by reason of being deemed a general partner under *Corp.C. 15642* (*supra*, §85). (*Corp.C. 15662(b).*)

The general partner is entitled to vote as a limited partner on all matters except the admission and compensation of a general partner. (*Corp.C. 15662(b).*)

The general partner has the interest in the partnership reduced pro rata with all of the other partners to provide both compensation to, and an interest in, the partnership to a new general partner. (*Corp.C. 15662(b).*)

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F. Withdrawal and Termination.
2. Withdrawal of Limited Partner.

9 Witkin Sum. Cal. Law Partn § 90

[§ 90] Withdrawal of Limited Partner.

(1) *Right To Withdraw.* A limited partner may withdraw from a limited partnership only at the time or on the occurrence of events specified in the partnership agreement. (*Corp.C. 15663.*)

(2) *Distribution on Withdrawal.* A withdrawing limited partner is entitled to receive distributions to which the partner is entitled under the partnership agreement. Within a reasonable time after withdrawal, the partner must receive the fair value of any interest in the limited partnership as of the date of withdrawal based on the limited partner's right to share in distributions. (*Corp.C. 15664.*)

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 G. Assignment of Partnership Interest.
 1. Nature of Interest.

9 Witkin Sum. Cal. Law Partn § 91

[§ 91] Nature of Interest.

(1) *Personal Property.* An interest in a limited partnership is personal property and a partner has no interest in specific partnership property. (*Corp.C. 15671.*)

(2) *Assignability.* Although a partnership agreement may prohibit a general partner from assigning or encumbering a partnership interest (*Corp.C. 15672(c)*), a limited partnership interest is generally assignable, and the assignment neither dissolves the limited partnership nor entitles the assignee to become a partner or exercise rights of a partner. Rather, the assignee is entitled to receive, to the extent assigned, only the distributions and the allocations of income, gain, loss, deduction, credit, and similar items to which the assignor would be entitled. Except as otherwise provided in the assignment, an assignee of an interest in a limited partnership with over 100 limited partners is entitled to the rights of information and inspection granted under *Corp.C. 15634* (*supra*, §78). (*Corp.C. 15672(a).*) A limited partner remains a partner after assignment, subject to the assignee becoming a limited partner pursuant to *Corp.C. 15674(a)* (*infra*, §93). (*Corp.C. 15672(a).*)

(3) *Effect of Encumbrance.* An encumbrance in or against the partnership interest does not cause the partner to cease to be a partner, nor does it cause the partner to grant to another party the power to exercise rights or powers of a partner. (*Corp.C. 15672(b).*)

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 2. Rights of Creditors.

9 *Witkin Sum. Cal. Law Partn* § 92

[§ 92] Rights of Creditors.

On an application by a judgment creditor of a partner, the court may charge the limited partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited partnership interest. In addition, the partner retains the benefit of exemption laws applicable to the partner's limited partnership interest. (*Corp.C. 15673.*) (See *Crocker Nat. Bank v. Perroton (1989) 208 C.A.3d 1, 5, 255 C.R. 794* [court may authorize sale of debtor partner's interest where (a) creditor has previously obtained charging order; (b) judgment remains unsatisfied; and (c) all partners other than debtor have consented to sale; decided under former *Corp.C. 15028* (now *Corp.C. 16504*)]; *Hellman v. Anderson (1991) 233 C.A.3d 840, 284 C.R. 830, 8 Cal. Proc. (4th), Enforcement of Judgment, §287* [disagreeing with *Crocker Nat. Bank* and holding that judgment debtor's interest on which it has obtained charging order may be foreclosed on and sold without consent of nondebtor partners, if foreclosure does not unduly interfere with partnership business]; *25 Pacific L. J. 1* [concluding that consent limit of *Crocker Nat. Bank*, and undue interference limit of *Hellman* add unnecessary complexity to law and overlook statutory protections already available to nondebtor partners].)

SUPPLEMENT: [This section is current through the latest supplement]
 See *35 Lincoln L. Rev. 27* [utilizing charging orders].



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3. Assignee as Limited Partner.

9 Witkin Sum. Cal. Law Partn § 93

[§ 93] Assignee as Limited Partner.

An assignee of a partnership interest, including the assignee of a general partner, may become a limited partner if and to the extent that (1) the partnership agreement so provides, or (2) all general partners and a majority in interest of the limited partners consent. (*Corp.C. 15674(a)*.) If so, to the extent assigned, the assignee has the rights and powers and is subject to the restrictions and liabilities of a limited partner under the partnership agreement and *Corp.C. 15611* et seq. Moreover, the assignee is liable for the obligations of the assignor to make contributions as provided in *Corp.C. 15651* et seq. However, the assignee is not obligated for liabilities unknown to the assignee on becoming a limited partner that could not be ascertained from the partnership agreement. (*Corp.C. 15674(b)*.)

Although an assignee becomes a limited partner, the assignor is not released from liability to the limited partnership under *Corp.C. 15624(c)* (supra, §§76, 86), *Corp.C. 15652* (supra, §87), and *Corp.C. 15666* (supra, §88). (*Corp.C. 15674(c)*.)

If the general partner assigns all the general partner's interest in the partnership to a third party, a majority in interest of the limited partners may remove that general partner. (*Corp.C. 15764(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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4. Power of Limited Partner's Representative.

9 Witkin Sum. Cal. Law Partn § 94

[§ 94] Power of Limited Partner's Representative.

If a limited partner who is an individual dies or a court adjudges the limited partner to be incompetent to manage the limited partner's person or property, the partner's appropriate legal representative may exercise all rights for the purpose of settling the partner's estate or administering the partner's property. (*Corp.C. 15675.*)

If a limited partner is a corporation, trust, or other entity and is dissolved or terminated, that partner's powers may be exercised by its legal representative or successor. (*Corp.C. 15675(b).*)

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H. Dissolution.

1. Nonjudicial Dissolution.

9 *Witkin Sum. Cal. Law Partn* § 95

[§ 95] Nonjudicial Dissolution.

A limited partnership is dissolved and its affairs must be wound up whenever the first of the following events occurs:

- (1) At the time or on the happening of events specified in the partnership agreement. (*Corp.C. 15681(a).*)
- (2) Unless otherwise provided in the partnership agreement, on the written consent of all general partners and a majority in interest of the limited partners. (*Corp.C. 15681(b).*)
- (3) Unless otherwise provided in the partnership agreement, when a general partner ceases to be a general partner under *Corp.C. 15642* (supra, §85). However, there is no dissolution where (a) there is at least one other general partner, and the remaining general partner or all the general partners, if more than one remains, continue the business of the limited partnership, or (b) there is no remaining general partner and a majority in interest of the limited partners or the greater interest provided in the partnership agreement agree in writing to continue the business of the limited partnership and, within 6 months after the last remaining general partner has ceased to be a general partner, admit one or more general partners. (*Corp.C. 15681(c).*)
- (4) Entry of a decree of judicial dissolution under *Corp.C. 15682* (infra, §96). (*Corp.C. 15681(d).*)

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H. Dissolution.

2. Judicial Dissolution.

9 *Witkin Sum. Cal. Law Partn* § 96

[§ 96] Judicial Dissolution.

On an action filed by a partner, a court may order the dissolution of a limited partnership whenever any of the following occurs:

(1) It is not reasonably practicable to carry on the business in conformity with the partnership agreement. (*Corp.C. 15682(a).*)

(2) The general partners have been guilty of or knowingly countenanced persistent and pervasive fraud, abuse of authority, or unfairness toward a partner, or have misapplied or wasted the limited partnership's property. (*Corp.C. 15682(b).*)

(3) Dissolution is reasonably necessary for the protection of the rights or interests of the complaining partners. (*Corp.C. 15682(c).*)

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H. Dissolution.

3. Winding Up.

9 *Witkin Sum. Cal. Law Partn* § 97

[§ 97] Winding Up.

(1) *By Partners.* A limited partnership may be wound up on dissolution by the *general partners* who have not wrongfully dissolved the limited partnership, or, if there are none, by the *limited partners*, except as otherwise provided in the partnership agreement, or unless the dissolution occurs pursuant to *Corp.C. 15681(d)* (*supra*, §95), in which event the winding up must be conducted in accordance with the decree of dissolution. (*Corp.C. 15683(a).*)

(2) *By Court.* A limited partnership may be wound up on dissolution by a court on petition of a limited partner or partners representing 5% or more of the interests of the limited partners, or three or more creditors, if winding up appears necessary for the protection of any parties in interest. (*Corp.C. 15683(b).*)

(3) *Compensation.* Subject to contrary provision in the partnership agreement, the limited partners winding up the affairs of the partnership are entitled to reasonable compensation. (*Corp.C. 15683(c).*)

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H. Dissolution.

4. Distribution of Assets.

9 *Witkin Sum. Cal. Law Partn* § 98

[§ 98] Distribution of Assets.

On the winding up of a limited partnership, the assets must be distributed as follows:

(1) To creditors, including partners who are creditors to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under *Corp.C. 15661* (supra, §88), *Corp.C. 15664* (supra, §90), or *Corp.C. 15665* (supra, §88). (*Corp.C. 15684(a).*)

(2) Subject to contrary provisions in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under *Corp.C. 15661*, *15664*, and *15665*. (*Corp.C. 15684(b).*)

(3) To partners in accordance with the partners' rights under the partnership agreement, and under *Corp.C. 15636*. (*Corp.C. 15684(c).*)

A limited partner has no right to receive property other than money on a distribution. (*Corp.C. 15636(d).*) In addition, a partner may not be compelled to accept a distribution of an asset in kind in lieu of a proportionate distribution of money being made to other partners. (*Corp.C. 15636(e).*)

SUPPLEMENT: [This section is current through the latest supplement]



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III. LIMITED PARTNERSHIP

H. Dissolution.

5. Power To Bind Partnership.

9 Witkin Sum. Cal. Law Partn § 99

[§ 99] Power To Bind Partnership.

After dissolution, a general partner can bind the partnership as follows:

(1) By acts appropriate for winding up partnership affairs or completing transactions unfinished at dissolution.
(*Corp.C. 15685(a).*)

(2) By transactions that would bind the partnership if dissolution had not taken place, provided that the other party to the transaction (a) had extended credit to the partnership prior to dissolution and had no actual knowledge or notice of the dissolution, or (b) though not extending credit, had nevertheless known of the partnership prior to dissolution, and had no actual knowledge or notice of the dissolution, and a certificate of dissolution had not been filed as provided in *Corp.C. 15623(a)* (*infra*, §100). (*Corp.C. 15685(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 H. Dissolution.

6. Certificates of Dissolution, Cancellation, and Continuation.

9 *Witkin Sum. Cal. Law Partn* § 100

[§ 100] Certificates of Dissolution, Cancellation, and Continuation.

(1) *Dissolution and Cancellation.* On dissolution a *certificate of dissolution* must be filed in the office of the Secretary of State. (*Corp.C. 15623(a)(1)*; see C.E.B., *Advising California Partnerships* 3d, §5.18.)

On the completion of the winding up, a *certificate of cancellation of a certificate of limited partnership* must be filed in the office of the Secretary of State. (*Corp.C. 15623(b)(1)*.) On the filing of the certificate, the certificate of limited partnership is cancelled. (*Corp.C. 15626*.)

These certificates are executed and filed by the person authorized to do so by the majority in interest of the limited partners. (*Corp.C. 15624(a)(3)*, (a)(4).)

(2) *Continuation.* The general partners may file a *certificate of continuation* in the office of the Secretary of State, notwithstanding the filing of a certificate of dissolution, in any of the following circumstances: (a) the partnership business is to be continued, pursuant to the written consent of all partners; (b) dissolution was by written consent of the partners, and each partner who consented to dissolution revokes the consent in writing; or (c) the partnership was not dissolved. (*Corp.C. 15623(c)(1)*.) On the filing of the certificate of continuation, the certificate of dissolution is of no effect from the time it was filed, except as provided in *Corp.C. 15624(c)* (*supra*, §86). (*Corp.C. 15623(c)(3)*.)

(3) *Content and Form.* The certificates of dissolution, cancellation, and continuation must all set forth the name of the limited partnership and the Secretary of State's file number. (*Corp.C. 15623(a)(2)(A)*, *15623(b)(2)(A)*, *15623(c)(2)(A)*.) The certificate of dissolution must also state the event causing dissolution and the date of dissolution. (*Corp.C. 15623(a)(2)(B)*.) The certificate of continuation must also set forth the grounds provided by *Corp.C. 15623(c)(1)* that are the basis for filing the certificate. (*Corp.C. 15623(c)(2)(B)*.) Both the certificate of dissolution and the certificate of cancellation may also include other information determined by the partners filing the certificate. (*Corp.C. 15623(a)(2)(C)*, *15623(b)(2)(B)*.) (For forms, see Secretary of State website, www.ss.ca.gov/business/business.htm.)

(4) *Filing Fee.* No fee is charged for filing a certificate of dissolution or a certificate of cancellation. (*Govt.C. 12188(e)*); on filing fee for certificate of continuation after certificate of dissolution has been filed, see *Govt.C. 12188(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(4) *Filing Fee.* *Govt.C. 12188* was repealed in 2006 and a new *Govt.C. 12188* was added. The new statute does not specifically mention a certificate of dissolution, and no fee is charged for filing a certificate of cancellation. (*Govt.C. 12188(n)*.) (On fee for filing instrument not otherwise specified, see *Govt.C. 12188(p)*.)



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III. LIMITED PARTNERSHIP
I. Foreign Limited Partnerships.
1. In General.

9 *Witkin Sum. Cal. Law Partn* § 101

[§ 101] In General.

(1) *Definition.* A *foreign limited partnership* is a partnership formed under the laws of a state other than California or under the laws of a foreign country that has as partners one or more general partners and one or more limited partners (or their equivalents). (*Corp.C. 15611(l)*); see Official Comment, 6A U.L.A. (Master Ed.), p. 223.) The partnership is governed by *Corp.C. 15691* et seq.

(2) *Rights of Limited Partners.* Limited partners residing in California and representing 25% or more of the limited partners are entitled to all information and rights provided for in *Corp.C. 15634* (supra, §78). (*Corp.C. 15694.*)

(3) *Action by Attorney General.* The Attorney General may bring an action to restrain a foreign limited partnership from transacting intrastate business in California in violation of *Corp.C. 15691* et seq. (*Corp.C. 15698.*)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Definition.* See 6B U.L.A. (Master Ed.), p. 86.



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 I. Foreign Limited Partnerships.
 2. Registration.

9 *Witkin Sum. Cal. Law Partn* § 102

[§ 102] Registration.

(1) *Governing Law.* Subject to *Corp.C. 15694* (supra, §101), (a) the laws of the state or country under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (b) a foreign limited partnership may not be denied registration because of differences between those laws and the laws of California. (*Corp.C. 15691.*)

(2) *Application for Registration.* Before transacting intrastate business in California, a foreign limited partnership must register with the Secretary of State by submitting an application for registration, signed and acknowledged by a general partner on a form prescribed by the Secretary of State and setting forth all of the following:

(a) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in California. (*Corp.C. 15692(a).*)

(b) The state or country and date of its formation, and a statement that the partnership is authorized to exercise its powers and privileges in the state or country of formation. (*Corp.C. 15692(b).*)

(c) The name and address of an agent for service of process meeting the qualifications specified in *Corp.C. 15627(d)(1)* (supra, §67). (*Corp.C. 15692(c).*)

(d) A statement that the Secretary of State is appointed the agent for service of process if the agent has resigned and has not been replaced or if the agent cannot, with the exercise of reasonable diligence, be found or served. (*Corp.C. 15692(d).*)

(e) The address of the principal executive office and of its principal office in California. (*Corp.C. 15692(e).*)

(f) The names and business or residence addresses of the general partners. (*Corp.C. 15692(f).*)

In conjunction with the application for registration, the Secretary of State must provide a notice regarding the foreign limited partnership's obligation to pay an annual tax under Rev.C. 17935. (*Corp.C. 15692(h).*) (For forms, see Secretary of State website, www.ss.ca.gov/business/business.htm.)

Specified foreign lending institutions organized as foreign limited partnerships are not required to register. (*Corp.C. 15699.*)

(3) *Issuance of Certificate of Registration.* If an application for registration conforms to law and all of the requisite fees have been paid, the Secretary of State *must* issue a certificate of registration to transact business in California. However, no certificate will be issued to transact intrastate business under a name that is prohibited by *Corp.C. 15612(c)* (*supra*, §65). (*Corp.C. 15693.*) (On filing fees, see *Govt.C. 12188(b).*)

(4) *Amendment of False or Erroneous Statement.* If a statement in the application was false when made or has become erroneous, the foreign limited partnership must promptly file a certificate, signed and acknowledged by a general partner, amending the statement. (*Corp.C. 15695.*)

(5) *Cancellation of Registration.* A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed and acknowledged by a general partner. However, cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transaction of business in California. (*Corp.C. 15696.*) (On resignation of foreign limited partnership's agent for service of process, see *supra*, §67; on service of process on foreign limited partnerships, see *supra*, §67.) The Secretary of State may cancel the application and the certificate of registration if a check or other remittance accepted in payment of the filing fee is not paid on presentation, after giving notice and an opportunity to pay. (*Corp.C. 15692(g).*) (On filing fee, see *Govt.C. 12188(e).*)

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Issuance of Certificate of Registration.* *Govt.C. 12188* was repealed in 2006 and a new *Govt.C. 12188* was added. The filing fee for a certificate of reservation is now in *Govt.C. 12188(a).*

(5) *Cancellation of Registration.* The filing fee for a certificate of cancellation (currently no fee) is in *Govt.C. 12188(n).*



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 3. Doing Business Without Registration.

9 Witkin Sum. Cal. Law Partn § 103

[§ 103] Doing Business Without Registration.

(1) *Prohibition Against Maintaining Court Action.* A foreign limited partnership transacting intrastate business in California without registration may not maintain actions or proceedings in California courts. (*Corp.C. 15697(a).*)

(2) *Statutory Penalties.* A foreign limited partnership transacting intrastate business in California without registration is subject to a monetary penalty for each day that the unauthorized business is transacted. Actions to recover penalties are governed by *Corp.C. 2258*. (*Corp.C. 15697(b).*) Moreover, the Attorney General may restrain further business transactions. (*Corp.C. 15698.*)

(3) *Secretary of State as Agent for Service.* A foreign limited partnership transacting intrastate business in California without registration appoints the Secretary of State as its agent for service of process with respect to causes of action arising out of the transaction of business in California. (*Corp.C. 15697(e).*)

(4) *Rights and Powers Unaffected by Failure To Register.* The failure of a foreign limited partnership to register in California does not impair the validity of contracts or acts of the foreign limited partnership or prevent the foreign limited partnership from defending actions, suits, or proceedings in California courts. (*Corp.C. 15697(c).*) Nor is a limited partner of a foreign limited partnership liable as a general partner solely because the partnership transacted intrastate business in California after failing to register. (*Corp.C. 15697(d).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 III. LIMITED PARTNERSHIP
 J. Class Actions and Derivative Actions.
 1. Right of Action and Pleading.

9 Witkin Sum. Cal. Law Partn § 104

[§ 104] Right of Action and Pleading.

(1) *Right To Bring Class Action.* A limited partner of a foreign or domestic limited partnership may bring a class action on behalf of all or a class of limited partners to enforce their common claims. The law governing class actions generally controls, provided that in order to maintain the class action there is no requirement that the class be so numerous that joinder of all members is impracticable. (*Corp.C. 15701*; see *26 A.L.R.4th 264* [right of limited partner to maintain derivative action on behalf of partnership].)

(2) *Pleading.* No action may be instituted or maintained on behalf of a domestic or foreign limited partnership by a partner unless both of the following conditions exist:

(a) The plaintiff alleges in the complaint that the plaintiff was a partner of record or beneficially at the time of the transaction at issue, or that the plaintiff's interest devolved by operation of law from a partner who was a partner at the time of the transaction. However, a party not meeting these requirements may still maintain the action where (1) there is a strong prima facie case in favor of the claim asserted on behalf of the limited partnership, (2) no other similar action has been or is likely to be instituted, (3) the plaintiff acquired the interest before there was disclosure to the public or to the plaintiff of the wrongdoing of which plaintiff complains, (4) unless the action can be maintained the defendant may retain a gain derived from defendant's wilful breach of a fiduciary duty, and (5) the requested relief will not result in unjust enrichment of the limited partnership or any partner of the limited partnership. (*Corp.C. 15702(a)(1)*.)

(b) The plaintiff alleges in the complaint with particularity efforts to secure from the general partners the desired action or the reasons for not making the effort, and alleges further that the plaintiff has either informed the limited partnership or the general partners in writing of the ultimate facts of each cause of action against each defendant or delivered to the limited partnership or the general partners a true copy of the proposed complaint. (*Corp.C. 15702(a)(2)*.)

A contributor is not a proper party to proceedings unless the contributor is a general partner, except where the objective is to enforce a limited partner's right against or liability to the partnership. (*Corp.C. 15526*.)

In *Wallner v. Parry Professional Bldg., Ltd.* (1994) 22 C.A.4th 1446, 27 C.R.2d 834, plaintiff was one of 20 limited partners who, along with defendant general partner, formed a limited partnership to acquire and manage a medical

office building. The limited partnership then leased suites to the general partners. The lessees failed to pay rent, which resulted in no monthly dividends available to the limited partners. Defendant failed to respond to plaintiff's demand that it secure rent, so plaintiff brought a derivative suit for breach of contract, breach of duty of due care, and breach of fiduciary duty. Defendant successfully demurred, the trial judge concluding the action was barred by *Corp.C. 15526* (contributor other than general partner is not proper party to proceedings by or against partnership). *Held*, reversed.

(a) *Proper party plaintiff*. Plaintiff was a proper party plaintiff for a limited partner's derivative action. (22 *C.A.4th 1450*.) C.C.P. 267 requires every action to be prosecuted in the name of the real party in interest. When a partnership has a claim, the partnership is the real party in interest. (22 *C.A.4th 1449*.) Here, the complaint's caption alleged it was a *derivative* action brought for the benefit of the limited partnership. A limited partner's derivative action is brought to enforce a claim the limited partnership possesses against others, but which the partnership refuses to enforce. The suit is filed in the name of a limited partner naming the partnership as defendant. "Although a limited partner is named as the plaintiff, it is the limited partnership which derives the benefits of the action." (22 *C.A.4th 1449*.)

(b) *Derivative action is appropriate under Corp.C. 15526*. The basic purpose of *Corp.C. 15526* is to restrain limited partners from interfering with the right of the general partners to carry on the partnership business, not to prohibit an action on behalf of the limited partnership when the general partners have disabled themselves or wrongfully refused to act. (22 *C.A.4th 1453*.) The basic purpose of *Corp.C. 15526* is served if a limited partner has a right to file a derivative action on behalf of the limited partnership. (22 *C.A.4th 1453*.) "California courts have long recognized that equitable principles apply to the Uniform Limited Partnership Act (ULPA). If the law were 'that a limited partner who may have a substantial investment in the partnership, must sit idly by and watch it disappear because the general partner refuses to' carry on the business of the partnership because it would adversely affect the finances of the general partner, ... something would have to be done." (22 *C.A.4th 1454*.) Therefore, allowing a limited partner's derivative action where the general partner refuses to carry on the partnership is appropriate. (22 *C.A.4th 1454*.) (See *Everest Investors 8 v. McNeil Partners (2003) 114 C.A.4th 411, 428, 8 C.R.3d 31* [limited partner's action against general partner for breach of fiduciary duty for selling plaintiff's interests in merger and misallocating proceeds was individual cause of action; it was not based on injury to limited partnership or its assets, both of which survived merger intact].) (On pleadings and class actions generally, see 4 *Cal. Proc. (4th), Pleading, §246 et seq.*)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Pleading.Pleadings and class actions:*

Cross-Reference: 4 *Cal. Proc. (5th), Pleading, §267 et seq.*



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J. Class Actions and Derivative Actions.

2. Defendant's Motion To Furnish Security.

9 *Witkin Sum. Cal. Law Partn* § 105

[§ 105] Defendant's Motion To Furnish Security.

(1) *Motion and Grounds.* In a derivative action by a partner, the limited partnership or the defendant may move for an order that the plaintiff furnish security for reasonable litigation expenses, including attorneys' fees, on the following grounds: (a) that there is no reasonable possibility that the suit will benefit the limited partnership or its partners; or (b) that the moving party, if other than the limited partnership, did not participate in the transaction complained of in any capacity. (*Corp.C. 15702(b).*)

(2) *Action by Court.* If the court determines that the evidence supports any of the grounds alleged by the moving party, the court must fix the nature and amount of security not to exceed \$ 50,000. Later, the amount may be increased or decreased at the court's discretion, but a subsequent increase must not bring the total amount beyond \$ 50,000 in the aggregate for all defendants. The court's ruling is not a determination on an issue or the merits of the action. (*Corp.C. 15702(c).*) (On posting security, see *Corp.C. 15702(d).*)

Corp.C. 15702(b) and (c) are patterned after *Corp.C. 800(c)* and (d), on corporate shareholder derivative actions (see 9 *Summary* (10th), *Corporations*, §170).

(3) *Stay Pending Decision on Motion.* If a motion is filed under *Corp.C. 15702(b)*, no pleadings need be filed by the limited partnership or other defendant, and the action is stayed until 10 days after the motion is disposed of. (*Corp.C. 15702(e).*)

SUPPLEMENT: [This section is current through the latest supplement]



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III. LIMITED PARTNERSHIP

K. Reorganization.

1. Conversion.

a. In General.

9 Witkin Sum. Cal. Law Partn § 106

[§ 106] In General.

(1) *Legislative Scheme.* *Corp.C. 15677.1* et seq. govern the conversion of limited partnerships into other business entities or foreign limited partnerships. These provisions closely parallel those governing the conversion of partnerships (supra, §52 et seq.), and those governing the conversion of limited liability companies (infra, §181 et seq.). An "other business entity" includes a limited partnership, limited liability company, corporation, business trust, and real estate investment trust. (*Corp.C. 16901(12)*.) (On comprehensive scheme for conversion of California corporations into domestic limited liability companies, limited partnerships, or general partnerships, see *Corp.C. 1150* et seq.; *9 Summary* (10th), *Corporations*, §206 et seq.)

(2) *Partner's Interests.* A limited partnership may convert to a permitted entity only if (a) in a conversion to a domestic or foreign partnership, limited liability company, or foreign limited partnership, each of the partners of the converting limited partnership receives a percentage interest in profits and capital of the converted entity equal to the partner's percentage interest in profits and capital of the converting limited partnership as of the time of conversion, and (b) if applicable, each limited partnership interest of the same class is treated equally with respect to distribution of the converted entity's property, and the nonredeemable limited partnership interests are converted into nonredeemable interests of the converted entity. (*Corp.C. 15677.2(a)*.)

(3) *Governing Law.* Conversion is permitted *only if* (a) the law under which the converted entity will exist expressly permits the conversion to and formation of that entity, and (b) the limited partnership complies with all other requirements of any other law that applies to conversion. (*Corp.C. 15677.2(b)*.)

(4) *Conversion to Foreign Entity.* The conversion of a limited partnership into a foreign limited partnership or foreign other business entity must comply with *Corp.C. 15677.2*, and is subject to other rules specified in *Corp.C. 15677.5*. (*Corp.C. 15677.5*.)

SUPPLEMENT: [This section is current through the latest supplement]



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K. Reorganization.

1. Conversion.

b. Plan.

9 *Witkin Sum. Cal. Law Partn* § 107

[§ 107] Plan.

(1) *Content.* A converting limited partnership must have a plan of conversion that contains the same information required in the statement of a converting partnership (*supra*, §55). (*Corp.C. 15677.3(a).*)

(2) *Approval and Amendment.* The plan must be approved by all general partners of the converting limited partnership and by a majority in interest of each class of limited partners, unless the partnership agreement specifies otherwise. However, if the limited partners would become personally liable for obligations of the converted entity, the plan must be approved by all of the limited partners, unless the plan provides that all limited partners will have dissenters' rights under *Corp.C. 15679.1* (*infra*, §116 et seq.). (*Corp.C. 15677.3(b).*)

The plan may be amended before conversion takes effect if approved by all general partners of the converting limited partnership. If the amendment changes a principal term, it must be approved by the limited partners of the converting limited partnership in the same manner required for the original plan. (*Corp.C. 15677.3(d).*)

(3) *Parties to Governing Document.* All partners of the converting limited partnership, except those exercising dissenters' rights, are considered parties to the governing documents for the converted entity adopted as part of the conversion plan. (*Corp.C. 15677.3(c).*)

(4) *Abandonment.* The general partners of the converting limited partnership may by unanimous approval abandon a conversion prior to its effective date without further approval of the limited partners, subject to contractual rights of third parties other than limited partners. (*Corp.C. 15677.3(e).*)

(6) *Conversion to Domestic Limited Partnership.* An entity wishing to convert to a domestic limited partnership under *Corp.C. 15677.1* et seq. may do so if the laws under which that entity is organized do not prohibit the conversion. A converting entity must also approve a conversion plan or similar instrument as required by the laws under which it is organized. Approval must be by the number or percentage required by the converting entity's organic document or the laws under which it is organized. (*Corp.C. 15677.8.*)

(6) *Effective Date of Conversion.* Conversion is effective on the earliest date that all the following events have

occurred:

- (a) The converting limited partnership partners have approved the plan. (*Corp.C. 15677.4(a)(1).*)
- (b) All documents required to create the converted entity have been filed. (*Corp.C. 15677.4(a)(2).*)
- (c) The effective date, if set forth in the conversion plan, has occurred. (*Corp.C. 15677.4(a)(3).*)

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K. Reorganization.

1. Conversion.

c. Effect.

9 Witkin Sum. Cal. Law Partn § 108

[§ 108] Effect.

A limited partnership that converts to another entity under *Corp.C. 15677.1* et seq. is for all purposes the same entity that existed before the conversion. (*Corp.C. 15677.9(a)*.) The rules governing rights and liabilities applicable generally to partnerships following a conversion (supra, §54) are applicable to a conversion involving a limited partnership. (*Corp.C. 15677.9(b)*.)

In addition, if the other party to a transaction with the limited partnership reasonably believes that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion. However, the limited partner's liability for all other obligations of the limited partnership incurred after the conversion is that of a limited partner. (*Corp.C. 15677.9(e)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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K. Reorganization.

1. Conversion.

d. Statement.

9 *Witkin Sum. Cal. Law Partn* § 109

[§ 109] Statement.

(1) *Conversion to Limited Liability Company.* If conversion is to a limited liability company, a statement of conversion must be completed on articles of organization (*infra*, §§145, 146). (*Corp.C. 15677.6(a)(1).*)

(2) *Conversion to Domestic Partnership.* If conversion is to a domestic partnership, a statement of conversion must be completed on the statement of partnership authority (*supra*, §36). If no statement of partnership authority is filed, then a certificate of conversion must be filed separately. (*Corp.C. 15677.6(a)(2).*)

(3) *Conversion to Domestic Corporation.* If conversion is to a domestic corporation, a statement of conversion must be completed on the articles of incorporation. (*Corp.C. 15677.6(a)(3).*)

(4) *Conversion to Foreign Limited Partnership or Other Business Entity.* If conversion is to a foreign limited partnership or foreign other business entity, a certificate of conversion must be filed. (*Corp.C. 15677.6(a)(4).*)

(5) *Form and Content.* A certificate or statement of conversion must be executed by all general partners, unless otherwise provided in the certificate of limited partnership, and must contain all of the following items:

(a) The name and the Secretary of State's file number of the converting limited partnership. (*Corp.C. 15677.6(b)(1).*)

(b) A statement that the principal terms of the conversion plan were approved by the required vote, as specified. (*Corp.C. 15677.6(b)(2).*)

(c) The form of organization of the converted entity. (*Corp.C. 15677.6(b)(3).*)

(d) The mailing addresses of the converted entity's agent for service of process and chief executive office. (*Corp.C. 15677.6(b)(4).*)

(6) *Record Ownership of Real Property.* A converting limited partnership or other business entity having real property in California that vests in the converted entity may establish record ownership by filing statements or

certificates as specified with the appropriate county recorder. (*Corp.C. 15677.7.*)

SUPPLEMENT: [This section is current through the latest supplement]



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III. LIMITED PARTNERSHIP

K. Reorganization.

2. Merger.

a. In General.

9 *Witkin Sum. Cal. Law Partn* § 110

[§ 110] In General.

(1) *Statutory Authorization.* *Corp.C. 15678.1* et seq. govern mergers under the California Revised Limited Partnership Act, and permit the merger of domestic and foreign limited partnerships between themselves or with other business entities. (*Corp.C. 15678.1*.) The provisions also apply to limited partnerships formed under the Uniform Limited Partnership Act (*Corp.C. 15501* et seq.). (*Corp.C. 15712(a)*.) (See C.E.B., *Advising California Partnerships* 3d, §16.29 et seq.; Chap. 17; on filing fees for merger documents, see *Govt.C. 12188(g)*.)

(2) *Definitions.* The following terms are applicable to mergers involving limited partnerships:

(a) *Constituent limited partnership.* A limited partnership that is merged with one or more other limited partnerships, including the surviving limited partnership. (*Corp.C. 15611(e)*.)

(b) *Surviving limited partnership.* A limited partnership into which one or more other limited partnerships or other business entities are merged. (*Corp.C. 15611(ad)*.)

(c) *Disappearing limited partnership.* A constituent limited partnership that is not the surviving limited partnership. (*Corp.C. 15611(h)*.)

(d) *Constituent other business entity.* An other business entity that is merged with or into one or more limited partnerships, including a surviving other business entity. (*Corp.C. 15611(f)*.)

(e) *Surviving other business entity.* An other business entity into which one or more limited partnerships are merged. (*Corp.C. 15611(ae)*.)

(f) *Disappearing other business entity.* A constituent other business entity that is not the surviving other business entity. (*Corp.C. 15611(i)*.)

(3) *Conditions.* The merger of limited partnerships with other business entities is permitted only if the other business entities that are organized in California are authorized by the laws under which they are organized to effect the merger, and (a) if a limited partnership is the survivor, foreign other business entities are not prohibited by the laws

under which they are organized from effecting the merger, or (b) if a foreign limited partnership or foreign other business entity is the survivor, the laws of the jurisdiction under which the survivor is organized authorize that merger. If a domestic corporation is also a party to the merger, the merger may be effected only if, with respect to a foreign other business entity that is a corporation, the foreign corporation is authorized by the laws under which it is organized to effect that merger. (*Corp.C. 15678.1.*) (On mergers involving general partnerships, see *supra*, §57 et seq.; on mergers involving one or more corporations with one or more other business entities, see 9 *Summary* (10th), *Corporations*, §187 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Statutory Authorization.* *Govt.C. 12188* was repealed in 2006 and a new *Govt.C. 12188* was added. The filing fees for merger documents are now in *Govt.C. 12188(i)* and (j).



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2. Merger.

b. Agreement.

9 *Witkin Sum. Cal. Law Partn* § 111

[§ 111] Agreement.

(1) *Approval of Agreement.* A limited partnership and other business entity that desire to merge must approve an agreement of merger. The agreement must be approved by all general partners of each constituent limited partnership, and the principal terms of the merger must be approved by a majority in interest of each class of limited partners of each constituent limited partnership, unless greater approval is required by the partnership agreement. (*Corp.C. 15678.2(a).*)

If the limited partners of a constituent limited partnership become personally liable for obligations of an entity as a result of the merger, the principal terms of the agreement must be approved by *all* of the limited partners of the constituent limited partnership, unless the agreement provides that all limited partners will have the dissenters' rights provided under *Corp.C. 15679.1* et seq. (infra, §116 et seq.). (*Corp.C. 15678.2(a).*)

The agreement must be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which they are organized. Other persons, including the parent of a constituent limited partnership, may be parties to the agreement of merger. (*Corp.C. 15678.2(a).*)

(2) *Contents of Agreement.* The agreement must contain the following information:

(a) The terms and conditions of the merger. (*Corp.C. 15678.2(a)(1).*)

(b) The name and place of organization of the surviving limited partnership, and of each disappearing limited partnership. (*Corp.C. 15678.2(a)(2).*)

(c) The manner of converting the partnership interests of each constituent limited partnership into interests, shares, or other securities of the surviving limited partnership or surviving other business entity; if the partnership interests are not to be solely so converted, then the property or interests the holders of the partnership interests will receive in exchange for the partnership interests, or a statement that the partnership interests are cancelled without consideration. (*Corp.C. 15678.2(a)(3).*)

(d) Other information required by the laws under which a constituent other business entity is organized. (*Corp.C. 15678.2(a)(4).*)

(3) *Equality Provisions.* Generally, limited partnership interests of the same class must be treated equally with respect to distributions of property, rights, and interests. (*Corp.C. 15678.2(b).*) (On limited exceptions and permissive conversion of nonredeemable interests, see *Corp.C. 15678.2(b).*)

(4) *Amendment of Agreement.* The agreement of merger may be amended prior to its filing or the filing of the certificate of merger (infra, §112) under the following conditions: (a) The amendment must be approved by the general partners of each constituent limited partnership in the same manner as required for approval of the original agreement of merger, and (b) if the amendment changes principal terms of the agreement, the amendment must be approved by the limited partners of each constituent limited partnership in the same manner and to the same extent as required for the approval of the original agreement of merger and by each of the constituent other business entities. (*Corp.C. 15678.2(c).*)

(5) *Amendment or Adoption of Partnership Agreement.* An agreement of merger approved in accordance with *Corp.C. 15678.2(a)* may (a) effect amendments to the partnership agreement of a constituent limited partnership, or (b) effect the adoption of a new partnership agreement for a constituent limited partnership if it is the surviving limited partnership in the merger. The amendment or adoption is effective at the effective time or date of the merger. However, if a greater number of limited partners is required to approve an amendment to the partnership agreement of a constituent limited partnership than is required to approve the agreement of merger under *Corp.C. 15678.2(a)*, and fewer than the required number of limited partners approve the agreement of merger, the amendment to the partnership agreement or the adoption of a new partnership agreement of that constituent limited partnership is effective only if the agreement of merger provides that all the limited partners have the dissenters' rights provided in *Corp.C. 15679.1 et seq. (Corp.C. 15678.2(e).*)

(6) *Abandonment of Merger.* The general partners of a constituent limited partnership may abandon a merger at any time before the merger is effective without further approval by the limited partnership interests. However, the abandonment is subject to contractual rights of third parties, including other constituent limited partnerships and constituent other business entities. (*Corp.C. 15678.2(d).*)

(7) *Repository for Agreement.* The surviving limited partnership or surviving other business entity must keep the agreement of merger at the office referred to in *Corp.C. 15614(a)* (supra, §66) or at the address specified in *Corp.C. 15678.4(a)(5)* (infra, §112). (*Corp.C. 15678.2(f).*)

(8) *Obligation To Provide Copy.* On the request of a limited partner of a constituent limited partnership or a holder of shares, interests, or other securities of a constituent other business entity, the general partners of the surviving limited partnership or the authorized person of the surviving other business entity must promptly deliver to the requesting party, at the expense of the surviving limited entity, a copy of the agreement of merger. A waiver of these rights is unenforceable. (*Corp.C. 15678.2(f).*)

SUPPLEMENT: [This section is current through the latest supplement]



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2. Merger.

c. Certificate of Merger.

9 *Witkin Sum. Cal. Law Partn* § 112

[§ 112] Certificate of Merger.

(1) *Filing.* If the surviving entity is a limited partnership or an other business entity (other than a corporation in a merger in which a domestic corporation is a constituent party), after approval of a merger the constituent limited partnerships and constituent other business entities must file a certificate of merger with the Secretary of State on a prescribed form. (*Corp.C. 15678.4(a).*) (For official form, see Secretary of State website, www.ss.ca.gov/business/business.htm.)

If the surviving entity is a foreign limited partnership in a merger in which a domestic corporation is a disappearing other business entity, a copy of the agreement of merger and attachments required under *Corp.C. 1113(g)(1)* (see 9 *Summary* (10th), *Corporations*, §197) must be filed with the certificate of merger. (*Corp.C. 15678.4(a).*)

If the surviving entity is a domestic corporation or a foreign corporation, after approval of the merger by the constituent limited partnerships and constituent other business entities the surviving corporation must file a copy of the agreement of merger and attachments required under *Corp.C. 1113(g)(1)*. (*Corp.C. 15678.4(b).*) (On filing fees, see *Govt.C. 12188(f).*)

(2) *Execution and Acknowledgment.* The certificate of merger must be executed and acknowledged by (a) all general partners of each domestic constituent limited partnership (unless the certificate of limited partnership provides for a lesser number), (b) one or more general partners of each foreign constituent limited partnership, and (c) persons in constituent other business entities required to do so by the laws under which the entity is organized. (*Corp.C. 15678.4(a)*; on execution of certificates generally, see *Corp.C. 15624.*)

If the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, the certificate must be executed and acknowledged by all general partners of each domestic constituent limited partnership unless the certificate of limited partnership provides for a lesser number. (*Corp.C. 15678.4(b).*)

(3) *Contents.* The certificate of merger must set forth the following information:

(a) The names and the Secretary of State's file numbers of the constituent limited partnerships and constituent other business entities, separately identifying the disappearing entities. (*Corp.C. 15678.4(a)(1).*)

(b) If a vote of the limited partners was required under *Corp.C. 15678.2* (supra, §111), a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and stating that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each. (*Corp.C. 15678.4(a)(2).*)

(c) If the surviving entity is a limited partnership, changes required in the certificate of limited partnership of the surviving limited partnership resulting from the merger, such as a change of name. (*Corp.C. 15678.4(a)(3)*); on effect as certificate of amendment, see *Corp.C. 15678.4(a)(3).*)

(d) If the merger is not to be effective on the date of filing of the certificate of merger, the future effective date or time (which must be a date or time certain not more than 90 days subsequent to the date of filing). (*Corp.C. 15678.4(a)(4).*)

(e) If the surviving entity is an other business entity or a foreign limited partnership, the full name, type of business entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are governed, and the address of the principal place of business. (*Corp.C. 15678.4(a)(5).*)

(f) Other information required to be stated by the laws under which each constituent other business entity is organized, including, if a domestic corporation is a party to the merger, information required by *Corp.C. 1113(g)(2)*. (*Corp.C. 15678.4(a)(6).*)

(4) *Effect as Certificate of Cancellation.* A certificate of merger or the agreement of merger, as applicable under *Corp.C. 15678.4(a)* or *15678.4(b)*, has the effect of filing a certificate of cancellation for each disappearing limited partnership. Thus, a disappearing limited partnership need not file a certificate of dissolution or a certificate of cancellation under *Corp.C. 15623* (supra, §100) as a result of the merger. (*Corp.C. 15678.4(c).*)

(5) *Effect of Filing by Foreign Corporations.* If a disappearing other business entity is a foreign corporation qualified to transact intrastate business in California, a certificate of satisfaction of the Franchise Tax Board required by Rev.C. 23334 must be filed with the certificate of merger or the agreement of merger. By filing the certificate or agreement of merger, the foreign corporation automatically surrenders its right to transact intrastate business. (*Corp.C. 15678.4(d).*)

(6) *Effective Date of Merger.* Unless a future effective date or time is provided in the certificate or agreement of merger, a merger is effective on the filing of the certificate or agreement of merger in the office of the Secretary of State. (*Corp.C. 15678.5(a)*); on evidentiary effect of copy of certificate of merger, see *Corp.C. 15678.5(b).*)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Filing.* *Govt.C. 12188* was repealed in 2006 and a new *Govt.C. 12188* was added. The filing fee for a certificate of merger is now in *Govt.C. 12188(j)*. (5) *Effect of Filing by Foreign Corporations.* *Corp.C. 15678.4(d)* was amended in 2006 to delete the requirement of filing a certificate of satisfaction of the Franchise Tax Board as required by Rev.C. 23334.



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2. Merger.

d. Effect.

9 *Witkin Sum. Cal. Law Partn* § 113

[§ 113] Effect.

(1) *Succession.* On a merger of limited partnerships or limited partnerships and other business entities, the separate existence of the disappearing limited partnerships and other business entities ceases and the surviving limited partnership or surviving other business entity, without further act, succeeds to all the rights and property of each of the disappearing entities and is subject to their debts and liabilities as if the surviving limited partnership had incurred them. (*Corp.C. 15678.6(a).*)

(2) *Rights of Creditors.* The rights of creditors and liens on the property of each of the constituent limited partnerships and constituent other business entities are preserved unimpaired and may be enforced against the surviving limited partnership or surviving other business entity as if the underlying debt, liability, or duty had been incurred by the surviving entity. Liens are limited to the property affected immediately prior to the time the merger is effective. (*Corp.C. 15678.6(b).*)

(3) *Action or Proceeding by or Against Entity.* An action or proceeding pending by or against a disappearing limited partnership or disappearing other business entity may be prosecuted to judgment, which binds the surviving entity. Alternatively, the surviving entity may be proceeded against or be substituted in place of the disappearing limited partnership or other business entity. (*Corp.C. 15678.6(c).*)

(4) *Effect on Former Debts of Disappearing Limited Partnership.* The merger provisions (*Corp.C. 15678.1* et seq.) do not affect the liability of a general partner of a disappearing limited partnership for the debts and liabilities of that partnership that existed prior to the effective date of the merger. (*Corp.C. 15678.6(d).*)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Succession.*

(*New*) *Taxes:* A surviving limited partnership or other business entity is deemed to have assumed the California tax liability of the disappearing entity and must file the required tax and information returns and pay taxes due. The Secretary of State must notify the Franchise Tax Board of the merger. (*Corp.C. 15678.10*, added in 2005 and amended in 2006.)



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e. Merger of Domestic and Foreign Limited Partnerships.

9 Witkin Sum. Cal. Law Partn § 114

[§ 114] Merger of Domestic and Foreign Limited Partnerships.

A merger of domestic limited partnerships with foreign limited partnerships or foreign other business entities is permitted if the merger complies with *Corp.C. 15678.1* (supra, §110). (*Corp.C. 15678.7(a)*.) In addition, depending on the nature of the surviving entity, the following rules apply:

(1) If the surviving entity is a domestic limited partnership or a domestic other business entity, merger with respect to that surviving entity and a domestic disappearing limited partnership must conform to the provisions governing the merger of domestic limited partnerships (*Corp.C. 15678.1* et seq.). However, if the surviving entity is a foreign limited partnership or a foreign other business entity, the merger may be in accordance with the laws of the state or place of organization of the surviving entity, subject to specified California Corporation Code provisions. (*Corp.C. 15678.7(b)*.)

(2) If the surviving entity is a domestic limited partnership or domestic other business entity other than a domestic corporation, the certificate of merger is filed according to *Corp.C. 15678.4(a)*, and, subject to *Corp.C. 15678.5(a)* (effective date of merger; supra, §112), the merger is effective on that filing as to each domestic constituent limited partnership and domestic constituent other business entity. (*Corp.C. 15678.7(c)*.)

(3) If the surviving entity is a domestic corporation, the agreement of merger with attachments is filed according to *Corp.C. 15678.4(b)*, and, subject to *Corp.C. 15678.5(a)*, the merger is effective on that filing as to each domestic constituent limited partnership and domestic constituent other business entity unless another effective date is provided for under *Corp.C. 1100* et seq. (*Corp.C. 15678.7(c)*.)

(4) If the surviving entity is a foreign limited partnership or foreign other business entity, the merger is effective in accordance with the law of the jurisdiction in which the surviving entity is organized, but is effective as to a domestic disappearing limited partnership as of the time of effectiveness in that foreign jurisdiction on the filing in California of a certificate of merger or agreement of merger according to *Corp.C. 15678.4* (supra, §111). (*Corp.C. 15678.7(d)*.)

(5) If a merger described in *Corp.C. 15678.6(c)* and (d) also includes a foreign disappearing limited partnership previously registered for the transaction of intrastate business in California, the filing of the certificate of merger or agreement of merger automatically has the effect of a cancellation of registration for that foreign limited partnership

pursuant to *Corp.C. 15696*. (*Corp.C. 15678.7(e)*.)

(6) The provisions of *Corp.C. 15678.2(b)* (equality of distributions; supra, §111) and *Corp.C. 15679.1* et seq. (rights of dissenting limited partners; infra, §116 et seq.) apply to the rights of limited partners of constituent limited partnerships that are domestic limited partnerships and of domestic limited partnerships that are parents of foreign constituent limited partnerships. (*Corp.C. 15678.7(f)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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f. Record Ownership of Real Property.

9 Witkin Sum. Cal. Law Partn § 115

[§ 115] Record Ownership of Real Property.

When the laws of the state or place of organization (including California) of a disappearing limited partnership or disappearing other business entity provide that making and filing an agreement of merger or a certificate of merger vests in the surviving entity all the real property of the disappearing entity, filing in a county recorder's office in California where the real property of the disappearing entity is located either (1) a certificate of merger certified by the Secretary of State, or other prescribed certificate, or (2) a copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, evidences record ownership in the surviving entity of all interest of the disappearing entity in and to the real property. (*Corp.C. 15678.8.*)

Recording the certificate of merger creates, in favor of bona fide purchasers or encumbrancers for value, a conclusive presumption that the merger was validly completed. (*Corp.C. 15678.9.*)

SUPPLEMENT: [This section is current through the latest supplement]



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3. Dissenting Limited Partner's Rights.

a. In General.

9 *Witkin Sum. Cal. Law Partn* § 116

[§ 116] In General.

(1) *Statutory Scheme. Corp.C. 15679.1* et seq. govern dissenters' rights under the California Revised Limited Partnership Act, and are generally similar to the rights granted to shareholders of merging corporations under *Corp.C. 1300* et seq. (See 9 *Summary* (10th), *Corporations*, §200 et seq.)

If the approval of outstanding limited partnership interests is required for a limited partnership to participate in a reorganization, each limited partner holding those interests may, by complying with *Corp.C. 15679.1* et seq., require the limited partnership to purchase for cash, at its fair market value, the interest owned, if the interest is a "dissenting interest" as defined in *Corp.C. 15679.2(b)* (infra, §117). Fair market value is determined as of the day before the first announcement of the terms of the proposed reorganization, excluding appreciation or depreciation in consequence of the proposed reorganization. (*Corp.C. 15679.2(a)*.)

(2) *Application. Corp.C. 15679.1* et seq. apply to the following entities:

(a) A domestic limited partnership formed on or after January 1, 1991. (*Corp.C. 15679.13(a)(1)*.)

(b) A foreign limited partnership if (1) the foreign limited partnership was formed on or after January 1, 1991, or filed an application to qualify to do business on or after January 1, 1991, and (2) limited partners holding more than 50% of the voting power held by all limited partners of the foreign limited partnership reside in California. (*Corp.C. 15679.13(a)(2)*.)

(c) A limited partnership if the partnership agreement so provides or if all general partners and a majority in interest of the limited partners determine that the provisions apply. (*Corp.C. 15679.13(a)(3)*.)

Corp.C. 15679.1 et seq. do not apply to the following:

(a) Limited partnership interests governed by a limited partnership agreement that specifically sets forth the amount to be paid for those interests in the event of a reorganization. (*Corp.C. 15679.13(b)*.)

(b) Limited partnerships with 35 or fewer limited partners, unless the partnership agreement provides that *Corp.C.*

15679.1 et seq. apply or unless all general partners and a majority in interest of the limited partners agree that the provisions apply. (*Corp.C. 15679.13(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 b. Definitions.

9 *Witkin Sum. Cal. Law Partn* § 117

[§ 117] Definitions.

(1) *Reorganization*. Reorganization refers to the following events:

(a) A conversion under *Corp.C. 15677.1* et seq. (*Corp.C. 15679.1(a)(1)*.)

(b) A merger under *Corp.C. 15678.1* et seq. (*Corp.C. 15679.1(a)(2)*.)

(c) The acquisition, by one limited partnership in exchange for its partnership interests, of partnership interests or equity securities of another limited partnership or other business entity if, immediately after the acquisition, the acquiring limited partnership has control of the other entity. (*Corp.C. 15679.1(a)(3)*.)

(d) The acquisition by one limited partnership in exchange for its partnership interests, or for its debt securities that are not adequately secured and have a maturity date in excess of 5 years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited partnership or other business entity. (*Corp.C. 15679.1(a)(4)*.)

(2) *Control*. Control means possessing the power to direct the management and policies of a limited partnership or other business entity. (*Corp.C. 15679.1(b)*.)

(3) *Dissenting Interest*. A dissenting interest is the interest of a limited partner that meets the following conditions:

(a) Immediately prior to the reorganization, either (1) the interest was not listed on a certified national securities exchange or on the list of OTC margin stocks issued by the Board of Governors of the Federal Reserve System, provided that in either instance, if the interests *are listed*, the limited partnership provides, in its notice to limited partners requesting their approval of the proposed reorganization, a summary of the provisions of *Corp.C. 15679.2* et seq. (*Corp.C. 15679.2(b)(1)(A)*), or (2) demands for payment are filed with respect to 5% or more of the outstanding interests of a class of interests specified in *Corp.C. 15679.2(b)(1)(A)* (*Corp.C. 15679.2(b)(1)(B)*).

(b) The interest was outstanding on the date for the determination of limited partners entitled to vote on the reorganization. (*Corp.C. 15679.2(b)(2)*.)

(c) The interest either (i) was not voted in favor of the reorganization, or (ii) if the interest is described in *Corp.C. 15679.2(b)(1)(A)*, was voted against the reorganization; however, where the approval for the proposed reorganization is sought by written consent rather than at a meeting, clause (i) of this paragraph applies. (*Corp.C. 15679.2(b)(3).*)

(d) The limited partner has demanded that the limited partnership purchase the interest at its fair market value in accordance with *Corp.C. 15679.3*. (*Corp.C. 15679.2(b)(4).*)

(e) The limited partner submits the interest for endorsement, if applicable, in accordance with *Corp.C. 15679.4*. (*Corp.C. 15679.2(b)(5).*)

(4) *Dissenting Limited Partner*. A dissenting limited partner is the holder of record of a dissenting interest, including an assignee of record of that interest. (*Corp.C. 15679.2(c).*)

SUPPLEMENT: [This section is current through the latest supplement]



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c. Notice and Demand.

9 *Witkin Sum. Cal. Law Partn* § 118

[§ 118] Notice and Demand.

(1) *Notice by Limited Partnership to Limited Partners.* The limited partnership must mail to each limited partner having dissenters' rights a notice of the approval of the reorganization by the requisite vote or consent of the limited partners, within 10 days after the date of the approval. The notice must be accompanied by the following: (a) copies of *Corp.C. 15679.2, 15679.3, 15679.4, 15679.5, and 15679.6*; (b) a statement of the price determined by the limited partnership to represent the fair market value of its outstanding interests; and (c) a brief description of the procedure to be followed if the limited partner desires to exercise the limited partner's dissenters' rights. The statement of price constitutes an offer by the limited partnership to purchase dissenting interests at the price stated, unless they lose their status as dissenting interests under *Corp.C. 15679.11* (infra, §120). (*Corp.C. 15679.3(a)*.)

(2) *Written Demand by Limited Partners.* A limited partner with dissenters' rights who desires the limited partnership to purchase the interest must make a written demand on the limited partnership for the purchase and payment in cash of the interest's fair market value. The demand is not effective unless it is received by the limited partnership or its transfer agent (a) in the case of interests described in clause (i) or (ii) of *Corp.C. 15679.2(b)(1)(A)* (supra, §117), not later than the date of the limited partners meeting to vote on the reorganization, or (b) in other cases, within 30 days after the date on which notice of the approval of the reorganization by the requisite vote or consent of the limited partners is mailed by the limited partnership to the limited partners. (*Corp.C. 15679.3(b)*.)

The demand must state the number or amount of the limited partner's interest in the limited partnership and must contain a statement of what the limited partner claims is the fair market value of that interest on the day before the announcement of the proposed reorganization. The statement of fair market value constitutes an offer by the limited partner to sell the interest at that price. (*Corp.C. 15679.3(c)*.)

A dissenting limited partner may not withdraw a demand for payment unless the limited partnership consents. (*Corp.C. 15679.10*.)

(3) *Submission by Limited Partners of Certificate or Written Notice.* Within 30 days after the date on which notice of the approval of the outstanding interests of the limited partnership is mailed to the limited partner pursuant to *Corp.C. 15679.3(a)*, the limited partner must submit the following to the limited partnership at its principal office or at

the office of the partnership's transfer agent:

(a) If the interest is evidenced by a certificate, the limited partner's certificate representing the interest that the limited partner demands be purchased, to be stamped or endorsed with a statement that the interest is a dissenting interest or to be exchanged for certificates of appropriate denominations so stamped or endorsed. (*Corp.C. 15679.4.*)

(b) If the interest is not evidenced by a certificate, written notice of the number or amount of interest that the limited partner demands be purchased. (*Corp.C. 15679.4.*)

SUPPLEMENT: [This section is current through the latest supplement]



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d. Determination of Fair Market Value.

9 *Witkin Sum. Cal. Law Partn* § 119

[§ 119] Determination of Fair Market Value.

(1) *Agreement.* If the limited partnership and the dissenting limited partner agree that the limited partner's interest is a dissenting interest and agree on the price to purchase it, the dissenting limited partner is entitled to the agreed price with interest at the legal rate on judgments from the date of consummation of the reorganization. Agreements fixing the fair market value must be in writing and filed in the records of the limited partnership. (*Corp.C. 15679.5(a).*)

(2) *Payment.* Subject to the provisions of *Corp.C. 15679.8* (infra, §120), payment for a dissenting interest must be made within 30 days after agreement on the amount or within 30 days after statutory or contractual conditions to the reorganization are satisfied, whichever is later. In the case of dissenting interests evidenced by certificates of interest, payment is subject to surrender of the certificates, unless provided otherwise by agreement. (*Corp.C. 15679.5(b).*)

(3) *Superior Court Action.* If the limited partnership denies that a limited partnership interest is a dissenting interest, or there is disagreement on the fair market value, the limited partner or interested limited partnership may seek judicial resolution of either or both issues. The action must be brought within 6 months after the date notice of the approval of the reorganization was mailed to the limited partner. Also, either party may intervene in a pending action. (*Corp.C. 15679.6(a).*)

Two or more dissenting limited partners may join as plaintiffs or be joined as defendants, and two or more actions may be consolidated. (*Corp.C. 15679.6(b).*)

The court determines the issues. If the status as a dissenting interest is in issue, the court first determines that issue. If the fair market value is in issue, the court either determines, or appoints one or more impartial appraisers to determine, the fair market value. (*Corp.C. 15679.6(c).*) (On appraiser procedures, see *Corp.C. 15679.7(a).*)

(4) *Judgment.* If a majority of the appraisers fails to make and file a report within 30 days from the date of their appointment or as further allowed, or the report is not confirmed by the court, the court determines the fair market value, by class if necessary. (*Corp.C. 15679.7(b).*) Once determined, judgment is rendered against the limited partnership for payment on each dissenting interest plus interest at the legal rate on judgments from the date of consummation of the reorganization. (*Corp.C. 15679.7(c).*)

The judgment must be paid immediately, but with respect to interests evidenced by transferable certificates of interest, only on the endorsement and delivery to the limited partnership of those certificates. The parties may appeal. (*Corp.C. 15679.7(d).*)

(5) *Costs and Fees.* Costs, including reasonable compensation for the appraisers as fixed by the court, are assessed or apportioned as the court considers equitable. However, if the appraisal exceeds the price offered by the limited partnership, the limited partnership must pay the costs. These may include, at the court's discretion, if the value awarded by the court for the dissenting interest is more than 125% of the price offered by the limited partnership under *Corp.C. 15679.3(a)*, attorneys' fees and fees of expert witnesses. (*Corp.C. 15679.7(e).*)

(6) *Suspension of Proceedings.* If litigation is instituted to test the sufficiency or regularity of the vote or consent of the limited partners in authorizing a reorganization, proceedings under *Corp.C. 15679.6* and *15679.7* must be suspended until final determination of that litigation. (*Corp.C. 15679.12.*)

SUPPLEMENT: [This section is current through the latest supplement]



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III. LIMITED PARTNERSHIP

K. Reorganization.

3. Dissenting Limited Partner's Rights.

e. Rights and Privileges of Dissenting Limited Partners.

9 *Witkin Sum. Cal. Law Partn* § 120

[§ 120] Rights and Privileges of Dissenting Limited Partners.

(1) *Dissenting Limited Partners as Creditors.* To the extent that the payment to dissenting limited partners of the fair market value of their dissenting interests would require the dissenting limited partners to return some or all of the payment by reason of *Corp.C. 15666* (supra, §88) or the Uniform Fraudulent Transfer Act, C.C. 3439 et seq. (see 8 *Cal. Proc.* (4th), *Enforcement of Judgment*, §460 et seq.), then that payment is not made, and the dissenting limited partners become creditors of the limited partnership for the amount not paid, together with interest until the date of payment. However, the limited partners are subordinate to all other creditors in the winding up and dissolution of the limited partnership, and the debt is payable only when permissible. (*Corp.C. 15679.8.*)

(2) *Cash Distributions.* Cash distributions made by a limited partnership to a dissenting limited partner after the date of consummation of the reorganization, but prior to a payment for the dissenting limited partner's interest, is credited against the total amount to be paid for the dissenting interest. (*Corp.C. 15679.9.*)

(3) *Continuance of Rights and Privileges.* Except where limited under *Corp.C. 15679.1* et seq., dissenting limited partners retain all the rights and privileges incident to their interests immediately prior to the reorganization, including limited liability, until payment by the limited partnership for their dissenting interests. (*Corp.C. 15679.10.*)

(4) *Loss of Status as Dissenting Interest.* A dissenting interest loses its status as a dissenting interest and the holder of the interest ceases to be a dissenting limited partner and to be entitled to require the limited partnership to purchase the interest on the happening of any of the following events:

(a) The limited partnership abandons the reorganization. If so, the limited partnership must pay a dissenting limited partner all reasonable expenses and reasonable attorneys' fees connected with good faith proceedings initiated by the limited partner. (*Corp.C. 15679.11(a).*)

(b) The interest is transferred prior to its submission for endorsement in accordance with *Corp.C. 15679.4.* (*Corp.C. 15679.11(b).*)

(c) The dissenting limited partner and the limited partnership do not agree on the status of the interest or the

purchase price and neither party timely files a complaint or intervenes in a pending action. (*Corp.C. 15679.11(c).*)

(d) The dissenting limited partner, with the consent of the limited partnership, withdraws the demand for purchase of the dissenting interest. (*Corp.C. 15679.11(d).*)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Dissenting Limited Partners as Creditors.*

Cross-Reference: 8 *Cal. Proc. (5th), Enforcement of Judgment*, §488 et seq.



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3. Dissenting Limited Partner's Rights.

f. Right To Attack Reorganization.

9 Witkin Sum. Cal. Law Partn § 121

[§ 121] Right To Attack Reorganization.

A limited partner may only attack the validity of the reorganization, or have it set aside or rescinded, in an action to test whether the vote or consent of limited partners required to authorize or approve the reorganization has been obtained in accordance with the limited partnership agreement. (*Corp.C. 15679.14(a).*) However, a partner is not prohibited from bringing an action against a general partner, the limited partnership, or another party controlling a general partner, as to other matters (e.g., breach of fiduciary obligation or fraud). (*Corp.C. 15679.14(e).*)

If one of the parties to a reorganization is controlled by, or under common control with, another party to the reorganization, *Corp.C. 15679.14(a)* does not apply to a limited partner of the controlled party who has not demanded payment of cash for a limited partner's interest. However, if the limited partner attacks the validity of the reorganization or seeks to have it set aside or rescinded, the limited partner has no right to later demand the cash payment for the limited partner's interest. (*Corp.C. 15679.14(b).*) In an action to attack the validity of the reorganization or to have the reorganization set aside or rescinded, (1) a party to a reorganization that controls another party to the reorganization has the burden of proving that the transaction is just and reasonable as to the limited partners of the controlled party, and (2) a person who controls two or more parties to a reorganization has the burden of proving that the transaction is just and reasonable as to the limited partners of a party so controlled. (*Corp.C. 15679.14(c).*)

Corp.C. 15679.14(b) and (c) do not apply if a majority in interest of the limited partners other than limited partners who are directly or indirectly controlled by, or under common control with, another party to the reorganization approve or consent to the reorganization. (*Corp.C. 15679.14(d).*)

SUPPLEMENT: [This section is current through the latest supplement]



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III-A. (New) UNIFORM LIMITED PARTNERSHIP ACT OF 2008.
A. (New) In General.
1. (New) Adoption and Effect.

9 Witkin Sum. Cal. Law Partn § 121A

[§ 121A] (New) Adoption and Effect.

(1) *Adoption.* The 2006 Legislature enacted the Uniform Limited Partnership Act of 2008 (2008 Act) (*Corp.C. 15900 et seq.*), California's version of the Uniform Limited Partnership Act (2001) (Uniform Act; 6A U.L.A. (Master Ed.), p. 325 et seq.).

(2) *Application and Effect.* The 2008 Act is effective January 1, 2008. Limited partnerships formed before January 1, 2008, will continue to be governed by the California Revised Limited Partnership Act (*Corp.C. 15611 et seq.*; text, §62 et seq.), and the law governing general partnerships (*Corp.C. 16100 et seq.*; text, §15 et seq.) unless the limited partnership elects to be governed by the 2008 Act, or until January 1, 2010, when the 2008 Act will govern all limited partnerships. (*Corp.C. 15912.06.*) Thus, as of January 1, 2010, *Corp.C. 15611 et seq.* are repealed. (See C.E.B., *Advising California Partnerships* 3d, §5.1.)

(3) *Special Rules.* Where a partnership formed before January 1, 2008, elects to be governed by the 2008 Act, the following provisions are not automatically applicable and must be expressly elected by the partners:

(a) *Corp.C. 15901.04(c)* (limited partnership has perpetual duration). (*Corp.C. 15912.06(c)(1).*)

(b) *Corp.C. 15906.01* (dissociation as limited partner), *Corp.C. 15906.02* (effect of dissociation), and *Corp.C. 15906.03(d)* (dissociation of general partner). (*Corp.C. 15912.06(c)(2), (c)(3).*)

(c) *Corp.C. 15906.03(e)* (expulsion by general partner by judicial order). (*Corp.C. 15912.06(c)(4).*)

(d) *Corp.C. 15908.01(c)* (continuation or dissolution of limited partnership following dissociation of general partner). (*Corp.C. 15912.06(c)(5).*)

In addition, if a limited partnership elects to be governed by the 2008 Act prior to January 1, 2010, the provisions limiting liability of a general partner to a third party apply only to a third party who (a) had not done business with the limited partnership in the year before the election took place, or (b) had done business with the limited partnership during that year but *only if* the third party knows or has received notification of the election. After January 1, 2010, the limited liability provisions apply to all third parties, except where an obligation was incurred when the provisions were inapplicable. (*Corp.C. 15912.06(d).*)

(4) *Existing Law.* The 2008 Act does not affect or overturn existing case or statutory law regarding the liability of limited partners. Nor does the 2008 Act permit the formation in California generally of limited liability limited partnerships. (See Stats. 2006, Chap. 495, §37.) (On permissible limited liability partnerships in law and accounting, see *Corp.C. 16951* et seq.; text, §122 et seq.)

(5) *Principal Changes.* California's Revised Limited Partnership Act (Revised Act) provides that in cases not covered by the Revised Act, "limited partnerships shall be governed in the same manner as general partnerships would be governed" under California's Revised Uniform Partnership Act of 1994. (*Corp.C. 15722.*) Thus, the Revised Act was designed to default to, or link to, California's general partnership law, just as the Uniform Limited Partnership Act of 2001 was so linked to the Uniform Partnership Act.

The 2008 Act generally follows the format and substance of the Uniform Act (6A U.L.A. (Master Ed.), p. 325 et seq.), and like the Uniform Act, is a stand-alone act that expressly states provisions previously applicable through California's Uniform Partnership Act. For example, the 2008 Act now specifically addresses the fiduciary duties of general partners (Supp., infra, §121V) and tracks generally *Corp.C. 16404* (text, §30 et seq.). Also, the 2008 Act generally adopts the Uniform Partnership Act's dissociation provisions verbatim except where inappropriate to limited partners (Supp., infra, §121BB). (See C.E.B., *Advising California Partnerships* 3d, §5.8.)

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A. (New) In General.
2. (New) Organization.

9 Witkin Sum. Cal. Law Partn § 121B

[§ 121B] (New) Organization.

The 2008 Act is organized as follows:

- (1) Article 1, General Provisions (*Corp.C. 15900 et seq.*; Supp., infra, §121C et seq.).
- (2) Article 2, Formation; Certificate of Limited Partnership and Other Filings (*Corp.C. 15902.01 et seq.*; Supp., infra, §121J et seq.).
- (3) Article 3, Limited Partners (*Corp.C. 15903.01 et seq.*; Supp., infra, §121-O et seq.).
- (4) Article 4, General Partners (*Corp.C. 15904.01 et seq.*; Supp., infra, §121S et seq.).
- (5) Article 5, Contributions and Distributions (*Corp.C. 15905.01 et seq.*; Supp., infra, §§121Z, 121AA).
- (6) Article 6, Dissociation (*Corp.C. 15906.01 et seq.*; Supp., infra, §§121BB, 121CC).
- (7) Article 7, Transferable Interests and Rights of Transferees and Creditors (*Corp.C. 15907.01 et seq.*; Supp., infra, §121DD).
- (8) Article 8, Dissolution (*Corp.C. 15908.01 et seq.*; Supp., infra, §121EE et seq.).
- (9) Article 9, Foreign Limited Partnership (*Corp.C. 15909.01 et seq.*; Supp., infra, §121KK).
- (10) Article 10, Actions by Partners (*Corp.C. 15910.01 et seq.*; Supp., infra, §121LL).
- (11) Article 11, Conversion and Merger (*Corp.C. 15911.01 et seq.*; Supp., infra, §121MM et seq.).
- (12) Article 11.5, Dissenting Limited Partners' Rights (*Corp.C. 15911.20 et seq.*; Supp., infra, §121WW et seq.).
- (13) Article 12, Miscellaneous Provisions (*Corp.C. 15912.01 et seq.*).

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 A. (New) In General.
 3. (New) Definitions.

9 Witkin Sum. Cal. Law Partn § 121C

[§ 121C] (New) Definitions.

Corp.C. 15901.02 defines various terms that govern the 2008 Act, including the following:

(1) *Electronic transmission by partnership.* A communication delivered by facsimile or electronic mail to designated numbers or electronic addresses, or posted on an electronic message board, as specified. If to a message board, there must be a separate notice to the recipient of the posting. The recipient must have provided an unrevoked consent to the means of the electronic transmission. (*Corp.C. 15901.02(h).*)

(2) *Electronic transmission to partnership.* A communication delivered by facsimile or electronic mail to designated numbers or electronic addresses, or posted on an electronic message board, as specified. The communication must be one as to which the partnership has developed reasonable measures to verify the sender's identity and status. (*Corp.C. 15901.02(i).*)

(3) *Foreign limited liability limited partnership.* A foreign limited partnership whose general partners have limited liability for the partnership's obligations. (*Corp.C. 15901.02(j).*)

(4) *Foreign other business entity.* An other business entity formed under the laws of a state other than California, or under the laws of a foreign country. (*Corp.C. 15901.02(l).*)

(5) *General partner.* With respect to a limited partnership, a person that becomes a general partner pursuant to *Corp.C. 15904.01* (Supp., infra, §121S), or was a general partner in a limited partnership when the partnership became subject to *Corp.C. 15900* et seq. As to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership. (*Corp.C. 15901.02(m).*)

(6) *Interests of all partners.* The aggregate interests of all partners in the current profits derived from business operations of the partnership. (*Corp.C. 15901.02(n).*)

(7) *Interests of limited partners.* The aggregate interests of all limited partners in their respective capacities as limited partners in the current profits derived from business operations of the partnership. (*Corp.C. 15901.02(o).*)

(8) *Limited partner.* A person that becomes a limited partner under *Corp.C. 15903.01* (Supp., infra, §121-O), or

Corp.C. 15907.02(g) (Supp., infra, §121DD), or was a limited partner in a limited partnership when the partnership became subject to the 2008 Act under *Corp.C. 15912.06(a)* or (b) (Supp., supra, §121A); as to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership. (*Corp.C. 15901.02(p)*.)

(9) *Limited partnership or domestic limited partnership.* Except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership," an entity having at least one general partner and one limited partner, which is formed under *Corp.C. 15900* et seq. by two or more persons or becomes subject to the 2008 Act under *Corp.C. 15911.01* et seq. (Supp., infra, §121MM et seq.) or *Corp.C. 15912.06(a)* or (b) (Supp., supra, §121A). (*Corp.C. 15901.02(q)*.)

(10) *Other business entity.* A corporation, general partnership, limited liability company, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a limited partnership. (*Corp.C. 15901.02(u)*.)

(11) *Partner.* A limited or general partner. (*Corp.C. 15901.02(w)*.)

(12) *Partnership agreement.* The partners' agreement, original or amended, whether oral, implied, in a record, or "in any combination," concerning the limited partnership. (*Corp.C. 15901.02(x)*.)

(13) *Person.* An individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign. (*Corp.C. 15901.02(y)*.)

(14) *Person dissociated as a general partner.* A person dissociated as a general partner of a limited partnership (Supp., infra, §121CC). (*Corp.C. 15901.02(z)*.)

(15) *Principal office.* The location of the principal executive office of a limited partnership or foreign limited partnership, whether or not in California. (*Corp.C. 15901.02(aa)*.)

(16) *Record.* Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. (*Corp.C. 15901.02(ac)*.)

(17) *Transact intrastate business.* Entering into repeated and successive transactions of business in California, other than interstate or foreign commerce. (*Corp.C. 15901.02(ai)(1)*.) (On status that foreign limited partnerships may maintain without being considered to be transacting intrastate business, see *Corp.C. 15901.02(ai)(2)*; on activities that foreign limited partnership may carry on without conducting intrastate business, see *Corp.C. 15901.02(ai)(3)*.)

A person does not transact intrastate business in California merely because the person is a limited partner of a domestic limited partnership or a foreign limited partnership registered to transact intrastate business in the state. (*Corp.C. 15901.02(ai)(4)*.)

(18) *Transferee.* A person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner. (*Corp.C. 15901.02(al)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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 A. (New) In General.
 4. (New) Knowledge, Notice, and Notification.

9 Witkin Sum. Cal. Law Partn § 121D

[§ 121D] (New) Knowledge, Notice, and Notification.

(1) *Knowledge*. A person knows a fact if the person has actual knowledge of it. (*Corp.C. 15901.03(a).*)

(2) *Notice*. A person has notice of a fact under the following circumstances:

(a) The person knows of the fact. (*Corp.C. 15901.03(b)(1).*)

(b) The person has received a notification of the fact. (*Corp.C. 15901.03(b)(2).*)

(c) The person has reason to know the fact exists based on all facts known at the time. (*Corp.C. 15901.03(b)(3).*)

(d) A certificate of limited partnership is on file with the Secretary of State, thus providing limited notice that the partnership is a limited partnership and that the persons listed as general partners are general partners. (*Corp.C. 15901.03(c).*)

(e) Ninety days after (1) the dissociation of a general partner, (2) a limited partnership's dissolution, or (3) the reorganization of a limited partnership, where the relevant certificates are properly filed. (*Corp.C. 15901.03(d).*)

(3) *Notification*. A person notifies or gives a notification by taking reasonable steps to inform another person "in ordinary course," regardless of whether the other person learns of it. (*Corp.C. 15901.03(e).*)

A person receives a notification if either of the following conditions applies:

(a) The notification comes to the person's attention. (*Corp.C. 15901.03(f)(1).*)

(b) The notification is delivered at the person's place of business or other place the person has represented as a place for receiving communications. (*Corp.C. 15901.03(f)(2).*)

(4) *Rules for Entity*. Generally, an entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or when the fact would have been brought to the individual's attention if the entity had exercised reasonable

diligence. (*Corp.C. 15901.03(g).*) For this purpose, an entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and has reasonably complied with the routine. Reasonable diligence does not require an individual acting for the entity to communicate information except in either of the following circumstances (*Corp.C. 15901.03(g)*):

(a) The communication is part of the individual's regular duties.

(b) The individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(5) *General Partner's Knowledge Imputed to Limited Partnership.* A general partner's (but not a limited partner's) knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is imputed immediately to the limited partnership, except when the general partner has consented to or committed a fraud on the partnership. (*Corp.C. 15901.03(h).*)

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 A. (New) In General.
 5. (New) Name.

9 Witkin Sum. Cal. Law Partn § 121E

[§ 121E] (New) Name.

(1) *In General.* The name of a limited partnership is subject to the following conditions:

(a) It may contain the name of a partner. (*Corp.C. 15901.08(a).*)

(b) It must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" at the end of its name. (*Corp.C. 15901.08(b).*)

(c) It may not contain the words "bank," "insurance," "trust," "trustee," "incorporated," "inc.," "corporation" or "corp." (*Corp.C. 15901.08(g).*)

(d) It must be distinguishable from the name of a limited partnership that has previously filed a certificate of limited partnership or from a registered foreign limited partnership, and from a name already reserved under *Corp.C. 15901.09*. (*Corp.C. 15901.08(d).*)

(2) *Conflicting Name.* The limited partnership may apply to the Secretary of State to use a name that conflicts with a name under *Corp.C. 15901.08(d)*, and the Secretary must authorize use of the name under any of the following conditions:

(a) The present user, registrant, or owner of the conflicting name consents to the use in a signed record and submits an undertaking in a form satisfactory to the Secretary of State to change the conflicting name to a name that complies with *Corp.C. 15901.08(d)* and is distinguishable in the records of the Secretary of State from the name applied for. (*Corp.C. 15901.08(e)(1).*)

(b) The applicant delivers to the Secretary of State a certified copy of a final judgment establishing the applicant's right to use in California the name applied for. (*Corp.C. 15901.08(e)(2).*)

(c) The applicant delivers to the Secretary of State satisfactory proof that the present user, registrant, or owner of the conflicting name has merged or converted into the applicant, or has transferred its assets, including the name, to the applicant. (*Corp.C. 15901.08(e)(3).*)

(3) *Reservation of Name.* The exclusive right to the use of a name may be reserved by application to the Secretary of State. If the name is available, the Secretary must issue a certificate of name reservation that reserves the name for 60 days. The period may be extended one time for an additional 60 days. (*Corp.C. 15901.09(a), (b), (c).*) (On entities permitted to apply for reservation of name, see *Corp.C. 15901.09(a)*; on transferability of reserved name, see *Corp.C. 15901.09(d).*)

(4) *Foreign Limited Liability Limited Partnership.* The name of a foreign limited liability limited partnership that is applying for a certificate of registration pursuant to *Corp.C. 15909.02* must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and must not contain the abbreviation "L.P." or "LP." (*Corp.C. 15901.08(c).*)

SUPPLEMENT: [This section is current through the latest supplement]



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A. (New) In General.
6. (New) Office and Information.

9 Witkin Sum. Cal. Law Partn § 121F

[§ 121F] (New) Office and Information.

A limited partnership must continuously maintain an office in California, which need not be a place of its activity (*Corp.C. 15901.14(a)(1)*), where the following information must be kept (*Corp.C. 15901.11*):

- (1) A current list separately identifying the general and limited partners, both in alphabetical order with each partner's full name and last known street and mailing address.
- (2) A copy of the certificate of limited partnership and all amendments to and restatement of the certificate, together with executed copies of powers of attorney pursuant to which certificates have been executed.
- (3) Copies of filed certificates of conversion or merger.
- (4) Copies of the limited partnership's federal, state, and local income tax returns and reports for the 6 most recent years.
- (5) Copies of partnership agreements made in a record and amendments.
- (6) Financial statements for the 6 most recent years.
- (7) Copies of records made by the limited partnership during the past 3 years of consents given by or vote taken of a partner.
- (8) Unless contained in a partnership agreement, a record that states the following:
 - (a) The amount of cash and the agreed value of other benefits contributed and to be contributed by each partner.
 - (b) The times of, or events that trigger additional contributions to be made by each partner.
 - (c) For persons that are both a general partner and a limited partner, what transferable interest the person owns in each capacity.
 - (d) Events causing the limited partnership to be dissolved and its activities wound up.

SUPPLEMENT: [This section is current through the latest supplement]



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A. (New) In General.

7. (New) Agent and Service of Process.

9 Witkin Sum. Cal. Law Partn § 121G

[§ 121G] (New) Agent and Service of Process.

A limited partnership must continuously maintain in California an agent for service of process. (*Corp.C. 15901.14(a)(2)*.) The agent must be an individual who is a California resident or a corporation that has complied with the certificate requirements of *Corp.C. 1505* and whose capacity to act as an agent has not terminated. (*Corp.C. 15901.14(c)*.)

The provisions for service of process in the 2008 Act generally track those in California's Revised Limited Partnership Act (*Corp.C. 15627*, text, §67). (See *Corp.C. 15901.16*.)

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A. (New) In General.
8. (New) Partners.

9 Witkin Sum. Cal. Law Partn § 121H

[§ 121H] (New) Partners.

(1) *Dual Capacity.* A person may be both a general and a limited partner. When acting as either, the person has the rights and is subject to the duties and restrictions under *Corp.C. 15900* et seq. and the partnership agreement with respect to each capacity. (*Corp.C. 15901.13.*)

(2) *Transacting Business With Partnership.* A partner may transact business with and lend money to the limited partnership and, as to the loan or transaction, has the same rights and obligations as a nonpartner. (*Corp.C. 15901.12.*)

(3) *Action Without Meeting.* Actions requiring consent of the partners may be taken without a meeting, and a partner may appoint a proxy by executing an appointment record. (*Corp.C. 15901.15.*)

(4) *Jurisdiction, Arbitration, and Service of Process.* A partner may, in the partnership agreement or other writing, consent to nonexclusive jurisdiction of the courts of a specified jurisdiction. Alternatively, a partner may consent to be nonexclusively subject to arbitration in a specified jurisdiction. Also, a partner may consent to be served with process in the manner prescribed in the partnership agreement or other writing. (*Corp.C. 15901.17.*)

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 A. (New) In General.
 9. (New) Filing Requirements.

9 Witkin Sum. Cal. Law Partn § 121-I

[§ 121-I] (New) Filing Requirements.

(1) *Prescribed Form.* A record authorized or required to be delivered to the Secretary of State for filing must be on a form and in a medium prescribed by the Secretary of State. If the record complies with filing requirements and all fees have been paid, the Secretary of State must file the record. (*Corp.C. 15902.06(a).*) (For forms and fees, see Secretary of State website, www.ss.ca.gov/business; on resubmission of nonconforming record, see *Corp.C. 15902.06(d).*)

(2) *Effective Date.* A record filed with the Secretary of State may specify an effective time and a delayed effective date. If no delayed date is specified, the record is effective on the date it is filed. If a delayed date is specified, the record is effective on the earlier of the specified date or the 90th day after the record is filed. (*Corp.C. 15902.06(b).*) (On revocation of record where delayed effective date is specified, see *Corp.C. 15902.06(c).*)

(3) *Failure To Sign or File Record.* If a person required under *Corp.C. 15900* et seq. to sign or file a record fails to do so, an aggrieved person may petition the court for the following relief:

- (a) An order requiring the responsible person to sign the record. (*Corp.C. 15902.05(a)(1).*)
- (b) An order that the record be delivered to the Secretary of State for filing. (*Corp.C. 15902.05(a)(2).*)
- (c) An order that the Secretary of State file the record unsigned. (*Corp.C. 15902.05(a)(3).*)

(4) *False Information.* *Corp.C. 15902.08* authorizes the recovery of damages by persons aggrieved by false information contained in records filed under *Corp.C. 15900* et seq.

SUPPLEMENT: [This section is current through the latest supplement]



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 B. (New) Nature and Formation of Limited Partnership.
 1. (New) Nature of Limited Partnership.

9 Witkin Sum. Cal. Law Partn § 121J

[§ 121J] (New) Nature of Limited Partnership.

(1) *Organization and Duration.* A limited partnership is an entity distinct from its partners and has a perpetual duration unless the partnership agreement varies that duration. (*Corp.C. 15901.04(a), (c)*; Comment to *Corp.C. 15901.04.*)

(2) *Business.* A limited partnership may engage in any lawful business activity, whether or not for profit, except for the banking, insurance, or trust company business. (*Corp.C. 15901.04(b).*) Thus, the 2008 Act does not require a limited partnership to have a business purpose although many of its provisions presuppose a profitmaking purpose. (See, e.g., *Corp.C. 15905.03*, Supp., infra, §121AA (sharing of distributions), *Corp.C. 15907.01*, Supp., infra, §121DD (transferable interest in terms of right to receive distributions); Comment (b) to *Corp.C. 15901.04.*)

(3) *Powers.* The partnership has the powers "to do all things necessary or convenient to carry on its activities," including the power to sue and be sued, defend in its name, and to maintain an action against a partner for breach of the partnership agreement or for the violation of a duty to the partnership. (*Corp.C. 15901.05.*)

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 2. (New) Partnership Agreement.

9 *Witkin Sum. Cal. Law Partn § 121K*

[§ 121K] (New) Partnership Agreement.

(1) *Requirement and Governing Document.* To form a limited partnership, the partners must file a certificate of limited partnership (Supp., infra, §121L) and either before or after the filing, enter into a partnership agreement. (*Corp.C. 15902.01(a)*.) The agreement governs relations among the partners and between the partners and the partnership. However, where the agreement does not otherwise provide, *Corp.C. 15900* et seq. govern those relations. (*Corp.C. 15901.10(a)*.)

(2) *Varying Provisions of 2008 Act.* The partnership agreement must not do the following with respect to the 2008 Act:

(a) Vary the limited partnership's power under *Corp.C. 15901.05* to sue, be sued, and defend in its own name (Supp., supra, §121J). (*Corp.C. 15901.10(b)(1)*.)

(b) Vary the law applicable to a limited partnership under *Corp.C. 15901.06* (California law governs). (*Corp.C. 15901.10(b)(2)*.)

(c) Vary the requirements of *Corp.C. 15902.04* (filing of records; signing of documents). (*Corp.C. 15901.10(b)(3)*.)

(d) Vary the information required by *Corp.C. 15901.11* (Supp., supra, §121F) or unreasonably restrict the right to information under *Corp.C. 15903.04* (Supp., infra, §121R) or *Corp.C. 15904.07* (Supp., infra, §121X). However, the agreement may impose reasonable restrictions on the availability and use of information obtained and may define appropriate remedies, including liquidated damages, for a breach of a reasonable restriction on use. (*Corp.C. 15901.10(b)(4)*.)

(e) Eliminate the duty of loyalty under *Corp.C. 15904.08* (Supp., infra, §121V). However, the agreement may do the following: (1) identify specific activities that do not violate the duty of loyalty, if not manifestly unreasonable; and (2) specify the number or percentage of partners required to 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. (*Corp.C. 15901.10(b)(5)*.)

(f) Unreasonably reduce the duty of care under *Corp.C. 15904.08(c)* (Supp., infra, §121V). (*Corp.C. 15901.10(b)(6)*.)

(g) Eliminate the obligation of good faith and fair dealing under *Corp.C. 15903.05(b)* (Supp., infra, §121Q) and *Corp.C. 15904.08(d)* (Supp., infra, §121V). However, the partnership agreement may prescribe reasonable standards by which to measure the performance of the obligation. (*Corp.C. 15901.10(b)(7)*.)

(h) Vary the power of a general partner to dissociate under *Corp.C. 15906.04(a)* (Supp., infra, §121CC) except to require that the notice to the limited partnership under *Corp.C. 15906.03(a)* (Supp., infra, §121CC) be in a record. (*Corp.C. 15901.10(b)(8)*.)

(i) Eliminate the judicial power to decree dissolution under *Corp.C. 15908.02(a)* (Supp., infra, §121FF). (*Corp.C. 15901.10(b)(9)*.)

(j) Vary the requirement to wind up the partnership's business as specified in *Corp.C. 15908.03* (Supp., infra, §121GG). (*Corp.C. 15901.10(b)(10)*.)

(k) Unreasonably restrict the right to maintain an action under *Corp.C. 15910.01* et seq. (Supp., infra, §121LL). (*Corp.C. 15901.10(b)(11)*.)

(l) Restrict the right of a partner to approve a conversion or merger (Supp., infra, §121MM et seq.). (*Corp.C. 15901.10(b)(12)*.)

(m) Vary the provisions of *Corp.C. 15911.14* et seq. (postmerger procedures; Supp., infra, §121SS), except as expressly permitted by those provisions. (*Corp.C. 15901.10(b)(13)*.)

(n) Restrict the rights under the 2008 Act of a person other than a partner or a transferee. (*Corp.C. 15901.10(b)(14)*.)

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 3. (New) Certificate of Limited Partnership.

9 Witkin Sum. Cal. Law Partn § 121L

[§ 121L] (New) Certificate of Limited Partnership.

(1) *Necessity and Filing.* Formation requires that the partners file a certificate of limited partnership on a form prescribed by the Secretary of State. (*Corp.C. 15902.01(a)*); for form, see Secretary of State website, www.ss.ca.gov/business.) A limited partnership is formed when the Secretary of State files the properly executed certificate of limited partnership. (*Corp.C. 15902.01(c)*.)

(2) *Contents.* *Corp.C. 15902.01(a)* requires that the certificate set forth the following:

- (a) The name of the limited partnership, which must comply with *Corp.C. 15901.08* (Supp., supra, §121E).
- (b) The address of the initial designated office.
- (c) The name and address of the initial agent for service of process.
- (d) The name and the address of each general partner.

The certificate may also contain other matters but may not vary or affect the prohibitions in the partnership agreement as specified in *Corp.C. 15901.10(b)* (Supp., supra, §121K), in a manner that is inconsistent with *Corp.C. 15901.10*. (*Corp.C. 15902.01(b)*.)

The certificate must be signed by all general partners listed in the certificate. (*Corp.C. 15902.04(a)(1)*.)

(3) *Inconsistencies.* Subject to *Corp.C. 15902.01(b)*, if a provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or its amendments, the following rules apply:

- (a) The partnership agreement prevails as to partners and transferees. (*Corp.C. 15902.01(d)(1)*.)
- (b) The filed certificate of limited partnership prevails as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment. (*Corp.C. 15902.01(d)(2)*.)

(4) *Recordation.* A limited partnership may record with any county in California a certified copy of the certificate

or amendments, filed by the Secretary of State; and a foreign limited partnership may similarly record a certified copy of its application for registration to transact business, with the certificate of registration or amendments. The recording creates a conclusive presumption in favor of a bona fide purchaser or encumbrancer for value of the partnership real property located in the county in which the certified copy has been recorded, that the persons named as general partners therein are the general partners of the partnership named and that they are all of the general partners of the partnership. (*Corp.C. 15902.01(e).*)

(5) *Cancellation.* The Secretary of State may cancel the filing of certificates of limited partnership if a remittance in payment of the filing fee is not honored on presentation, but must first give notice and a further opportunity to pay as specified. (*Corp.C. 15902.01(f).*)

(6) *Taxes.* The Secretary of State must include with the instructional materials accompanying the form for filing the certificate a notice that filing the certificate of limited partnership obligates the limited partnership to pay an annual tax for that taxable year to the Franchise Tax Board pursuant to Rev.C. 17935. The notice must be updated annually to specify the amount of the tax. (*Corp.C. 15902.01(g).*)

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 4. (New) Amendment or Correction of Certificate.

9 Witkin Sum. Cal. Law Partn § 121M

[§ 121M] (New) Amendment or Correction of Certificate.

(1) *Necessity of Amendment.* A limited partnership must promptly deliver to the Secretary of State for filing an amendment to a certificate of limited partnership to reflect any of the following events:

- (a) The admission of a new general partner. (*Corp.C. 15902.02(b)(1).*)
- (b) The dissociation of a person as a general partner. (*Corp.C. 15902.02(b)(2).*)
- (c) The appointment of a person to wind up the limited partnership's activities under *Corp.C. 15908.03(c)* or (d) (*Supp., infra, §121GG*). (*Corp.C. 15902.02(b)(3).*)
- (d) The discovery by a general partner that information in a filed certificate was false when the certificate was filed or has become false. If appropriate, the partner may file an amendment or a certificate of correction (*Corp.C. 15902.07*). (*Corp.C. 15902.02(c).*)

A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership. (*Corp.C. 15902.02(d).*)

The amendment must be on a form prescribed by the Secretary of State and must state the name and the Secretary of State's file number of the limited partnership, and the changes the amendment makes to the most recently amended or restated certificate. (*Corp.C. 15902.02(a)*); for form, see Secretary of State website, www.ss.ca.gov/business.) It must be signed by at least one general partner listed in the original certificate, by any other designated new general partner, and by disassociating partners, except as provided under *Corp.C. 15902.04(a)(4)(C)*. (*Corp.C. 15902.04(a)(4).*) The amended certificate is effective when filed by the Secretary of State. (*Corp.C. 15902.02(f).*)

(2) *Certificate of Correction.* *Corp.C. 15902.07* authorizes the partnership to file a certificate of correction to correct a record previously filed that contained false or erroneous information or was defectively signed. When filed by the Secretary of State, the certificate is effective retroactively as of the date of the original certificate. However, the certificate is effective when filed for purposes of specified notice and knowledge provisions of *Corp.C. 15901.03* and "as to persons relying on the uncorrected record and adversely affected by the correction" (*Corp.C. 15902.07(c)*).

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5. (New) Restated Certificate.

9 Witkin Sum. Cal. Law Partn § 121N

[§ 121N] (New) Restated Certificate.

Corp.C. 15902.02(e) authorizes the filing of a restated certificate of limited partnership that includes in a single certificate all the provisions that are in effect contained in the different certificates that have been filed with the Secretary of State. The certificate may include an amendment of the certificate of limited partnership not previously filed with the Secretary of State, and will supersede the initial certificate of limited partnership and all amended certificates. An amendment effected in connection with the restatement is subject to all provisions of *Corp.C. 15900* et seq. not inconsistent with *Corp.C. 15902.02* that would apply if a separate certificate of amendment were filed to effect that change.

The restated certificate must be signed by at least one general partner listed in the certificate of limited partnership (*Corp.C. 15902.04(a)(5)*), and is filed with the Secretary of State in the same manner as an amendment (*Corp.C. 15902.02(e)*).

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C. (New) Limited Partners.
1. (New) Admission of Limited Partners.

9 Witkin Sum. Cal. Law Partn § 121-O

[§ 121-O] (New) Admission of Limited Partners.

(1) *Conditions.* A person may become a limited partner as follows:

- (a) As provided in the partnership agreement. (*Corp.C. 15903.01(a).*)
- (b) As the result of a conversion or merger (Supp., infra, §121MM et seq.). (*Corp.C. 15903.01(b).*)
- (c) With the consent of all partners. (*Corp.C. 15903.01(c).*)

(2) *Classes and Voting.* The partnership agreement may provide for classes of limited partners and, if so, it must define the rights, powers, and duties of the classes. The agreement may also provide to all or specified classes the right to vote separately or with all or any class, or with the general partners. (*Corp.C. 15903.07.*)

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 2. (New) Participation and Liability.

9 Witkin Sum. Cal. Law Partn § 121P

[§ 121P] (New) Participation and Liability.

(1) *Authority.* A limited partner has no right or power as a limited partner to act for or bind the limited partnership. (*Corp.C. 15903.02.*) The phrase "as a limited partner" recognizes that a general partner that also owns a limited partner interest is not disabled. Moreover, the partnership agreement may, as a matter of contract, allocate managerial rights to a limited partner and a separate agreement may empower and entitle a limited partner to act for the partnership in another capacity (e.g., as an agent). (Comment to *Corp.C. 15903.02.*)

(2) *Liability.* A limited partner is not liable for the obligations of a limited partnership unless named as a general partner in the certificate, or if the limited partner participates in the control of the business. (*Corp.C. 15903.03(a).*)

A limited partner, not named as a general partner, that participates in the control of the business may be liable as a general partner only to persons who transact business with the partnership with actual knowledge of that partner's participation in control and with a reasonable belief that the partner is a general partner at the time of the transaction. (*Corp.C. 15903.03(a).*) (On activities not constituting participation in control of business, see *Corp.C. 15903.03(b).*)

(3) *Good Faith Investor.* A person that invests in a business and erroneously but in good faith believes that the person has become a limited partner is not liable for the business's obligations by reason of the investment or exercising appropriate limited partner rights if, on learning of the mistake, the person takes specified steps to correct the misperception and withdraw from future participation. (*Corp.C. 15903.06(a).*)

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3. (New) Discharge of Duties.

9 Witkin Sum. Cal. Law Partn § 121Q

[§ 121Q] (New) Discharge of Duties.

A limited partner must discharge the duties to the partnership and to other partners as provided in the partnership agreement, according to *Corp.C. 15900* et seq., and consistent with the obligation of good faith and fair dealing. (*Corp.C. 15903.05(b).*)

However, a limited partner has no fiduciary duty to the limited partnership or to other partners solely by reason of being a limited partner. (*Corp.C. 15903.05(a).*) Nor does a limited partner violate a duty or obligation merely because the partner's conduct furthers the partner's own interest. (*Corp.C. 15903.05(c).*)

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 C. (New) Limited Partners.
 4. (New) Rights of Limited Partners.

9 *Witkin Sum. Cal. Law Partn § 121R*

[§ 121R] (New) Rights of Limited Partners.

(1) *Inspection Rights.* On 10 days' demand, made in a record received by the limited partnership, a limited partner may, for whatever reason, inspect and copy information required to be maintained at the partnership office pursuant to *Corp.C. 15901.11* (Supp., supra, §121F). The inspection must be during regular business hours. (*Corp.C. 15903.04(a)*.)

However, should the demand involve inspection of information regarding the activities and financial condition of the partnership, the demand must be "just and reasonable" (*Corp.C. 15903.04(b)*), and meet the following conditions:

(a) The limited partner must seek the information for a purpose reasonably related to that partner's interest as a limited partner. (*Corp.C. 15903.04(b)(1)*.)

(b) The demand must be made in a record describing with reasonable particularity the information sought and for what purpose. (*Corp.C. 15903.04(b)(2)*.)

(c) The information sought must be directly connected to the limited partner's purposes. (*Corp.C. 15903.04(b)(3)*.)

Within 10 days of receiving the demand, the limited partnership must inform the demanding partner what information will be provided, when and where, and reasons for declining to furnish information. (*Corp.C. 15903.04(c)*.) The partnership may withhold trade secrets and other information, disclosure of which would prove damaging to the partnership or business, or information that the limited partnership is required by law or agreement with a third party to keep confidential. (*Corp.C. 15903.04(g)*.) Moreover, the partnership may impose reasonable restrictions on the use of the information, and may charge the demanding person reasonable costs for labor and material related to copying. (*Corp.C. 15903.04(h)*, (i).)

(2) *Mandatory Information.* Whenever *Corp.C. 15900* et seq. or the partnership agreement requires a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership must, without demand, provide the partner with all information material to the partner's decision. (*Corp.C. 15903.04(j)*.)

(3) *Exercise and Enforcement of Rights.* The rights under *Corp.C. 15903.04* may be exercised by the limited partner or through an attorney or agent (*Corp.C. 15903.04(k)*), and may be enforced by a direct action against the limited partnership or another partner with or without an accounting as to partnership activities (*Corp.C. 15910.01(a)*).

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D. (New) General Partners.
1. (New) Admission of General Partners.

9 Witkin Sum. Cal. Law Partn § 121S

[§ 121S] (New) Admission of General Partners.

(1) *Conditions.* A person may become a general partner as follows:

- (a) As provided in the partnership agreement. (*Corp.C. 15904.01(a).*)
- (b) Following the dissociation of a limited partnership's last general partner, as specified. (*Corp.C. 15904.01(b).*)
- (c) As the result of a conversion or merger (Supp., infra, §121MM et seq.). (*Corp.C. 15904.01(c).*)
- (d) With the consent of all partners. (*Corp.C. 15904.01(d).*)

(2) *Classes and Voting.* The partnership agreement may provide for classes of general partners and, if so, it must define the rights, powers, and duties of the classes. The agreement may also provide to all or specified classes the right to vote separately or with all or any class on any matter. (*Corp.C. 15904.09.*)

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2. (New) Actions of General Partners.

9 Witkin Sum. Cal. Law Partn § 121T

[§ 121T] (New) Actions of General Partners.

(1) *Agents.* A general partner is an agent of the limited partnership for purposes of the partnership's activities. Thus, a general partner's act, including signing a record in the partnership's name, for apparently carrying on in ordinary course the partnership's activities binds the partnership, unless the general partner had no authority to act and the other party to the transaction knew or had received notification of that lack of authority. (*Corp.C. 15904.02(a).*)

A general partner's act that is not apparently for carrying on in ordinary course the limited partnership's activities binds the partnership only if the act was actually authorized by all partners. (*Corp.C. 15904.02(b).*)

(2) *Wrongful Acts.* The partnership is liable for loss or injury resulting from a wrongful act or omission of a general partner acting in the ordinary course of the partnership's activities or with the authority of the partnership. Moreover, the limited partnership is strictly liable for misapplication by a general partner of money or property received by the partner in the course of the partnership's activities. (*Corp.C. 15904.03; Comment to Corp.C. 15904.03.*)

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3. (New) Liability of General Partners.

9 Witkin Sum. Cal. Law Partn § 121U

[§ 121U] (New) Liability of General Partners.

All general partners are jointly and severally liable for limited partnership obligations unless otherwise agreed by the claimant or provided by law. (*Corp.C. 15904.04(a)*.) However, a person that becomes a general partner of an existing limited partnership is not personally liable for a partnership obligation incurred before that person became a general partner. (*Corp.C. 15904.04(b)*.)

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 4. (New) Fiduciary Duties.

9 Witkin Sum. Cal. Law Partn § 121V

[§ 121V] (New) Fiduciary Duties.

(1) *In General.* A general partner owes to the limited partnership and to the other partners the fiduciary duties of loyalty and care. (*Corp.C. 15904.08(a).*) In addition, a general partner must discharge the duties arising from the partnership agreement or under *Corp.C. 15900* et seq., and exercise any rights consistently with the obligations of good faith and fair dealing. (*Corp.C. 15904.08(d).*) However, a general partner does not violate a fiduciary duty or obligation merely because the partner's conduct furthers the partner's own interest. (*Corp.C. 15904.08(e).*) (See C.E.B., *Advising California Partnerships* 3d, §5.19 et seq.)

(2) *Duty of Loyalty.* A general partner's duty of loyalty is limited as follows:

(a) To account to the limited partnership and hold as trustee for the partnership any property, profits, or benefits derived by the general partner in the conduct and winding up of the limited partnership's activities or from using limited partnership property, including the appropriation of a limited partnership opportunity. (*Corp.C. 15904.08(b)(1).*)

(b) To refrain from dealing with the limited partnership in the conduct or winding up of the partnership's activities as or on behalf of a party having an interest adverse to the partnership. (*Corp.C. 15904.08(b)(2).*)

(c) To refrain from competing with the limited partnership in the conduct or winding up of the partnership's activities. (*Corp.C. 15904.08(b)(3).*)

(3) *Duty of Care.* A general partner's duty of care in the conduct and winding up of the limited partnership's activities is limited to refraining from engaging in "grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." (*Corp.C. 15904.08(c).*)

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 5. (New) Management and Conduct of Business.

9 Witkin Sum. Cal. Law Partn § 121W

[§ 121W] (New) Management and Conduct of Business.

(1) *In General.* General partners have equal rights in the management and conduct of the limited partnership's activities. Except as provided otherwise in *Corp.C. 15900* et seq., matters relating to partnership activities may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the partners. (*Corp.C. 15904.06(a).*)

(2) *Activities Requiring Consent.* The consent of each partner is necessary to amend the partnership agreement, or to transfer all, or substantially all, of a limited partnership's property, with or without the good will, other than in the regular course of partnership activities. (*Corp.C. 15904.06(b).*)

(3) *Reimbursements and Remuneration.* A limited partnership must reimburse a general partner for payments made and indemnify the partner for liabilities incurred in the ordinary course of partnership activities or for the preservation of the partnership's activities or property. Reimbursement is also required for advances to the partnership beyond the amount of capital the partner agreed to contribute. (*Corp.C. 15904.06(c), (d).*)

A general partner is not entitled to remuneration for services performed for the partnership. (*Corp.C. 15904.06(f).*)

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9 *Witkin Sum. Cal. Law Partn § 121X*

[§ 121X] (New) Access to Information.

(1) *In General.* A general partner may, for any reason, inspect and copy during regular business hours records and information required to be maintained by the limited partnership. (*Corp.C. 15904.07(a).*) The limited partnership, and each general partner, must furnish to a general partner *without demand* information concerning the limited partnership's activities and activities "reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement" or *Corp.C. 15900 et seq. (Corp.C. 15904.07(b)(1).*)

Delivery of the information may be by electronic transmission (*Corp.C. 15904.07(b)*), and the partnership may impose reasonable restrictions on its use (*Corp.C. 15904.07(f)*).

(2) *On Demand.* On demand of a general partner, the partnership and the other general partners must furnish information concerning the limited partnership's activities, except where the demand is unreasonable or improper. (*Corp.C. 15904.07(b)(2).*)

(3) *Dissociated Partner.* A person dissociated (Supp., *infra*, §121CC) as a general partner may have access to information and records under *Corp.C. 15904.07(a)* on 10 days' demand made in a record received by the limited partnership. (*Corp.C. 15904.07(c).*)

(4) *Exercise and Enforcement of Rights.* The rights under *Corp.C. 15904.07* may be exercised through an attorney or agent, subject to restrictions under the partnership agreement or imposed under *Corp.C. 15904.07(f)* (*Corp.C. 15904.07(h)*), and may be enforced by a direct action against the limited partnership or another partner with or without an accounting as to partnership activities (*Corp.C. 15910.01(a)*).

SUPPLEMENT: [This section is current through the latest supplement]



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 D. (New) General Partners.
 7. (New) Actions and Judgments.

9 *Witkin Sum. Cal. Law Partn § 121Y*

[§ 121Y] (New) Actions and Judgments.

(1) *Joinder*. Subject to *Corp.C. 15904.04* (Supp., supra, §121U), a general partner may be joined in an action against the limited partnership or named in a separate action. (*Corp.C. 15904.05(a)*.)

(2) *Judgment Against Limited Partnership*. A judgment against the limited partnership is not by itself a judgment against a general partner. Thus, the judgment may not be satisfied from a general partner's assets unless there is also a judgment against the partner. (*Corp.C. 15904.05(b)*.)

(3) *Judgment Creditor of General Partner*. A judgment creditor of a general partner may not levy against the assets of the general partner to satisfy a judgment on a claim against the limited partnership unless the partner is personally liable under *Corp.C. 15904.04* and at least one of the following conditions is applicable:

(a) A judgment on the same claim has been obtained against the limited partnership and a writ of execution has been returned unsatisfied. (*Corp.C. 15904.05(c)(1)*.)

(b) The limited partnership is a debtor in bankruptcy. (*Corp.C. 15904.05(c)(2)*.)

(c) The general partner has agreed that the creditor need not exhaust limited partnership assets. (*Corp.C. 15904.05(c)(3)*.)

(d) A court grants permission to levy against the general partner's assets after finding that the limited partnership's assets are clearly insufficient to satisfy the judgment, that exhaustion of the partnership assets would be excessively burdensome, or that granting permission is an appropriate exercise of the court's equitable power. (*Corp.C. 15904.05(c)(4)*.)

(e) Liability is imposed on the general partner by law or contract independent of the limited partnership's existence. (*Corp.C. 15904.05(c)(5)*.)

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 E. (New) Contributions and Distributions.
 1. (New) Contributions.

9 *Witkin Sum. Cal. Law Partn § 121Z*

[§ 121Z] (New) Contributions.

(1) *Definition.* A contribution is a benefit provided to a limited partnership by a person in order to become a partner or in the person's capacity as a partner. (*Corp.C. 15901.02(c).*) The benefit may be tangible or intangible property, money, services, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed. (*Corp.C. 15905.01.*)

(2) *Obligation To Contribute.* A partner's contribution obligation is not excused by the partner's death, disability, or inability to personally perform. (*Corp.C. 15905.02(a).*) If a partner fails to make a promised *nonmonetary* contribution, the partner is obligated, at the option of the partnership, to contribute money of equal value. (*Corp.C. 15905.02(b).*)

A partnership agreement may provide for specific remedies or consequences concerning the interest of a partner that fails to make a contribution, including loss of voting or approval rights, bar from active management, liquidated damages, or a reduction of the partner's economic rights. (*Corp.C. 15905.02(d).*)

(3) *Compromised Obligation.* A partner's obligation to make a contribution or return property distributed in violation of *Corp.C. 15900* et seq. may be compromised only by the consent of all partners. However, a creditor of the partnership that extends credit or acts in reliance on a partner's obligation without notice of a compromise may enforce the original obligation. (*Corp.C. 15905.02(c).*)

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 E. (New) Contributions and Distributions.
 2. (New) Distributions.

9 *Witkin Sum. Cal. Law Partn § 121AA*

[§ 121AA] (New) Distributions.

(1) *Definition.* A distribution is the transfer of money or property from a limited partnership to a partner in the partner's capacity as a partner or to a person owning a transferable interest. (*Corp.C. 15901.02(f).*)

A partner has no right to a distribution in a form other than cash. However, a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions. (*Corp.C. 15905.06.*)

(2) *Based on Contribution.* In the absence of a contrary agreement, distributions by a limited partnership must be shared among the partners based on the value, as stated in the required records when the partnership decides to make the distribution, of the contributions from each partner. (*Corp.C. 15905.03; Comment to Corp.C. 15905.03.*) The same rule applies to allocation of profits and losses. (*Corp.C. 15905.035.*)

(3) *No Right to Distribution.* Unless the limited partnership makes an interim distribution, a partner has no right to a distribution before the dissolution and winding up of the partnership. (*Corp.C. 15905.04.*) Nor does a partner have a right to a distribution because of dissociation. (*Corp.C. 15905.05.*)

(4) *Creditor Status.* A partner (or transferee) entitled to receive a distribution has the status of a creditor of the limited partnership and is entitled to all available creditor remedies with respect to the distribution. However, the partnership's obligation is subject to offset for amounts owed to the partnership by the partner. (*Corp.C. 15905.07.*)

(5) *Restrictions on Distributions.* A limited partnership may not make a distribution that violates the partnership agreement. (*Corp.C. 15905.08(a).*) Nor may the partnership make a distribution if doing so prevents payment of debts due in the ordinary course of partnership activities, or leaves the partnership's total assets less than total liabilities plus the amount needed in connection with dissolution. (*Corp.C. 15905.08(b).*)

(6) *Improper Distributions.* A general partner that consents to a distribution made in violation of *Corp.C. 15905.08*, if the consent is a breach of the partner's fiduciary duty, is personally liable to the partnership for the excess of the amount that could have been properly distributed. (*Corp.C. 15905.09(a).*) A general partner against which an action is brought under *Corp.C. 15905.09(a)* may implead other persons, as specified, to compel contribution. (*Corp.C.*

15905.09(c.)

A partner or transferee receiving a distribution knowing that the distribution was improper is personally liable to the partnership to the extent of the excess of the amount that could have been properly distributed. (*Corp.C.*

15905.09(b.))

An action under *Corp.C. 15905.09* must be brought within 4 years after the distribution. (*Corp.C. 15905.09(d.)*)

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 F. (New) Dissociation.
 1. (New) Dissociation as Limited Partner.

9 Within Sum. Cal. Law Partn § 121BB

[§ 121BB] (New) Dissociation as Limited Partner.

(1) *Events Resulting in Dissociation.* A person does not have a right to dissociate as a limited partner before the termination of the limited partnership. (*Corp.C. 15906.01(a).*) However, a person may dissociate as a limited partner on the occurrence of any of the following events:

(a) The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person. (*Corp.C. 15906.01(b)(1).*)

(b) An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner. (*Corp.C. 15906.01(b)(2).*)

(c) The person's expulsion as a limited partner pursuant to the partnership agreement. (*Corp.C. 15906.01(b)(3).*)

(d) The person's expulsion as a limited partner by the unanimous consent of the other partners if any of the following conditions exists:

(1) It is unlawful to carry on the limited partnership's activities with the person as a limited partner. (*Corp.C. 15906.01(b)(4)(A).*)

(2) There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed. (*Corp.C. 15906.01(b)(4)(B).*)

(3) The person is a corporation and, within 90 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 no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business. (*Corp.C. 15906.01(b)(4)(C).*)

(4) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up. (*Corp.C. 15906.01(b)(4)(D).*)

(e) The person's expulsion as a limited partner by judicial order because of any of the following acts:

(1) The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities. (*Corp.C. 15906.01(b)(5)(A).*)

(2) The person wilfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under *Corp.C. 15903.05(b)* (Supp., supra, §121Q). (*Corp.C. 15906.01(b)(5)(B).*)

(3) The person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities with the person as limited partner. (*Corp.C. 15906.01(b)(5)(C).*)

(f) In the case of an individual, the person's death. (*Corp.C. 15906.01(b)(6).*)

(g) Where the person is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee. (*Corp.C. 15906.01(b)(7).*)

(h) Where the person is an estate or is acting as a limited partner due to being a personal representative, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative. (*Corp.C. 15906.01(b)(8).*)

(i) Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate. (*Corp.C. 15906.01(b)(9).*)

(j) The limited partnership's participation in a conversion or merger under *Corp.C. 15911.01* et seq. (Supp., infra, §121MM et seq.), if the limited partnership (1) is not the converted or surviving entity, or (2) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner. (*Corp.C. 15906.01(b)(10).*)

(2) *Effect of Dissociation.* A person's dissociation does not of itself discharge the person from obligations to the limited partnership or partners that the person incurred as a limited partner. (*Corp.C. 15906.02(b).*) The following rules apply to the dissociated person:

(a) Subject to *Corp.C. 15907.04* (power of deceased partner's estate), the person has no further rights as a limited partner. (*Corp.C. 15906.02(a)(1).*)

(b) The person's obligation of good faith and fair dealing under *Corp.C. 15903.05* (Supp., supra, §121Q) continues only as to matters occurring before the dissociation. (*Corp.C. 15906.02(a)(2).*)

(c) Subject to *Corp.C. 15907.04* and *Corp.C. 15911.01* et seq. (reorganizations; Supp., infra, §121MM et seq.), transferable interests owned by the person as a limited partner immediately before dissociation is owned by that person as a mere transferee. (*Corp.C. 15906.02(a)(3).*)

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 F. (New) Dissociation.
 2. (New) Dissociation as General Partner.

9 *Witkin Sum. Cal. Law Partn § 121CC*

[§ 121CC] (New) Dissociation as General Partner.

(1) *Events Resulting in Dissociation.* In addition to the same conditions and events applicable to the dissociation of a limited partner (Supp., supra, §121BB), the following events will result in dissociation of a general partner:

- (a) The person's becoming a debtor in bankruptcy. (*Corp.C. 15906.03(f)(1).*)
- (b) The person's execution of an assignment for the benefit of creditors. (*Corp.C. 15906.03(f)(2).*)
- (c) The person's 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 person's property. (*Corp.C. 15906.03(f)(3).*)
- (d) The person's failure, within 90 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 person's property, or failing to have the appointment vacated within 90 days after the expiration of a stay. (*Corp.C. 15906.03(f)(4).*)
- (e) Where the person is an individual, on the person's death, on the appointment of a guardian or general conservator for the person, or after a judicial determination that the person is incapable of performing under the partnership agreement. (*Corp.C. 15906.03(g).*)

(2) *Person's Power To Dissociate.* A person may dissociate as a general partner at any time, rightfully or wrongfully, by express will and notice under *Corp.C. 15906.03(a)*. (*Corp.C. 15906.04(a).*) The dissociation is *wrongful* only if it breaches an express provision of the partnership agreement (*Corp.C. 15906.04(b)(1)*), or it occurs before the termination of the limited partnership under the following conditions:

- (a) The person withdraws as a general partner by express will. (*Corp.C. 15906.04(b)(2)(A).*)
- (b) The person is expelled as a general partner by judicial determination. (*Corp.C. 15906.04(b)(2)(B).*)
- (c) The person is dissociated by becoming a debtor in bankruptcy. (*Corp.C. 15906.04(b)(2)(C).*)
- (d) Where the person is not an individual, trust (other than a business trust), or estate, and is expelled or dissociated

because it wilfully dissolved or terminated. (*Corp.C. 15906.04(b)(2)(D).*)

A general partner that wrongfully dissociates is liable to the limited partnership and to the other partners for damages caused by the dissociation. (*Corp.C. 15906.04(c).*)

(3) *Effect of Dissociation.* The following rules apply when a person dissociates as a general partner:

(a) A partner's dissociation does not of itself discharge the partner from previously incurred obligations to the limited partnership or other partners. (*Corp.C. 15906.05(b), 15906.07(a).*)

(b) The person's right to participate in the management and conduct of the partnership's activities terminates. (*Corp.C. 15906.05(a)(1).*)

(c) The person's duty of loyalty under *Corp.C. 15904.08(b)(3)* (Supp., supra, §121V) terminates. (*Corp.C. 15906.05(a)(2).*)

(d) The person's duty of loyalty under *Corp.C. 15904.08(b)(1)* and (b)(2) (Supp., supra, §121V), and duty of care under *Corp.C. 15904.08(c)* (Supp., supra, §121V) continue only as to matters arising before the dissociation. (*Corp.C. 15906.05(a)(3).*)

(e) The person may file with the Secretary of State a certificate of dissociation and on request of the partnership must sign an amendment to the certificate of limited partnership stating that the person has dissociated. (*Corp.C. 15906.05(a)(4).*)

(f) Subject to *Corp.C. 15907.04* (Supp., infra, §121DD) and *Corp.C. 15911.01* et seq. (Supp., infra, §121MM et seq.), transferable interests owned by the person as a general partner immediately before dissociation are owned by that person as a mere transferee. (*Corp.C. 15906.05(a)(5).*)

(4) *Acts of Dissociating Partner.* After a general partner dissociates, and before the limited partnership is either dissolved, converted, or merged out of existence, the partnership is bound by an act of the dissociating partner only if (a) the act would have bound the partnership before the dissociation, and (b) at the time the other party enters into the transaction less than 2 years have passed since dissociation, and the other party does not have notice of the dissociation and reasonably believes the person is a general partner. (*Corp.C. 15906.06(a).*) If the partnership is bound, the dissociating partner responsible is liable to the partnership for damages resulting from the obligation incurred. (*Corp.C. 15906.06(b).*)

Except as specified under *Corp.C. 15906.07*, a dissociated person is not liable for a limited partnership's obligation incurred *after* dissociation. (*Corp.C. 15906.07(a).*)

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 G. (New) Transferable Interests.

9 Witkin Sum. Cal. Law Partn § 121DD

[§ 121DD] (New) Transferable Interests.

(1) *Nature of Interest.* A transferable interest is a partner's right to receive distributions. (*Corp.C. 15901.02(ak).*) It is personal property and is the only interest of a partner that is transferable. (*Corp.C. 15907.01.*)

(2) *Rights on Transfer.* A transfer is permissible in whole or in part, and does not by itself cause the partner's dissociation or a dissolution of the limited partnership. The transfer does not entitle the transferee (a) to participate in the management or conduct of the limited partnership, (b) to access to information concerning the partnership's transactions, or (c) to any other rights or powers of a partner. (*Corp.C. 15907.02(a).*) Moreover, the transferor retains the rights of a partner (other than the interest in distributions) and the duties and obligations of a partner. (*Corp.C. 15907.02(d).*)

The transferee is entitled to the distributions to which the transferor would have been entitled, and to an account of the partnership transactions at the time of dissolution and winding up. (*Corp.C. 15907.02(b), (c).*) A transferee that becomes a partner with respect to the transferable interest is liable for the transferor's obligations under *Corp.C. 15905.02* (Supp., supra, §121Z) and *Corp.C. 15905.09* (Supp., supra, §121AA). (*Corp.C. 15907.02(g).*) A transferee may become a limited partner if the partnership agreement so provides or if all general partners and a majority in interest of the limited partners consent. (*Corp.C. 15907.02(h).*)

The personal representative or other legal representative of a deceased partner may exercise the rights of a transferee. (*Corp.C. 15907.04.*)

(3) *Transfer in Violation of Restriction.* A transfer in violation of a restriction under the partnership agreement is ineffective as to a person having notice of the restriction at the time of the transfer. (*Corp.C. 15907.02(f).*) A limited partnership need not give effect to a transferee's rights until the partnership receives notice of the transfer. (*Corp.C. 15907.02(e).*)

(4) *Rights of Creditors.* On an application by a 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. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the distribution due the judgment debtor and "make all other orders, directions, accounts, and inquiries the judgment debtor might have made" or which the circumstances require to give effect to the charging order. (*Corp.C. 15907.03(a)*)

.) The charging order constitutes a lien on the judgment debtor's transferable interest. (*Corp.C. 15907.03(b).*)

Corp.C. 15907.03 provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment from the judgment debtor's transferable interest. (*Corp.C. 15907.03(e).*) Moreover, a creditor of a partner has no right to obtain possession or exercise legal or equitable remedies with respect to a limited partnership's property. (*Corp.C. 15907.03(f).*)

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 1. (New) Nonjudicial Dissolution.

9 Witkin Sum. Cal. Law Partn § 121EE

[§ 121EE] (New) Nonjudicial Dissolution.

Subject to *Corp.C. 15908.02* (Supp., infra, §122FF), a limited partnership is dissolved, and its activities must be wound up, only on the occurrence of at least one of the following events:

- (1) An event specified in the partnership agreement. (*Corp.C. 15908.01(a).*)
- (2) On 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. (*Corp.C. 15908.01(b).*)
- (3) After the dissociation of a person as a general partner in either of the following instances:
 - (a) The limited partnership has at least one remaining general partner, and a consent to dissolve the limited partnership is given within 90 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. (*Corp.C. 15908.01(c)(1).*)
 - (b) Ninety days after the dissociation if the partnership does not have a remaining general partner, unless before the end of the period qualifying limited partners consent to continue the partnership and admit at least one general partner, and at least one new general partner is in fact admitted. (*Corp.C. 15908.01(c)(2).*)
- (4) Ninety days after the dissociation of the last limited partner, unless before the end of the period the limited partnership admits at least one limited partner. (*Corp.C. 15908.01(d).*)

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2. (New) Judicial Dissolution.

9 Witkin Sum. Cal. Law Partn § 121FF

[§ 121FF] (New) Judicial Dissolution.

On application by a partner, a court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the partnership activities in conformity with the partnership agreement. (*Corp.C. 15908.02(a).*)

The other partners may avoid the dissolution by purchasing for cash at fair market value (less damages if the action is a breach of an agreement) the partnership interests owned by the partners initiating the dissolution action. (*Corp.C. 15908.02(b).*) If no price is agreed on, the court, on application of the purchasing parties, either in the pending action or in a separate judicial proceeding initiated by the purchasing parties, must stay the winding up and dissolution proceeding and proceed to ascertain and fix the fair market value of the partnership interests owned by the moving parties. (*Corp.C. 15908.02(c).*) (On appointment of appraisers, see *Corp.C. 15908.02(d)*; on valuation date, see *Corp.C. 15908.02(f).*)

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 H. (New) Dissolution.
 3. (New) Winding Up.

9 Witkin Sum. Cal. Law Partn § 121GG

[§ 121GG] (New) Winding Up.

(1) *Activities.* A limited partnership continues after dissolution only for the purpose of winding up its activities. (*Corp.C. 15908.03(a).*) Thus, the partnership may amend its certificate of limited partnership to state that the partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the partnership's property, settle disputes by mediation or arbitration, file a certificate of cancellation as provided in *Corp.C. 15902.03*, and perform other necessary acts. (*Corp.C. 15908.03(b)(1).*) However, the partnership *must* discharge its liabilities, settle and close its activities, and marshal and distribute its assets. (*Corp.C. 15908.03(b)(2).*)

(2) *Appropriate Person.* If the dissolved partnership does not have a general partner, qualified limited partners may appoint a person to wind up the activities, and if so the following rules apply:

(a) The person has the powers of a general partner under *Corp.C. 15908.04* (Supp., infra, §121HH). (*Corp.C. 15908.03(c)(1).*)

(b) The person must promptly amend the certificate of limited partnership to state that the limited partnership does not have a general partner, and to state the name and address of the person that has been appointed to conduct the wind up. (*Corp.C. 15908.03(c)(2).*)

(3) *Judicial Supervision.* On application of a partner, the court may order judicial supervision of the winding up, including the appointment of a person to conduct the wind up, if a limited partnership does not have a general partner and no person has been appointed, or if the applicant establishes other good cause. (*Corp.C. 15908.03(d).*)

(4) *Compensation.* Unless otherwise provided in the partnership agreement, the limited partners winding up the affairs of the partnership pursuant to *Corp.C. 15908.03* are entitled to reasonable compensation. (*Corp.C. 15908.03(e).*)

(5) *Certificate of Cancellation.* A dissolved limited partnership that has completed winding up must file with the Secretary of State on the prescribed form a certificate of cancellation. (*Corp.C. 15902.03*; for form, see Secretary of State website, www.ss.ca.gov/business.) (On certificate of revival, see *Corp.C. 15902.09*.)

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 4. (New) Acts After Dissolution.

9 Witkin Sum. Cal. Law Partn § 121HH

[§ 121HH] (New) Acts After Dissolution.

(1) *Power To Bind Partnership.* After dissolution, a general partner may bind the partnership as follows:

(a) By an act that is appropriate for winding up the partnership's activities. (*Corp.C. 15908.04(a)(1).*)

(b) By transactions that would have bound the partnership before dissolution if, at the time of entering into the transaction, the other party does not have notice of the dissolution. (*Corp.C. 15908.04(a)(2).*)

A person *dissociated* as a general partner may also bind the partnership through an act after dissolution where the following two conditions exist:

(a) At the time the other party enters into the transaction less than 2 years have passed since the dissociation and the other party does not have notice of the dissociation and reasonably believes the person is a general partner. (*Corp.C. 15908.04(b)(1).*)

(b) The transaction is appropriate for winding up or would have bound the partnership before dissolution if, at the time of the transaction, the other party does not have notice of the dissolution. (*Corp.C. 15908.04(b)(2).*)

(2) *Liability of Partner.* A general partner that, having knowledge of the dissolution, causes the partnership to incur an obligation under *Corp.C. 15908.04(a)* by an act that is not appropriate for winding up the partnership's activities, is liable as follows:

(a) For damages caused to the partnership arising from the obligation. (*Corp.C. 15908.05(a)(1).*)

(b) For damages caused to another general partner or person dissociated as a general partner who incurred liability for the obligation. (*Corp.C. 15908.05(a)(2).*)

A dissociated general partner that causes the partnership to incur an obligation under *Corp.C. 15908.04(b)* is liable (a) to the partnership for damages arising from the obligation, and (b) for damages to other general partners or dissociated persons who also are liable for the obligation. (*Corp.C. 15908.05(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



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Witkin Summary of California Law
III-A. (New) UNIFORM LIMITED PARTNERSHIP ACT OF 2008.
H. (New) Dissolution.
5. (New) Claims.

9 Witkin Sum. Cal. Law Partn § 121-II

[§ 121-II] (New) Claims.

A dissolved limited partnership may dispose of known claims incurred prior to dissolution by notifying the claimants of the dissolution in a record that supplies specified information. (*Corp.C. 15908.06, 15901.02(ac).*) If the notice complies with *Corp.C. 15908.06*, the claim is barred if the claim is not received by the specified deadline or, if received, the claimant does not file an action to enforce the claim within 90 days after receipt of the partnership's written rejection of the claim. (*Corp.C. 15908.06(c).*)

The dissolved partnership may publish a notice of its dissolution and request that persons having claims present them in accordance with the notice. If properly published, a claimant meeting specified conditions will be barred from collecting if the claimant fails to bring an action to enforce the claim within 4 years after the publication date of the notice. However, publication of the notice does not bar the collection of taxes. (*Corp.C. 15908.07.*)

If a claim is barred under either *Corp.C. 15908.06* or *15908.07*, corresponding claims against general partners for partnership obligations under *Corp.C. 15904.04* (Supp., supra, §121U) are also barred. (*Corp.C. 15908.08.*)

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H. (New) Dissolution.
6. (New) Distribution of Assets.

9 Witkin Sum. Cal. Law Partn § 121JJ

[§ 121JJ] (New) Distribution of Assets.

In winding up a limited partnership's activities, the assets must first be applied to satisfy the partnership's obligations to creditors, including partners that are creditors. Any surplus must then be returned to the partners according to their share in distributions. If the assets are insufficient to satisfy all debts, general partners must contribute as necessary to meet the obligations. A partner that fails to contribute becomes liable to other partners for amounts contributed by the others. (*Corp.C. 15908.09.*)

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 I. (New) Foreign Limited Partnership.

9 *Witkin Sum. Cal. Law Partn § 121KK*

[§ 121KK] (New) Foreign Limited Partnership.

(1) *In General.* A foreign limited partnership is a partnership formed under the laws of a state other than California, and required by those laws to have at least one general partner and one limited partner. (*Corp.C. 15901.02(k).*) Thus, the laws of the state of formation govern the relations among the partners and between the partners and the partnership as well as the liability of the partners for obligations of the partnership. (*Corp.C. 15909.01(a).*)

(2) *Certificate of Registration.* To apply for a certificate of registration to transact business in California a foreign limited partnership must submit an application on a prescribed form. (*Corp.C. 15909.02*; for form and fees, see Secretary of State website, www.ss.ca.gov/business.) False or erroneous statements must be promptly amended, also on a prescribed form. (*Corp.C. 15909.06.*)

Unless the application fails to comply with filing requirements, the Secretary of State must issue a certificate of registration, which, subject to other licensing requirements, qualifies the partnership to transact intrastate business in California. (*Corp.C. 15909.04.*) (On activities not constituting transacting business in California, see *Corp.C. 15901.02, 15909.03*; on noncomplying name of foreign limited partnership, see *Corp.C. 15909.05*; on cancellation of certificate, see *Corp.C. 15909.07(a).*)

(3) *Doing Business Without Registration.* A foreign limited partnership that transacts intrastate business in California without registration is subject to a penalty of \$ 20 for each day of unauthorized business, up to a maximum of \$ 10,000. An action to recover the penalty may be brought under *Corp.C. 2258.* (*Corp.C. 15909.07(c).*) In addition, the nonregistered partnership may not maintain an action in California. (*Corp.C. 15909.07(b).*) However, failure to have a certificate does not invalidate contracts or acts of the partnership or prevent the partnership from defending an action in California. (*Corp.C. 15909.07(d).*)

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 J. (New) Actions by Partners.

9 Witkin Sum. Cal. Law Partn § 121LL

[§ 121LL] (New) Actions by Partners.

(1) *Direct Action.* A partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief with respect to rights and interests under the partnership agreement or under *Corp.C. 15900* et seq. The action may be brought with or without an accounting as to partnership activities. (*Corp.C. 15910.01(a)*.) The plaintiff must plead and prove an actual or threatened harm that is independent of a harm to the partnership. (*Corp.C. 15910.01(b)*; Comment to *Corp.C. 15910.01*.)

(2) *Derivative Action.* A partner may bring an action to enforce a right of the limited partnership under either of the following circumstances:

(a) The partner first makes a demand on the general partners requesting that they cause the partnership to bring an action to enforce the right and the general partners fail to do so in a reasonable time. (*Corp.C. 15910.02(1)*.)

(b) A demand would be futile. (*Corp.C. 15910.02(2)*.)

To qualify as a plaintiff, the person must be a partner at the time the action is brought and must either (a) have been a partner when the actionable conduct occurred, or (b) have acquired partner status by operation of law or under the terms of the partnership agreement from a person that was a partner at the time of the conduct. (*Corp.C. 15910.03(a)*.) Nevertheless, a court may permit a nonqualifying partner to maintain the action if the following conditions are shown: (a) There is a strong prima facie case in favor of the claim; (b) no other similar action is pending or likely to be brought; (c) the plaintiff acquired the shares before there was disclosure to the public and to the plaintiff of the wrongdoing; (d) unless the action is maintained the defendant may retain gains from the defendant's wilful breach of a fiduciary duty; and (e) the requested relief will not result in unjust enrichment of the partnership or a partner. (*Corp.C. 15910.03(b)*.) (On contents of complaint, see *Corp.C. 15910.04*; on proceeds and expenses, see *Corp.C. 15910.05*; on furnishing of bond, see *Corp.C. 15910.06*.)

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K. (New) Reorganization.

1. (New) Conversion.

a. (New) In General.

9 Witkin Sum. Cal. Law Partn § 121MM

[§ 121MM] (New) In General.

(1) *Partner's Interests.* A limited partnership may convert to a permitted entity only if (a) in a conversion to a domestic or foreign partnership, limited liability company, or foreign limited partnership, each of the partners of the converting limited partnership receives a percentage interest in profits and capital of the converted entity equal to the partner's percentage interest in profits and capital of the converting limited partnership as of the time of conversion, and (b) if applicable, each limited partnership interest of the same class is treated equally with respect to distribution of the converted entity's property, and the nonredeemable limited partnership interests are converted into nonredeemable interests of the converted entity. (*Corp.C. 15911.02(a).*)

(2) *Governing Law.* Conversion is permitted *only if* (a) the law under which the converted entity will exist expressly permits the conversion to and formation of that entity, and (b) the limited partnership complies with all other requirements of any other law that applies to conversion. (*Corp.C. 15911.02(b).*)

(3) *Conversion to Foreign Entity.* The conversion of a limited partnership into a foreign limited partnership or foreign other business entity must comply with *Corp.C. 15911.02*, and is subject to other rules specified in *Corp.C. 15911.05*. (*Corp.C. 15911.05.*)

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 1. (New) Conversion.
 b. (New) Plan.

9 *Witkin Sum. Cal. Law Partn § 121NN*

[§ 121NN] (New) Plan.

(1) *Content.* A converting limited partnership must have a plan of conversion that contains the same information required in the statement of a converting partnership (text, §53). (*Corp.C. 15911.03(a).*)

(2) *Approval and Amendment.* The plan must be approved by all general partners of the converting limited partnership and by a majority in interest of each class of limited partners, unless the partnership agreement specifies otherwise. However, if the limited partners would become personally liable for obligations of the converted entity, the plan must be approved by all of the limited partners, unless the plan provides that all limited partners will have dissenters' rights under *Corp.C. 15911.20* et seq. (Supp., infra, §112WW et seq.). (*Corp.C. 15911.03(b).*)

The plan may be amended before conversion takes effect if approved by all general partners of the converting limited partnership. If the amendment changes a principal term, it must be approved by the limited partners of the converting limited partnership in the same manner required for the original plan. (*Corp.C. 15911.03(d).*)

(3) *Parties to Governing Document.* All partners of the converting limited partnership, except those exercising dissenters' rights, are considered parties to the governing documents for the converted entity adopted as part of the conversion plan. (*Corp.C. 15911.03(c).*)

(4) *Abandonment.* The general partners of the converting limited partnership may by unanimous approval abandon a conversion prior to its effective date without further approval of the limited partners, subject to contractual rights of third parties other than limited partners. (*Corp.C. 15911.03(e).*)

(5) *Conversion to Domestic Limited Partnership.* An entity wishing to convert to a domestic limited partnership under *Corp.C. 15911.01* et seq. may do so if the laws under which that entity is organized do not prohibit the conversion. A converting entity must also approve a conversion plan or similar instrument as required by the laws under which it is organized. Approval must be by the number or percentage required by the converting entity's organic document or the laws under which it is organized. (*Corp.C. 15911.08.*)

(6) *Effective Date of Conversion.* Conversion is effective on the earliest date that all the following events have

occurred:

- (a) The converting limited partnership partners have approved the plan. (*Corp.C. 15911.04(a)(1).*)
- (b) All documents required to create the converted entity have been filed. (*Corp.C. 15911.04(a)(2).*)
- (c) The effective date, if set forth in the conversion plan, has occurred. (*Corp.C. 15911.04(a)(3).*)

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1. (New) Conversion.

c. (New) Effect.

9 Witkin Sum. Cal. Law Partn § 121-00

[§ 121-00] (New) Effect.

A limited partnership that converts to another entity under *Corp.C. 15911.01* et seq. is for essentially all purposes the same entity that existed before the conversion. (*Corp.C. 15911.09(a)*.) The rules governing rights and liabilities applicable generally to partnerships following a conversion (text, §54) are applicable to a conversion involving a limited partnership. (*Corp.C. 15911.09(b)*.)

In addition, if a party to a transaction with the limited partnership reasonably believes that a limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion. However, the limited partner's liability for all other obligations of the limited partnership incurred after the conversion is that of a limited partner. (*Corp.C. 15911.09(e)*.)

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1. (New) Conversion.

d. (New) Statement.

9 Witkin Sum. Cal. Law Partn § 121PP

[§ 121PP] (New) Statement.

(1) *Conversion to Limited Liability Company.* If conversion is to a limited liability company, a statement of conversion must be completed on articles of organization (text, §§145, 146). (*Corp.C. 15911.06(a)(1).*)

(2) *Conversion to Domestic Partnership.* If conversion is to a domestic partnership, a statement of conversion must be completed on the statement of partnership authority (text, §36). If no statement of partnership authority is filed, then a certificate of conversion must be filed separately. (*Corp.C. 15911.06(a)(2).*)

(3) *Conversion to Domestic Corporation.* If conversion is to a domestic corporation, a statement of conversion must be completed on the articles of incorporation. (*Corp.C. 15911.06(a)(3).*)

(4) *Conversion to Foreign Limited Partnership or Other Business Entity.* If conversion is to a foreign limited partnership or foreign other business entity, a certificate of conversion must be filed. (*Corp.C. 15911.06(a)(4).*)

(5) *Form and Content.* A certificate or statement of conversion must be executed by all general partners, unless otherwise provided in the certificate of limited partnership, and must contain all of the following items:

(a) The name and the Secretary of State's file number of the converting limited partnership. (*Corp.C. 15911.06(b)(1).*)

(b) A statement that the principal terms of the conversion plan were approved by the required vote, as specified. (*Corp.C. 15911.06(b)(2).*)

(c) The form of organization of the converted entity. (*Corp.C. 15911.06(b)(3).*)

(d) The mailing addresses of the converted entity's agent for service of process and chief executive office. (*Corp.C. 15911.06(b)(4).*)

(6) *Record Ownership of Real Property.* A converting limited partnership or other business entity having real property in California that vests in the converted entity may establish record ownership by filing statements or

certificates as specified with the appropriate county recorder. (*Corp.C. 15911.07.*)

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2. (New) Merger.
a. (New) In General.

9 *Witkin Sum. Cal. Law Partn § 121QQ*

[§ 121QQ] (New) In General.

(1) *Definitions.* The following terms are applicable to mergers involving limited partnerships:

(a) *Constituent limited partnership.* A limited partnership that is merged with one or more other limited partnerships, including the surviving limited partnership. (*Corp.C. 15911.01(f).*)

(b) *Constituent other business entity.* An other business entity that is merged with or into one or more limited partnerships, including a surviving other business entity. (*Corp.C. 15911.01(g).*)

(c) *Disappearing limited partnership.* A constituent limited partnership that is not the surviving limited partnership. (*Corp.C. 15911.01(h).*)

(d) *Disappearing other business entity.* A constituent other business entity that is not the surviving other business entity. (*Corp.C. 15911.01(i).*)

(e) *Surviving limited partnership.* A limited partnership into which one or more other limited partnerships or other business entities are merged. (*Corp.C. 15911.01(l).*)

(f) *Surviving other business entity.* An other business entity into which one or more limited partnerships are merged. (*Corp.C. 15911.01(m).*)

(2) *Conditions.* The merger of limited partnerships with other business entities is permitted only if the other business entities that are organized in California are authorized by the laws under which they are organized to effect the merger, and (a) if a limited partnership is the survivor, foreign other business entities are not prohibited by the laws under which they are organized from effecting the merger, or (b) if a foreign limited partnership or foreign other business entity is the survivor, the laws of the jurisdiction under which the survivor is organized authorize that merger. (*Corp.C. 15911.11.*)

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 b. (New) Agreement.

9 Witkin Sum. Cal. Law Partn § 121RR

[§ 121RR] (New) Agreement.

(1) *Approval of Agreement.* Entities wishing to merge must approve an agreement of merger. The agreement must be approved by all general partners of each constituent limited partnership, and the principal terms of the merger must be approved by a majority in interest of each class of limited partners of each constituent limited partnership, unless greater approval is required by the partnership agreement. (*Corp.C. 15911.12(a).*)

If the limited partners of a constituent limited partnership become personally liable for obligations of an entity as a result of the merger, the principal terms of the agreement must be approved by *all* of the limited partners of the constituent limited partnership, unless the agreement provides that all limited partners will have the dissenters' rights provided under *Corp.C. 15911.20* et seq. (Supp., infra, §121WW et seq.). (*Corp.C. 15911.12(a).*)

The agreement must be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which they are organized. Other persons, including the parent of a constituent limited partnership, may be parties to the agreement of merger. (*Corp.C. 15911.12(a).*)

(2) *Contents of Agreement.* The agreement must contain the following information:

(a) The terms and conditions of the merger. (*Corp.C. 15911.12(a)(1).*)

(b) The name and place of organization of the surviving limited partnership, and of each disappearing limited partnership. (*Corp.C. 15911.12(a)(2).*)

(c) The manner of converting the partnership interests of each constituent limited partnership into interests, shares, or other securities of the surviving limited partnership or surviving other business entity; if the partnership interests are not to be solely so converted, then the property or interests the holders of the partnership interests will receive in exchange for the partnership interests, or a statement that the partnership interests are cancelled without consideration. (*Corp.C. 15911.12(a)(3).*)

(d) Other information required by the laws under which a constituent other business entity is organized. (*Corp.C. 15911.12(a)(4).*)

(3) *Equality Provisions.* Generally, limited partnership interests of the same class must be treated equally with respect to distributions of property, rights, and interests. (*Corp.C. 15911.12(b).*) (On limited exceptions and permissive conversion of nonredeemable interests, see *Corp.C. 15911.12(b).*)

(4) *Amendment of Agreement.* The agreement of merger may be amended prior to its filing or the filing of the certificate of merger (Supp., infra, §121SS) under the following conditions: (a) The amendment must be approved by the general partners of each constituent limited partnership in the same manner as required for approval of the original agreement of merger, and (b) if the amendment changes principal terms of the agreement, the amendment must be approved by the limited partners of each constituent limited partnership in the same manner and to the same extent as required for the approval of the original agreement of merger and by each of the constituent other business entities. (*Corp.C. 15911.12(c).*)

(5) *Amendment or Adoption of Partnership Agreement.* An agreement of merger approved in accordance with *Corp.C. 15911.12(a)* may (a) effect amendments to the partnership agreement of a constituent limited partnership, or (b) effect the adoption of a new partnership agreement for a constituent limited partnership if it is the surviving limited partnership in the merger. The amendment or adoption is effective at the effective time or date of the merger. However, if a greater number of limited partners is required to approve an amendment to the partnership agreement of a constituent limited partnership than is required to approve the agreement of merger under *Corp.C. 15911.12(a)*, and fewer than the required number of limited partners approve the agreement of merger, the amendment to the partnership agreement or the adoption of a new partnership agreement of that constituent limited partnership is effective only if the agreement of merger provides that all the limited partners have the dissenters' rights provided in *Corp.C. 15911.20* et seq. (Supp., infra, §121WW et seq.). (*Corp.C. 15911.12(e).*)

(6) *Abandonment of Merger.* The general partners of a constituent limited partnership may abandon a merger at any time before the merger is effective without further approval by the limited partnership interests. However, the abandonment is subject to contractual rights of third parties, including other constituent limited partnerships and constituent other business entities. (*Corp.C. 15911.12(d).*)

(7) *Repository for Agreement.* The surviving limited partnership or surviving other business entity must keep the agreement of merger at the designated office or at the business address specified in *Corp.C. 15911.14(a)(5)* (Supp., infra, §121SS). (*Corp.C. 15911.12(f).*)

(8) *Obligation To Provide Copy.* On the request of a limited partner of a constituent limited partnership or a holder of shares, interests, or other securities of a constituent other business entity, the general partners of the surviving limited partnership or the authorized person of the surviving other business entity must promptly deliver to the requesting party, at the expense of the surviving limited entity, a copy of the agreement of merger. A waiver of these rights is unenforceable. (*Corp.C. 15911.12(f).*)

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2. (New) Merger.

c. (New) Certificate of Merger.

9 *Witkin Sum. Cal. Law Partn § 121SS*

[§ 121SS] (New) Certificate of Merger.

(1) *Filing.* If the surviving entity is a limited partnership or an other business entity (other than a corporation in a merger in which a domestic corporation is a constituent party), after a merger is approved the constituent entities must file a certificate of merger with the Secretary of State on a prescribed form. (*Corp.C. 15911.14(a).*) (For official form, see Secretary of State website, www.ss.ca.gov/business/business.htm.)

If the surviving entity is a foreign limited partnership in a merger in which a domestic corporation is a disappearing other business entity, a copy of the agreement of merger and attachments required under *Corp.C. 1113(g)(1)* (see 9 *Summary* (10th), *Corporations*, §197) must be filed with the certificate of merger. (*Corp.C. 15911.14(a)(6).*)

If the surviving entity is a domestic corporation or a foreign corporation, after approval of the merger by the constituent entities the surviving corporation must file a copy of the agreement of merger and attachments required under *Corp.C. 1113(g)(1)*. (*Corp.C. 15911.14(b).*)

(2) *Execution and Acknowledgment.* The certificate of merger must be executed and acknowledged by (a) all general partners of each domestic constituent limited partnership (unless the certificate of limited partnership provides for a lesser number), (b) one or more general partners of each foreign constituent limited partnership, and (c) persons in constituent other business entities required to do so by the laws under which the entity is organized. (*Corp.C. 15911.14(a).*)

If the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, the certificate must be executed and acknowledged by all general partners of each domestic constituent limited partnership unless the certificate of limited partnership provides for a lesser number. (*Corp.C. 15911.14(b).*)

(3) *Contents.* The certificate of merger must set forth the following information:

(a) The names and the Secretary of State's file numbers of the constituent limited partnerships and constituent other business entities, separately identifying the disappearing entities. (*Corp.C. 15911.14(a)(1).*)

(b) If a vote of the limited partners was required under *Corp.C. 15911.12* (Supp., supra, §121RR), a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and stating that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each. (*Corp.C. 15911.14(a)(2)*.)

(c) If the surviving entity is a limited partnership, changes required in the certificate of limited partnership of the surviving limited partnership resulting from the merger, such as a change of name. (*Corp.C. 15911.14(a)(3)*) [filing of certificate of merger has effect of filing certificate of amendment].)

(d) If the merger is not to be effective on the date the certificate of merger is filed, the future effective date or time (which must be a date or time certain not more than 90 days subsequent to the date of filing). (*Corp.C. 15911.14(a)(4)*.)

(e) If the surviving entity is an other business entity or a foreign limited partnership, the full name, type of business entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are governed, and the address of the principal place of business. (*Corp.C. 15911.14(a)(5)*.)

(f) Other information required to be stated by the laws under which each constituent other business entity is organized, including, if a domestic corporation is a party to the merger, information required by *Corp.C. 1113(g)(2)*. (*Corp.C. 15911.14(a)(6)*.)

(4) *Effect as Certificate of Cancellation.* A certificate of merger or the agreement of merger, as applicable under *Corp.C. 15911.14(a)* or *15911.14(b)*, has the effect of filing a certificate of cancellation for each disappearing limited partnership. Thus, a disappearing limited partnership need not file a certificate of cancellation under *Corp.C. 15902.03* as a result of the merger. (*Corp.C. 15911.14(c)*.)

(5) *Effect of Filing by Foreign Corporations.* If a disappearing other business entity is a foreign corporation qualified to transact intrastate business in California, a certificate of satisfaction of the Franchise Tax Board required by Rev.C. 23334 must be filed with the certificate of merger or the agreement of merger. By filing the certificate or agreement of merger, the foreign corporation automatically surrenders its right to transact intrastate business. (*Corp.C. 15911.14(d)*.)

(6) *Effective Date of Merger.* Unless a future effective date or time is provided in the certificate or agreement of merger, a merger is effective on the filing of the certificate or agreement of merger in the office of the Secretary of State. (*Corp.C. 15911.15(a)*); on evidentiary effect of copy of certificate of merger, see *Corp.C. 15911.15(b)*.)

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2. (New) Merger.

d. (New) Effect.

9 *Witkin Sum. Cal. Law Partn § 121TT*

[§ 121TT] (New) Effect.

(1) *Succession.* On a merger of limited partnerships or limited partnerships and other business entities, the separate existence of the disappearing limited partnerships and other business entities ceases and the surviving limited partnership or surviving other business entity, without further act, succeeds to all the rights and property of each of the disappearing entities and is subject to their debts and liabilities as if the surviving limited partnership had incurred them. (*Corp.C. 15911.16(a).*)

(2) *Rights of Creditors.* The rights of creditors and liens on the property of each of the constituent limited partnerships and constituent other business entities are preserved unimpaired and may be enforced against the surviving limited partnership or surviving other business entity as if the underlying debt, liability, or duty had been incurred by the surviving entity. Liens are limited to the property affected immediately prior to the time the merger is effective. (*Corp.C. 15911.16(b).*)

(3) *Action or Proceeding by or Against Entity.* Actions or proceedings pending by or against a disappearing limited partnership or disappearing other business entity may be prosecuted to judgment, which binds the surviving entity. Alternatively, the surviving entity may be proceeded against or be substituted in place of the disappearing entity. (*Corp.C. 15911.16(c).*)

(4) *Effect on Former Debts of Disappearing Limited Partnership.* The conversion and merger provisions (*Corp.C. 15911.01* et seq.) do not affect the liability of a general partner of a disappearing limited partnership for the debts and liabilities of that partnership that existed prior to the effective date of the merger. (*Corp.C. 15911.16(d).*)

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 2. (New) Merger.
 e. (New) Merger of Domestic and Foreign Limited Partnerships.

9 *Witkin Sum. Cal. Law Partn § 121UU*

[§ 121UU] (New) Merger of Domestic and Foreign Limited Partnerships.

A merger of domestic limited partnerships with foreign limited partnerships or foreign other business entities is permitted if the merger complies with *Corp.C. 15911.10 et seq.* (Supp., supra, §121QQ et seq.). (*Corp.C. 15911.17(a).*) Depending on the nature of the surviving entity, the following rules apply:

(1) If the surviving entity is a domestic limited partnership or a domestic other business entity, merger with respect to that surviving entity and a domestic disappearing limited partnership must conform to the provisions governing the merger of domestic limited partnerships (*Corp.C. 15911.10 et seq.*). However, if the surviving entity is a foreign limited partnership or a foreign other business entity, the merger may be in accordance with the laws of the state or place of organization of the surviving entity, subject to specified California Corporations Code provisions. (*Corp.C. 15911.17(b).*)

(2) If the surviving entity is a domestic limited partnership or domestic other business entity other than a domestic corporation, the certificate of merger is filed according to *Corp.C. 15911.14(a)*, and, subject to *Corp.C. 15911.15(a)* (effective date of merger), the merger is effective on that filing as to each domestic constituent limited partnership and domestic constituent other business entity. (*Corp.C. 15911.17(c).*)

(3) If the surviving entity is a domestic corporation, the agreement of merger with attachments is filed according to *Corp.C. 15911.14(b)*, and, subject to *Corp.C. 15911.15(a)*, the merger is effective on that filing as to each domestic constituent limited partnership and domestic constituent other business entity unless another effective date is provided for under *Corp.C. 1100 et seq.* (*Corp.C. 15911.17(c).*)

(4) If the surviving entity is a foreign limited partnership or foreign other business entity, the merger is effective in accordance with the law of the jurisdiction in which the surviving entity is organized, but is effective as to a domestic disappearing limited partnership as of the time of effectiveness in that foreign jurisdiction on the filing in California of a certificate of merger or agreement of merger according to *Corp.C. 15911.14* (Supp., supra, §121SS). (*Corp.C. 15911.17(d).*)

(5) If a merger described in *Corp.C. 15911.17(c)* and (d) also includes a foreign disappearing limited partnership

previously registered for the transaction of intrastate business in California, the filing of the certificate of merger or agreement of merger automatically has the effect of a cancellation of registration for that foreign limited partnership pursuant to *Corp.C. 15909.06*. (*Corp.C. 15911.17(e)*.)

(6) The provisions of *Corp.C. 15911.12(b)* (Supp., supra, §121RR) and *Corp.C. 15911.20* et seq. (Supp., infra, §121WW et seq.) apply to the rights of limited partners of constituent limited partnerships that are domestic limited partnerships and of domestic limited partnerships that are parents of foreign constituent limited partnerships. (*Corp.C. 15911.17(f)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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K. (New) Reorganization.
2. (New) Merger.
f. (New) Record Ownership of Real Property.

9 Witkin Sum. Cal. Law Partn § 121VV

[§ 121VV] (New) Record Ownership of Real Property.

When the laws of the state or place of organization (including California) of a disappearing limited partnership or disappearing other business entity provide that making and filing an agreement of merger or a certificate of merger vest in the surviving entity all the real property of the disappearing entity, filing in a county recorder's office in California where the real property of the disappearing entity is located either (1) a certificate of merger certified by the Secretary of State, or other prescribed certificate, or (2) a copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, evidences record ownership in the surviving entity of all interest of the disappearing entity in and to the real property. (*Corp.C. 15911.18.*)

Recording the certificate of merger creates, in favor of bona fide purchasers or encumbrancers for value, a conclusive presumption that the merger was validly completed. (*Corp.C. 15911.19.*)

SUPPLEMENT: [This section is current through the latest supplement]



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K. (New) Reorganization.

3. (New) Dissenting Limited Partner's Rights.

a. (New) In General.

9 *Witkin Sum. Cal. Law Partn § 121WW*

[§ 121WW] (New) In General.

(1) *Statutory Scheme. Corp.C. 15911.20* et seq. govern dissenters' rights under the 2008 Act, and are generally similar to the rights granted to shareholders of merging corporations under *Corp.C. 1300* et seq. (See 9 *Summary* (10th), *Corporations*, §200 et seq.)

If the approval of outstanding limited partnership interests is required for a limited partnership to participate in a reorganization, each limited partner holding those interests may, by complying with *Corp.C. 15911.20* et seq., require the limited partnership to purchase for cash, at its fair market value, the interest owned, if the interest is a "dissenting interest" as defined in *Corp.C. 15911.21(b)* (Supp., infra, §121XX). Fair market value is determined as of the day before the first announcement of the terms of the proposed reorganization, excluding appreciation or depreciation in consequence of the proposed reorganization. (*Corp.C. 15911.21(a)*.)

(2) *Application. Corp.C. 15911.20* et seq. apply to the following entities:

(a) A domestic limited partnership formed on or after January 1, 1991. (*Corp.C. 15911.32(a)(1)*.)

(b) A foreign limited partnership if (1) the foreign limited partnership was formed on or after January 1, 1991, or filed an application to qualify to do business on or after January 1, 1991, and (2) limited partners holding more than 50% of the voting power held by all limited partners of the foreign limited partnership reside in California. (*Corp.C. 15911.32(a)(2)*.)

(c) A limited partnership if the partnership agreement so provides or if all general partners and a majority in interest of the limited partners determine that the provisions apply. (*Corp.C. 15911.32(a)(3)*.)

Corp.C. 15911.20 et seq. do not apply to the following:

(a) Limited partnership interests governed by a limited partnership agreement that specifically sets forth the amount to be paid for those interests in the event of a reorganization. (*Corp.C. 15911.32(b)*.)

(b) Limited partnerships with 35 or fewer limited partners, unless the partnership agreement provides that *Corp.C.*

15911.20 et seq. apply or unless all general partners and a majority in interest of the limited partners agree that the provisions apply. (*Corp.C. 15911.32(b).*)

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K. (New) Reorganization.

3. (New) Dissenting Limited Partner's Rights.

b. (New) Definitions.

9 Witkin Sum. Cal. Law Partn § 121XX

[§ 121XX] (New) Definitions.

(1) *Reorganization*. Reorganization refers to the following events:

(a) A conversion under *Corp.C. 15911.01* et seq. (Supp., supra, §121MM et seq.). (*Corp.C. 15911.20(a)(1)*.)

(b) A merger under *Corp.C. 15911.10* et seq. (Supp., supra, §121QQ et seq.). (*Corp.C. 15911.20(a)(2)*.)

(c) The acquisition, by one limited partnership in exchange for its partnership interests, of partnership interests or equity securities of another limited partnership or other business entity if, immediately after the acquisition, the acquiring limited partnership has control of the other entity. (*Corp.C. 15911.20(a)(3)*.)

(d) The acquisition by one limited partnership in exchange for its partnership interests, or for its debt securities that are not adequately secured and have a maturity date in excess of 5 years after the consummation of the acquisition, or both, of all or substantially all of the assets of another limited partnership or other business entity. (*Corp.C. 15911.20(a)(4)*.)

(2) *Control*. Control means possessing the power to direct the management and policies of a limited partnership or other business entity. (*Corp.C. 15911.20(b)*.)

(3) *Dissenting Interest*. A dissenting interest is the interest of a limited partner that meets the following conditions:

(a) Either (1) immediately prior to the reorganization the interest was not listed on a certified national securities exchange or on the list of OTC margin stocks issued by the Board of Governors of the Federal Reserve System, provided that in either instance, if the interests *are listed*, the limited partnership provides, in its notice to limited partners requesting their approval of the proposed reorganization, a summary of the provisions of *Corp.C. 15911.21* et seq. (*Corp.C. 15911.21(b)(1)(A)*), or (2) demands for payment are filed with respect to 5% or more of the outstanding interests of a class of interests (*Corp.C. 15911.21(b)(1)(B)*).

(b) The interest was outstanding on the date for the determination of limited partners entitled to vote on the reorganization. (*Corp.C. 15911.21(b)(2)*.)

(c) The interest either (i) was not voted in favor of the reorganization, or (ii) if the interest is described in *Corp.C. 15911.21(b)(1)(A)*, was voted against the reorganization; however, where the approval for the proposed reorganization is sought by written consent rather than at a meeting, clause (i) of this paragraph applies. (*Corp.C. 15911.21(b)(3)*.)

(d) The limited partner has demanded that the limited partnership purchase the interest at its fair market value in accordance with *Corp.C. 15911.22*. (*Corp.C. 15911.21(b)(4)*.)

(e) The limited partner submits the interest for endorsement, if applicable, in accordance with *Corp.C. 15911.23*. (*Corp.C. 15911.21(b)(5)*.)

(4) *Dissenting Limited Partner*. A dissenting limited partner is the holder of record of a dissenting interest, including an assignee of record of that interest. (*Corp.C. 15911.21(c)*.)

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3. (New) Dissenting Limited Partner's Rights.

c. (New) Notice and Demand.

9 Witkin Sum. Cal. Law Partn § 121YY

[§ 121YY] (New) Notice and Demand.

(1) *Notice by Limited Partnership to Limited Partners.* The limited partnership must mail to each limited partner having dissenters' rights a notice of the approval of the reorganization by the requisite vote or consent of the limited partners, within 10 days after the date of the approval. The notice must be accompanied by the following: (a) copies of *Corp.C. 15911.21, 15911.22, 15911.23, 15911.24, and 15911.25*; (b) a statement of the price determined by the limited partnership to represent the fair market value of its outstanding interests; and (c) a brief description of the procedure to be followed if the limited partner desires to exercise the limited partner's dissenters' rights. The statement of price constitutes an offer by the limited partnership to purchase dissenting interests at the price stated, unless they lose their status as dissenting interests under *Corp.C. 15911.30* (Supp., infra, §121AAA). (*Corp.C. 15911.22(a).*)

(2) *Written Demand by Limited Partners.* A limited partner with dissenters' rights who desires the limited partnership to purchase the interest for cash must make a written demand on the limited partnership for the purchase and payment in cash of the interest's fair market value. The demand is not effective unless it is received by the limited partnership or its transfer agent (a) in the case of interests described in clause (i) or (ii) of *Corp.C. 15911.21(b)(1)(A)* (Supp., supra, §121XX), not later than the date of the limited partners meeting to vote on the reorganization, or (b) in other cases, within 30 days after the date on which notice of the approval of the reorganization by the requisite vote or consent of the limited partners is mailed by the limited partnership to the limited partners. (*Corp.C. 15911.22(b).*)

The demand must state the number or amount of the limited partner's interest in the limited partnership and must contain a statement of what the limited partner claims is the fair market value of that interest on the day before the announcement of the proposed reorganization. The statement of fair market value constitutes an offer by the limited partner to sell the interest at that price. (*Corp.C. 15911.22(c).*)

A dissenting limited partner may not withdraw a demand for payment unless the limited partnership consents. (*Corp.C. 15911.29.*)

(3) *Submission by Limited Partners of Certificate or Written Notice.* Within 30 days after the date on which notice of the approval of the outstanding interests of the limited partnership is mailed to the limited partner pursuant to *Corp.C. 15911.22(a)*, the limited partner must submit the following to the limited partnership at its principal office or at

the office of the partnership's transfer agent:

(a) If the interest is evidenced by a certificate, the limited partner's certificate representing the interest that the limited partner demands be purchased, to be stamped or endorsed with a statement that the interest is a dissenting interest or to be exchanged for certificates of appropriate denominations so stamped or endorsed. (*Corp.C. 15911.23.*)

(b) If the interest is not evidenced by a certificate, written notice of the number or amount of interest that the limited partner demands be purchased. (*Corp.C. 15911.23.*)

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3. (New) Dissenting Limited Partner's Rights.

d. (New) Determination of Fair Market Value.

9 *Witkin Sum. Cal. Law Partn § 121ZZ*

[§ 121ZZ] (New) Determination of Fair Market Value.

(1) *Agreement.* If the limited partnership and the dissenting limited partner agree that the limited partner's interest is a dissenting interest and agree on a purchase price, the dissenting partner is entitled to the agreed price with interest at the legal rate on judgments from the date of consummation of the reorganization. Agreements fixing the fair market value must be in writing and filed in the records of the limited partnership. (*Corp.C. 15911.24(a).*)

(2) *Payment.* Subject to the provisions of *Corp.C. 15911.27* (Supp., infra, §121AAA), payment for a dissenting interest must be made within 30 days after agreement on the amount or within 30 days after statutory or contractual conditions to the reorganization are satisfied, whichever is later. In the case of dissenting interests evidenced by certificates of interest, payment is subject to surrender of the certificates, unless provided otherwise by agreement. (*Corp.C. 15911.24(b).*)

(3) *Superior Court Action.* If the limited partnership denies that a limited partnership interest is a dissenting interest, or there is disagreement on the fair market value, the limited partner or interested limited partnership may seek judicial resolution of either or both issues. The action must be brought within 6 months after the date notice of the approval of the reorganization was mailed to the limited partner. Also, either party may intervene in a pending action. (*Corp.C. 15911.25(a).*)

Two or more dissenting limited partners may join as plaintiffs or be joined as defendants, and two or more actions may be consolidated. (*Corp.C. 15911.25(b).*)

The court determines the issues. If the status as a dissenting interest is in issue, the court first determines that issue. If the fair market value is in issue, the court either determines, or appoints one or more impartial appraisers to determine, the fair market value. (*Corp.C. 15911.25(c).*) (On appraiser procedures, see *Corp.C. 15911.26(a).*)

(4) *Judgment.* If a majority of the appraisers fails to make and file a report within 30 days from the date of their appointment or as further allowed, or the report is not confirmed by the court, the court determines the fair market value, by class if necessary. (*Corp.C. 15911.26(b).*) Once determined, judgment is rendered against the limited partnership for payment on each dissenting interest plus interest at the legal rate on judgments from the date of

consummation of the reorganization. (*Corp.C. 15911.26(c)*.)

The judgment must be paid immediately, but with respect to interests evidenced by transferable certificates of interest, only on the endorsement and delivery to the limited partnership of those certificates. The parties may appeal. (*Corp.C. 15911.26(d)*.)

(5) *Costs and Fees.* Costs, including reasonable compensation for the appraisers as fixed by the court, are assessed or apportioned as the court considers equitable. However, if the appraisal exceeds the price offered by the limited partnership, the limited partnership must pay the costs. These may include, at the court's discretion, if the value awarded by the court for the dissenting interest is more than 125% of the price offered by the limited partnership under *Corp.C. 15911.22(a)*, attorneys' fees and fees of expert witnesses. (*Corp.C. 15911.26(e)*.)

(6) *Suspension of Proceedings.* If litigation is instituted to test the sufficiency or regularity of the vote or consent of the limited partners in authorizing a reorganization, proceedings under *Corp.C. 15911.25* and *15911.26* must be suspended until final determination of that litigation. (*Corp.C. 15911.31*.)

SUPPLEMENT: [This section is current through the latest supplement]



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 e. (New) Rights and Privileges of Dissenting Limited Partners.

9 *Witkin Sum. Cal. Law Partn § 121AAA*

[§ 121AAA] (New) Rights and Privileges of Dissenting Limited Partners.

(1) *Dissenting Limited Partners as Creditors.* To the extent that the payment to dissenting limited partners of the fair market value of their dissenting interests would require the dissenting limited partners to return some or all of the payment by reason of *Corp.C. 15905.09* (Supp., supra, §121AA) or the Uniform Fraudulent Transfer Act, C.C. 3439 et seq. (see 8 *Cal. Proc. (5th), Enforcement of Judgment*, §488 et seq.), then that payment is not made, and the dissenting limited partners become creditors of the limited partnership for the amount not paid, together with interest until the date of payment. However, the limited partners are subordinate to all other creditors in the winding up and dissolution of the limited partnership, and the debt is payable only when permissible. (*Corp.C. 15911.27.*)

(2) *Cash Distributions.* Cash distributions made by a limited partnership to a dissenting limited partner after the date of consummation of the reorganization, but prior to a payment for the dissenting limited partner's interest, are credited against the total amount to be paid for the dissenting interest. (*Corp.C. 15911.28.*)

(3) *Continuance of Rights and Privileges.* Except where limited under *Corp.C. 15911.20* et seq., dissenting limited partners retain all the rights and privileges incident to their interests immediately prior to the reorganization, including limited liability, until payment by the limited partnership for their dissenting interests. (*Corp.C. 15911.29.*)

(4) *Loss of Status as Dissenting Interest.* A dissenting interest loses its status as a dissenting interest and the holder of the interest ceases to be a dissenting limited partner and to be entitled to require the limited partnership to purchase the interest on the happening of any of the following events:

(a) The limited partnership abandons the reorganization. If so, the limited partnership must pay a dissenting limited partner all reasonable expenses and reasonable attorneys' fees connected with good faith proceedings initiated by the limited partner. (*Corp.C. 15911.30(a).*)

(b) The interest is transferred prior to its submission for endorsement in accordance with *Corp.C. 15911.23.* (*Corp.C. 15911.30(b).*)

(c) The dissenting limited partner and the limited partnership do not agree on the status of the interest or the

purchase price and neither party timely files a complaint or intervenes in a pending action. (*Corp.C. 15911.30(c).*)

(d) The dissenting limited partner, with the consent of the limited partnership, withdraws the demand for purchase of the dissenting interest. (*Corp.C. 15911.30(d).*)

SUPPLEMENT: [This section is current through the latest supplement]



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3. (New) Dissenting Limited Partner's Rights.

f. (New) Right To Attack Reorganization.

9 Witkin Sum. Cal. Law Partn § 121BBB

[§ 121BBB] (New) Right To Attack Reorganization.

A limited partner may only attack the validity of the reorganization, or have it set aside or rescinded, in an action to test whether the vote or consent of limited partners required to authorize or approve the reorganization has been obtained in accordance with the limited partnership agreement. (*Corp.C. 15911.33(a).*) However, a partner is not prohibited from bringing an action against a general partner, the limited partnership, or another party controlling a general partner, as to other matters (e.g., breach of fiduciary obligation or fraud). (*Corp.C. 15911.33(e).*)

If one of the parties to a reorganization is controlled by, or under common control with, another party to the reorganization, *Corp.C. 15911.33(a)* does not apply to a limited partner of the controlled party who has not demanded payment of cash for a limited partner's interest. However, if the limited partner attacks the validity of the reorganization or seeks to have it set aside or rescinded, the limited partner has no right to later demand the cash payment for the limited partner's interest. (*Corp.C. 15911.33(b).*) In an action to attack the validity of the reorganization or to have the reorganization set aside or rescinded, (1) a party to a reorganization that controls another party to the reorganization has the burden of proving that the transaction is just and reasonable as to the limited partners of the controlled party, and (2) a person who controls two or more parties to a reorganization has the burden of proving that the transaction is just and reasonable as to the limited partners of a party so controlled. (*Corp.C. 15911.33(c).*)

Corp.C. 15911.33(b) and (c) do not apply if a majority in interest of the limited partners other than limited partners who are directly or indirectly controlled by, or under common control with, another party to the reorganization approve or consent to the reorganization. (*Corp.C. 15911.33(d).*)

SUPPLEMENT: [This section is current through the latest supplement]



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Witkin Summary of California Law
 IV. LIMITED LIABILITY PARTNERSHIP

A. In General.

1. Statutory Authorization.

9 Witkin Sum. Cal. Law Partn § 122

[§ 122] Statutory Authorization.

When the 1994 Legislature enacted the Limited Liability Company Act (*Corp.C. 17000* et seq.; infra, §136 et seq.), it expressly denied the Act's benefits to persons rendering professional services. (See Stats. 1994, Chap. 1200, §93.) The Legislature subsequently granted many of those benefits to three classes of professionals--attorneys, accountants, and architects--and authorized the establishment of limited liability partnerships (*Corp.C. 16951* et seq.). The inclusion of architecture as a permissible professional limited liability partnership extends only until January 1, 2007. (*Corp.C. 16102(17)*.)

Corp.C. 16951 et seq. do not constitute a comprehensive partnership act. Their main function is to limit the liability of partners for debts, obligations, and other liabilities of their fellow partners (see *Corp.C. 16306(c)-(g)*, infra, §130); provisions requiring the posting of security are intended to allay concerns regarding the entity's ability to satisfy malpractice claims. (See *Corp.C. 16956*, infra, §124.) Thus, a limited liability partnership remains subject to the Uniform Partnership Act of 1994 ("1994 Act") (*Corp.C. 16100* et seq.; supra, §15 et seq.) if it is a domestic partnership, or to the laws of its home jurisdiction if it is a foreign partnership. (*Corp.C. 16958*; infra, §132.) (See generally, C.E.B., *Selecting and Forming Business Entities* §7:1 et seq.; C.E.B., 17 *California Business Law Reporter* 104 (November 1995); C.E.B., 18 *California Business Law Reporter* 157 (January 1996); Cal Transactions Forms, 4 *Business Entities*, Chap. 21; 27 *Pacific L. J.* 440 [limited liability partnerships].)

SUPPLEMENT: [This section is current through the latest supplement]

Corp.C. 16101(19) was amended in 2006 to extend the inclusion of architecture as a permissible professional limited liability partnership service to January 1, 2012. See C.E.B., *Selecting and Forming Business Entities* 2d, §7.1 et seq. *Correction:* Page 688, "*Corp.C. 16102(17)*" at the end of the first paragraph, should read "*Corp.C. 16101(19)*".



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IV. LIMITED LIABILITY PARTNERSHIP

A. In General.

2. Limited Liability Partnership Defined.

9 *Witkin Sum. Cal. Law Partn* § 123

[§ 123] Limited Liability Partnership Defined.

There are two types of limited liability partnerships: a registered limited liability partnership and a foreign limited liability partnership. (*Corp.C. 16951*.)

(1) *Registered Limited Liability Partnership*. A registered limited liability partnership is a partnership, other than a limited partnership, that is formed under an agreement governed by *Corp.C. 16951* et seq. and is registered under *Corp.C. 16953* (infra, §127). Each of its partners must be a "licensed person" in architecture, accountancy, or law in California, or a person licensed or authorized to provide those services in another jurisdiction. (*Corp.C. 16101(8)(A)*.) However, the inclusion of architecture as a permissible professional limited liability partnership extends only until January 1, 2007. (*Corp.C. 16102(17)*.)

A limited liability partnership also includes a partnership, formed under *Corp.C. 16951* et seq. and registered under *Corp.C. 16953*, that (a) is "related to" a registered limited liability partnership providing legal or accounting services or to a foreign limited liability partnership, and (b) provides services "related or complementary to" the services provided by the registered limited liability partnership or foreign limited liability partnership or provides services or facilities to that partnership. (*Corp.C. 16101(8)(A)*.)

Under *Corp.C. 16101(8)(B)*, a partnership is "related to" a registered limited liability partnership or foreign limited liability partnership if one of the following requirements is met:

(a) At least a majority of the partners in one partnership are also partners in another partnership.

(b) At least a majority in interest in each partnership hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person. (For definition of person, see *Corp.C. 16101(13)*.)

(c) One partnership, through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(2) *Foreign Limited Liability Partnership*. A foreign limited liability partnership is a partnership, other than a limited partnership, formed under an agreement governed by the laws of another jurisdiction and denominated or

registered as a limited liability partnership or registered limited liability partnership under that jurisdiction's laws. Each partner must be a "licensed person" in architecture, accountancy, or law in California, or a person licensed or authorized to provide those services in another jurisdiction. The definition includes a partnership that (a) is "related to" a registered limited liability partnership practicing accountancy or law or a foreign limited liability partnership, and (b) provides services "related or complementary to" the services provided by the registered limited liability partnership or foreign limited liability partnership or provides services or facilities to that partnership. (*Corp.C. 16101(6)(A).*)

The term "related to" has the same meaning when applied to a foreign limited liability partnership as when applied to a registered limited liability partnership. (*Corp.C. 16101(6)(B).*)

SUPPLEMENT: [This section is current through the latest supplement]

Correction: Page 689, "*Corp.C. 16102(17)*" at the end of the second paragraph, should read "*Corp.C. 16101(19)*".



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 IV. LIMITED LIABILITY PARTNERSHIP
 A. In General.
 3. Security for Claims.

9 *Witkin Sum. Cal. Law Partn § 124*

[§ 124] Security for Claims.

(1) *In General.* All limited liability partnerships, at the time of registration and continuously while transacting intrastate business, must provide security for claims. (*Corp.C. 16956(a).*) However, neither the existence of the security requirements nor the partnership's compliance with them is admissible in determining an issue of liability or the extent of damages. (*Corp.C. 16956(d).*) Furthermore, if the partnership is in compliance with the security requirements at the time an insolvency proceeding is commenced, the partnership is deemed to be in compliance throughout the pendency of the proceeding. If it conducts business after the proceeding ends, it must then comply with the security requirements in order to qualify for the limitations on liability created by the limited liability partnership provisions. (*Corp.C. 16956(e).*)

(2) *Methods of Satisfying Security.* *Corp.C. 16956* provides four ways to satisfy the required security for claims based on acts, errors, or omissions. The partnership may use just one of the alternatives or may combine them. (*Corp.C. 16956(b).*) The alternatives are as follows:

(a) Maintaining an insurance policy of specified amounts. (*Corp.C. 16956(a)(1)(A)* [practice of accountancy]; *Corp.C. 16956(a)(2)(A)* [practice of law]; *Corp.C. 16956(a)(3)(A)* [practice of architecture].)

(b) Maintaining trust or bank escrow of specified amounts. (*Corp.C. 16956(a)(1)(B)* [practice of accountancy]; *Corp.C. 16956(a)(2)(B)* [practice of law]; *Corp.C. 16956(a)(3)(B)* [practice of architecture].)

(c) Confirmation of net worth of specified amount. (*Corp.C. 16956(a)(1)(D)* [practice of accountancy]; *Corp.C. 16956(a)(2)(D)* [practice of law]; *Corp.C. 16956(a)(3)(D)* [practice of architecture].)

(d) Automatic guarantee by partners (if net worth is not confirmed). (*Corp.C. 16956(a)(1)(C)* [practice of accountancy]; *Corp.C. 16956(a)(2)(C)* [practice of law]; *Corp.C. 16956(a)(3)(C)* [practice of architecture].)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *In General.* See *Hecht, Solberg, Robinson, Goldberg & Bagley LLP v. Superior Court (2006) 137 C.A.4th 579, 599, 40 C.R.3d 446, 1 Cal. Proc. (5th), Attorneys, §319 [Corp.C. 16956(d)]* did not preclude discovery of filings where they were relevant to collectibility issues by potentially leading to admissible evidence about available assets].



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CHAPTER XII - Partnership

Witkin Summary of California Law
IV. LIMITED LIABILITY PARTNERSHIP

A. In General.

4. Compliance With Professional Requirements.

9 Witkin Sum. Cal. Law Partn § 125

[§ 125] Compliance With Professional Requirements.

A limited liability partnership must comply with all statutory and administrative registration or filing requirements of the board, commission, or agency that regulates its profession. The regulatory body must not disclose, unless compelled by court order, information it receives in the course of evaluating the partnership's compliance with applicable registration or filing requirements. However, the regulatory body may disclose the manner in which the partnership has complied with the security provisions (*Corp.C. 16956*; *supra*, §124) and the partnership's compliance or noncompliance with other regulatory requirements. (*Corp.C. 16953(h)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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 IV. LIMITED LIABILITY PARTNERSHIP

A. In General.

5. Agent for Service of Process.

9 Witkin Sum. Cal. Law Partn § 126

[§ 126] Agent for Service of Process.

Every foreign limited liability partnership, and every registered limited liability partnership with a principal office in another state, must designate an agent for service of process. The agent must be a natural person or a domestic or foreign corporation entitled to be designated as agent for service of process under *Corp.C. 1505* (see *9 Summary* (10th), *Corporations*, §76). (*Corp.C. 16962(a).*)

In addition to the methods of service permitted by *C.C.P. 416.40* (see *3 Cal. Proc. (4th), Actions*, §971), a copy of process may be delivered by hand to a natural person designated by the partnership as agent. If a corporate agent has been designated, a copy of process may be delivered by hand, at the office of the corporate agent, to a person named in the latest certificate of the corporate agent filed under *Corp.C. 1505* (see *9 Summary* (10th), *Corporations*, §76). (*Corp.C. 16962(b).*)

If process cannot be served using one of the ordinary methods, a court may order that process be hand-delivered to the Secretary of State or one of the Secretary's employees, who must accept process on payment of a required fee. (*Corp.C. 16962(c).*)

SUPPLEMENT: [This section is current through the latest supplement]
Cross-Reference: *3 Cal. Proc. (5th), Actions*, §1054.



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CHAPTER XII - Partnership

Witkin Summary of California Law
 IV. LIMITED LIABILITY PARTNERSHIP
 B. Registered Limited Liability Partnership.
 1. Registration.

9 *Witkin Sum. Cal. Law Partn § 127*

[§ 127] Registration.

(1) *Name.* The name of a registered limited liability partnership must contain the words "Registered Limited Liability Partnership" or "Limited Liability Partnership," or the abbreviation "L.L.P.," "LLP," "R.L.L.P.," or "RLLP," as its last words or letters. (*Corp.C. 16952.*)

(2) *Filing of Registration.* A partnership becomes a registered limited liability partnership by filing with the Secretary of State a properly executed registration. The registration must contain the following information:

- (a) The partnership's name. (*Corp.C. 16953(a)(1).*)
- (b) The address of the principal office. (*Corp.C. 16953(a)(2).*)
- (c) The name and address of the agent for service of process on the limited liability partnership in California. (*Corp.C. 16953(a)(3).*)
- (d) A brief statement of the partnership's business. (*Corp.C. 16953(a)(4).*)
- (e) A statement that the partnership is registering as a registered limited liability partnership. (*Corp.C. 16953(a)(6).*)

The registration may contain other matters as determined by the partnership. (*Corp.C. 16953(a)(5).*) (See Cal Transactions Forms, 4 Business Entities §21:36 et seq.)

The Secretary of State must register as a registered limited liability partnership a partnership that submits a completed registration with the required fee. (*Corp.C. 16953(c); see Corp.C. 16953(b)* [fee requirement]; *Govt.C. 12189(a)* [amount of fee].) The partnership becomes a registered limited liability partnership at the time of filing the initial registration or at a later date or time specified in the registration and the payment of the required fee. (*Corp.C. 16953(e);* on requirement of security for claims, which must be satisfied at time of registration, see *supra*, §124.)

(3) *Effect of Filing.* A registration on file with the Secretary of State acts as notice that the partnership is a registered limited liability partnership, and it is also notice of the facts contained in the registration. (*Corp.C. 16953(f).*)

The registration makes it unnecessary for the partnership to make the filings referred to in the fictitious business name provisions (*B. & P.C. 17900 et seq.*; *supra*, §2 et seq.). (*Corp.C. 16961.*)

SUPPLEMENT: [This section is current through the latest supplement]



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B. Registered Limited Liability Partnership.
2. Amendment.

9 Witkin Sum. Cal. Law Partn § 128

[§ 128] Amendment.

In order to add information or correct information that has become inaccurate, the partnership may file an amended registration executed by one or more partners authorized to execute an amended registration. It must be accompanied by the required fee. If the amendment is submitted to correct an inaccuracy, it should be filed as soon as reasonably practical after the information in the previously filed registration or amended registration has become inaccurate. (*Corp.C. 16954(a), (c)*.) If the partnership has ceased to be a registered limited liability partnership, it must file a notice to that effect with the Secretary of State, accompanied by a tax clearance certificate indicating that all required taxes have been satisfied. (*Corp.C. 16954(b); Rev.C. 17948.1.*)

SUPPLEMENT: [This section is current through the latest supplement]
Rev.C. 17948.1 was repealed in 2006.

Corp.C. 16954(b) was amended in 2006 to delete the requirement of a tax clearance certificate and to provide instead that the filed notice must state that a final annual tax return pursuant to Rev.C. 17948.3 has been or will be filed with the Franchise Tax Board as required by Rev.C. 18401 et seq.

A notice of cessation signed pursuant to *Corp.C. 16954(b)* must be filed with the Secretary of State, and the Secretary of State must notify the Franchise Tax Board of the cessation. (*Corp.C. 16954(e)*, added in 2006.)



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CHAPTER XII - Partnership

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IV. LIMITED LIABILITY PARTNERSHIP
B. Registered Limited Liability Partnership.
3. Conversion of Domestic Partnership.

9 *Witkin Sum. Cal. Law Partn* § 129

[§ 129] Conversion of Domestic Partnership.

A domestic partnership, other than a limited partnership, may convert to a registered limited liability partnership by vote of the partners possessing a majority of the interests in the current profits of the partnership or by a different vote as provided by the partnership agreement. (*Corp.C. 16955(a).*) Once the conversion takes effect, the following rules apply:

(1) All property of the converting partnership remains vested in the converted registered limited liability partnership. (*Corp.C. 16955(b)(1).*)

(2) All debts, obligations, liabilities, and penalties of the converting partnership continue in force with the converted registered limited liability partnership. (*Corp.C. 16955(b)(2).*)

(3) Civil or criminal actions then pending by or against the converting partnership may be continued as if the conversion had not occurred. (*Corp.C. 16955(b)(3).*)

(4) The partners of a partnership continue as partners in the converted registered limited liability partnership. (*Corp.C. 16955(b)(4).*)

(5) A partnership that has been converted to a registered limited liability partnership is the same person that existed prior to the conversion. (*Corp.C. 16955(b)(5).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 B. Registered Limited Liability Partnership.
 4. Limitation on Partner's Liability.

9 Witkin Sum. Cal. Law Partn § 130

[§ 130] Limitation on Partner's Liability.

(1) *General Rule of Nonliability.* The primary motivation for enactment of the limited liability partnership provisions was to limit partner liability, but the actual language providing that limitation is included in *Corp.C. 16306*, which states the nature of partner liability generally.

A partner in a limited liability partnership, by being a partner or acting in the conduct of the business or activities of the partnership, is not liable or accountable, including by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, or liabilities of or chargeable to the partnership or another partner, regardless of the basis of the liability, that are incurred, created, or assumed by the partnership while the partnership is a registered limited liability partnership. (*Corp.C. 16306(c)*.)

In addition, a partner is not a proper party to a proceeding by or against a registered limited liability partnership where personal liability for partnership debts, obligations, or liabilities is asserted against the partner, unless that partner has either (a) agreed to the liability under *Corp.C. 16306(d)*, or (b) is liable for tortious conduct under *Corp.C. 16306(e)*. (*Corp.C. 16306(g)*.)

(2) *Exceptions.* The following exceptions to nonliability apply:

(a) *Agreement To Be Liable.* All partners, or certain specified partners if the specified partners agree, may be liable for all or specified debts, obligations, or liabilities of the partnership, if partners possessing a majority of the interests of the partners in the current profits of the partnership, or a different vote as the partnership agreement may require, specifically agreed in writing to the debt, obligation, or liability prior to the time it was incurred. Although the specific agreement may be modified or revoked, this will not affect a partner's liability for partnership debts, obligations, or liabilities incurred, created, or assumed by the partnership prior to the modification or revocation. (*Corp.C. 16306(d)*.)

(b) *Partner's Own Torts.* A partner remains liable for damages resulting from the partner's own tortious conduct. (*Corp.C. 16306(e)*.)

(c) *Law Partnership Not Registered With State Bar.* The general limitation of partner liability does not apply to a limited liability partnership providing legal services if the partnership does not have a currently effective certificate of

registration issued by the State Bar. (*Corp.C. 16306(f).*)

(d) *Partner Acting as Guarantor.* A partner may act as a guarantor or surety for, provide collateral for, or otherwise be liable for the debts, obligations, or liabilities of, a registered limited liability partnership. (*Corp.C. 16306(h).*)

SUPPLEMENT: [This section is current through the latest supplement]



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B. Registered Limited Liability Partnership.
5. Limitation on Distributions.

9 Witkin Sum. Cal. Law Partn § 131

[§ 131] Limitation on Distributions.

A distribution is a transfer of money or property by the partnership to its partners without consideration. (*Corp.C. 16957(c).*) A registered limited liability partnership may not make a distribution if the distribution would result in any of the following conditions:

(1) The partnership would not be able to pay its debts as they become due in the usual course of business. (*Corp.C. 16957(a)(1).*)

(2) The partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the partnership were to be dissolved at the time of the distribution, to satisfy the preferential rights of other partners on dissolution that are superior to the rights of the partners receiving the distribution. (*Corp.C. 16957(a)(2).*)

An action for return of a distribution may not be brought more than 4 years after the distribution was made. (*Corp.C. 16957(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



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6. (New) Exemption From Taxes.

9 Witkin Sum. Cal. Law Partn § 131A

[§ 131A] (New) Exemption From Taxes.

Rev.C. 17948.3, added in 2006, provides that a registered limited liability partnership is not subject to California franchise taxes if the partnership complies with the following conditions:

- (1) Files with the Franchise Tax Board a timely final annual tax return for the preceding taxable year.
- (2) Does no business in California after the taxable year for which the final annual tax return was filed.
- (3) Files a notice of cessation under *Corp.C. 16954(b)* or *Corp.C. 16960(b)* prior to the end of the 12-month period beginning on the date the final annual tax return was filed. (On definition of "final annual tax return," see Rev.C. 17948.3(b).)

SUPPLEMENT: [This section is current through the latest supplement]



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IV. LIMITED LIABILITY PARTNERSHIP
C. Foreign Limited Liability Partnership.
1. In General.

9 Witkin Sum. Cal. Law Partn § 132

[§ 132] In General.

(1) *Governing Law.* Subject to compliance with the security requirements (supra, §124), the organization, internal affairs, and partner liability and authority of a foreign limited liability partnership are governed by the laws of the jurisdiction under which the partnership is organized. The partnership may not be denied registration by reason of any difference between those laws and California law. (*Corp.C. 16958(a)*); for definition of foreign limited liability partnership, see supra, §123.)

(2) *Name.* A foreign limited liability partnership's name must contain the words "Registered Limited Liability Partnership" or "Limited Liability Partnership," or the abbreviation "L.L.P.," "LLP," "R.L.L.P.," or "RLLP" (or other similar words or abbreviations as required or authorized by the laws of the jurisdiction of formation of the partnership), as its last words or letters. (*Corp.C. 16958(b)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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 C. Foreign Limited Liability Partnership.
 2. Registration.
 a. In General.

9 *Witkin Sum. Cal. Law Partn* § 133

[§ 133] In General.

(1) *Compliance With Applicable Law.* Before transacting intrastate business in California, a foreign limited liability partnership must comply with all registration or filing requirements of the state board, commission, or agency that regulates the profession in which the partnership proposes to engage. (*Corp.C. 16959(a)(1)*); for definition of "transact intrastate business," see *Corp.C. 16959(l)-(o)*.)

(2) *Registration Application.* Under *Corp.C. 16959(a)(1)*, a foreign limited liability partnership that transacts business in California must submit to the Secretary of State a registration application within 30 days after the date on which the foreign limited liability partnership first transacts business in California. (For official form, see Secretary of State website, www.ss.ca.gov/business/business.htm.) The application must be accompanied by the required fee (*Corp.C. 16959(b)*; *Govt.C. 12189*), must be signed by a person with authority to do so under the laws of the jurisdiction of formation of the partnership, and must state the following:

- (a) The partnership's name.
- (b) The address of its principal office.
- (c) The name and address of its agent for service of process in California.
- (d) A brief statement of the business in which the partnership engages.

(3) *Certificate From Jurisdiction of Organization.* With the registration application, the partnership must include a certificate from the authorized public official of the partnership's jurisdiction of organization to the effect that the partnership is in good standing in that jurisdiction, or a statement by the partnership that the laws of its jurisdiction of organization do not permit issuance of this type of certificate. (*Corp.C. 16959(a)(2)*.)

(4) *Effective Date of Registration.* The partnership is considered registered as of the time the initial registration is filed or at a later time specified in the registration and the payment of the required fee. The partnership continues to be registered until the filing of notice under *Corp.C. 16960* (*infra*, §134) or until it has been dissolved and finally wound up. (*Corp.C. 16959(e)*.)

(5) *Effect of Registration.* A registration on file with the Secretary of State is notice that the partnership is a foreign limited liability partnership, and is notice of the facts in the registration that are required to be there. (*Corp.C. 16959(f).*) The registration makes it unnecessary for the partnership to make the filings referred to in the fictitious business name provisions (*B. & P.C. 17900 et seq.; supra, §2 et seq.*). (*Corp.C. 16961.*)

SUPPLEMENT: [This section is current through the latest supplement]



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 C. Foreign Limited Liability Partnership.
 2. Registration.
 b. Amendment of Withdrawal.

9 Witkin Sum. Cal. Law Partn § 134

[§ 134] Amendment of Withdrawal.

In order to add information, correct information that has become inaccurate, or withdraw registration, the partnership may file an amended registration executed by the authorized partner or partners and accompanied by the required fee. If the amendment is submitted to correct an inaccuracy, it should be filed as soon as reasonably practical after the information in the previously filed registration or amended registration has become inaccurate. (*Corp.C. 16960(a), (c).*)

A partnership that ceases to be a limited liability partnership must file a notice to that effect with the Secretary of State. (*Corp.C. 16960(b).*) If the partnership is registered but is no longer required to be, it may withdraw its registration by filing a properly executed notice with the Secretary of State. (*Corp.C. 16960(c).*)

SUPPLEMENT: [This section is current through the latest supplement]
Corp.C. 16960(b) was amended in 2006 to provide that the filed notice must state that a final annual tax return pursuant to Rev.C. 17948.3 has been or will be filed with the Franchise Tax Board as required by Rev.C. 18401 et seq.

A notice of cessation signed pursuant to *Corp.C. 16960(b)* must be filed with the Secretary of State, and the Secretary of State must notify the Franchise Tax Board of the cessation. (*Corp.C. 16960(f)*, added in 2006.)

On conditions rendering limited liability partnership exempt from California franchise tax, see Rev.C. 17948.3, added in 2006; Supp., supra, §131A. *Correction:* The title of this section should be "*Amendment or Withdrawal*".



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C. Foreign Limited Liability Partnership.
2. Registration.
c. Failure To Register.

9 *Witkin Sum. Cal. Law Partn* § 135

[§ 135] Failure To Register.

(1) *In General.* A foreign limited liability partnership transacting business in California may not maintain an action in California until it has registered. (*Corp.C. 16959(h).*) Moreover, it is subject to a penalty of \$ 20 per day (up to a maximum of \$ 10,000) for transacting intrastate business without being registered. (*Corp.C. 16959(i).*) However, a partner is not liable for the debts or obligations of the partnership solely by reason of its having transacted intrastate business without being registered. (*Corp.C. 16959(j).*)

(2) *Appointment of Secretary of State as Agent.* A foreign limited liability partnership that transacts intrastate business without being registered appoints the Secretary of State as its agent for service of process for causes of action arising out of business transacted in California. (*Corp.C. 16959(k).*)

(3) *Action by Attorney General.* The Attorney General may bring an action to restrain a foreign limited liability partnership that is in violation of *Corp.C. 16101* et seq. from transacting business in California. (*Corp.C. 16959(p).*)

SUPPLEMENT: [This section is current through the latest supplement]



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Witkin Summary of California Law
 V. LIMITED LIABILITY COMPANY
 A. In General.

1. Nature of Limited Liability Company.

9 Witkin Sum. Cal. Law Partn § 136

[§ 136] Nature of Limited Liability Company.

(1) *Hybrid Business Entity.* A limited liability company is a hybrid business entity that combines aspects of both a partnership and a corporation. It is formed under the Corporations Code and consists of "members" who own membership interests. Members may be individuals, corporations, partnerships, or other limited liability companies. (See *Corp.C. 17001(t), (x), (z)*; *infra*, §§151, 152.)

The company has a legal existence separate from its members. It provides members with limited liability to the same extent enjoyed by corporate shareholders, yet allows members to actively participate in management and control. (See *Corp.C. 17101*, *infra*, §153; *Corp.C. 17150*, *infra*, §164.)

(2) *Taxed as Partnership.* Prior to 1997, the Internal Revenue Service specified the conditions necessary to receive a favorable ruling classifying a limited liability company as a partnership for federal tax purposes. At a minimum, the company had to lack two of the four corporate characteristics of continuity of life, centralized management, limited liability, and free transferability of interests. If properly formed and classified as a partnership for tax purposes, the company avoids a corporate entity's double-taxation, i.e., tax on corporate income and on shareholder dividends. Profits passing to company members are taxed only once, and like a partnership, a limited liability company is allowed to make special allocations of income and loss. (See *Rev. Rul. 88-76, 1988-2 C.B. 360*; *Corp.C. 17202*, *infra*, §157.)

The Internal Revenue Service now classifies limited liability companies as partnerships for federal income tax purposes. (26 *U.S.C.*, §7701.) Under Treasury Regulations promulgated in 1997, a limited liability company that is not publicly traded may choose to be taxed either as a partnership or as a corporation. (26 *C.F.R.*, 301.7701-1 et seq.) Thus, a limited liability company in existence prior to 1997 will be classified according to the classification it claimed under the former regulations; a company formed during or after 1997 will be classified as a partnership if it has at least two members, unless it chooses to be classified as a corporation. (For complete discussion, see *Cal. Transactions Forms, 3 Business Entities*, §16:20 et seq.)

(3) *Uniform Act.* The Uniform Limited Liability Company Act was approved by the National Conference of Commissioners on Uniform State Laws in 1995. (See 6A *U.L.A. (Master Ed.)*, p. 553 et seq.) The Commissioners sought a flexible act with comprehensive rules designed to substitute as "the essence of the bargain for small entrepreneurs and others." Thus, most provisions of the Uniform Act may be modified by private agreement. The

Uniform Act provides default rules designed to allow the operation of a limited liability company without sophisticated agreements, and recognizes that members may modify the rules by oral agreements defined in part by their conduct. (Prefatory Note, 6A U.L.A. (Master Ed.), p. 554.)

(4) *Commentary.* Limited liability companies have been the subject of considerable commentary. (See Cal. Transactions Forms, 3 Business Entities, Chap. 16; 2 Limited Liability Companies: Law, Practice & Forms (Clark Boardman Callaghan, 1994), §3:01 et seq.; C.E.B., Forming and Operating California Limited Liability Companies; C.E.B., Selecting and Forming Business Entities §11.1 et seq.; C.E.B., 16 California Business Law Reporter 143 (October 1994); 47 Business Lawyer 375 [limited liability company as emerging entity]; C.E.B., 18 California Business Law Practitioner 102 (Fall 2003) [fiduciary duties of members and managers]; 13 California Real Prop. J. 21 [limited liability companies: a primer for real estate lawyers]; 45 *Hastings L. J.* 1223 [limited liability company interests]; 76 *So. Cal. L. Rev.* 351 [evolving role of courts in articulating standards for limited liability company member and manager conduct; policy recommendations regarding education and research]; 44 *U.C.L.A. L. Rev.* 1541 [member liability]; 79 *A.L.R.5th* 689 [construction and application of limited liability company acts].)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Hybrid Business Entity.*

(1a) *(New) Enforcement of preformation agreements:* General corporation law principles that permit a corporation to enforce preincorporation agreements made in its behalf, provided the corporation adopts, ratifies, or succeeds to the agreement, are equally applicable to a limited liability company's ratification of a preformation agreement. (02 *Dev., LLC v. 607 South Park, LLC* (2008) 159 *C.A.4th* 609, 612, 71 *C.R.3d* 608 [limited liability company could enforce by ratification preformation agreement that assigned to company right to purchase real property].)(3) *Uniform Act.* On Uniform Limited Liability Company Act (1996) see 6B U.L.A. (Master Ed.), p. 545 et seq.; on Revised Uniform Limited Liability Company Act (2006), see 6B U.L.A. (Master Ed.), p. 407 et seq.

(4) *Commentary.* See C.E.B, Selecting and Forming Business Entities 2d, §11.1 et seq.



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CHAPTER XII - Partnership

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V. LIMITED LIABILITY COMPANY

A. In General.

2. Scope and Purpose of Act.

9 *Witkin Sum. Cal. Law Partn* § 137

[§ 137] Scope and Purpose of Act.

(1) *Enactment.* In an effort to expand California's competitive business environment, the 1994 Legislature enacted the Beverly-Killea Limited Liability Company Act (*Corp.C. 17000* et seq.) and made conforming amendments to various other codes.

(2) *Nature and Scope.* The Act does the following:

(a) It governs the formation of limited liability companies. (*Corp.C. 17050* et seq.; *infra*, §145 et seq.)

(b) It establishes requirements and procedures for membership interests, including meetings, voting, and inspection rights. (*Corp.C. 17100* et seq.; *infra*, §151 et seq.)

(c) It sets forth management duties and obligations. (*Corp.C. 17150* et seq.; *infra*, §164 et seq.)

(d) It establishes capital contribution standards and governs the liability of members. (*Corp.C. 17200* et seq.; *infra*, §156.)

(e) It regulates the allocation of profits and losses (*Corp.C. 17202*; *infra*, §157), the withdrawal of members (*Corp.C. 17252*; *infra*, §159), the assignment of interests (*Corp.C. 17300* et seq.; *infra*, §160 et seq.), and dissolution (*Corp.C. 17350* et seq.; *infra*, §172 et seq.).

(f) It requires foreign limited liability companies to register with the Secretary of State, and provides penalties for conducting business without registering. (*Corp.C. 17450* et seq.; *infra*, §178 et seq.)

(g) Under specified conditions, it permits members of domestic and foreign limited liability companies to bring class or derivative actions. (*Corp.C. 17500* et seq.; *infra*, §§154, 155.)

(h) It specifies the penalty arising from the failure to execute or file specified documents (*Corp.C. 17650* et seq.; *infra*, §170.)

(3) *Conversions.* *Corp.C. 17540.1* et seq. govern conversion of a limited liability company into an other business

entity, a foreign other business entity, or a foreign limited liability company. These provisions are substantially similar to those governing conversions of partnerships (*Corp.C. 16902 et seq.*; supra, §52 et seq.) and limited partnerships (*Corp.C. 15677.1 et seq.*; supra, §106 et seq.).

(4) *Mergers.* *Corp.C. 17550 et seq.* govern mergers involving a limited liability company and an other business entity. These provisions are substantially similar to those governing mergers of partnerships (*Corp.C. 16911 et seq.*; supra, §57 et seq.) and limited partnerships (*Corp.C. 15678.1 et seq.*; supra, §110 et seq.).

SUPPLEMENT: [This section is current through the latest supplement]



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 A. In General.
 3. Agreement Varying Effect of Act.

9 *Witkin Sum. Cal. Law Partn* § 138

[§ 138] Agreement Varying Effect of Act.

(1) *In General.* Ordinarily, relations among members and between members and the limited liability company are governed by the articles of organization and the operating agreement. (On articles of organization, see *infra*, §§145, 146; on operating agreement, see *infra*, §147.) However, to the extent that the articles or the operating agreement does not otherwise provide, the provisions of *Corp.C. 17000 et seq.* serve as default rules and govern these relations. (*Corp.C. 17005(a).*)

(2) *When Act May Be Varied.* Under *Corp.C. 17005(b)*, the effect of the Act may be varied by the articles of organization or the operating agreement. However, the following provisions may be varied only by the articles of organization or a *written* operating agreement:

- (a) *Corp.C. 17059* (altering operating agreement; *infra*, §147).
- (b) *Corp.C. 17103* (voting by members; *infra*, §154).
- (c) *Corp.C. 17104* (meetings; *infra*, §154).
- (d) *Corp.C. 17152* (management by manager; *infra*, §165).
- (e) *Corp.C. 17154* (appointment of officers; *infra*, §166).
- (f) *Corp.C. 17155* (indemnification; *infra*, §169).

(3) *When Act May Not Be Varied.* Neither the articles nor the operating agreement may do the following:

- (a) Vary the definitions in *Corp.C. 17001* (*infra*, §139), except as specifically provided. (*Corp.C. 17005(b)(1).*)
- (b) Eliminate the right of a member under *Corp.C. 17100(c)* (*infra*, §152) to assert that a provision in the operating agreement governing termination of the member's interest and return of the member's contribution was unreasonable at the time the agreement was made. (*Corp.C. 17005(b)(21).*)

(c) Vary the voting requirements or voting rights set forth in *Corp.C. 17103(b)*, (c) (infra, §154). (*Corp.C. 17005(b)(3)*.)

(d) Vary a member's rights under *Corp.C. 17106* (access to records; infra, §154) and *Corp.C. 17453* (information and inspection rights; infra, §178). (*Corp.C. 17005(b)(4)*.)

SUPPLEMENT: [This section is current through the latest supplement]

Correction: Page 700, "*Corp.C. 17005(b)(21)*" at the third line from the bottom, should read "*Corp.C. 17005(b)(2)*".



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CHAPTER XII - Partnership

Witkin Summary of California Law
 V. LIMITED LIABILITY COMPANY
 A. In General.
 4. Definitions.

9 *Witkin Sum. Cal. Law Partn* § 139

[§ 139] Definitions.

Corp.C. 17001 sets forth various definitions that govern the construction of the Act unless the context indicates otherwise. (For definitions contained in Uniform Limited Liability Company Act §101, see 6A U.L.A. (Master Ed.), p. 563.)

Many of the terms, such as "domestic," "foreign," "other business entity," "person," "parent," and the like are substantially the same as their counterparts under the Revised Uniform Partnership Act (*supra*, §15 et seq.), the Revised Limited Partnership Act (*supra*, §62 et seq.), and the Limited Liability Partnership statutes (*supra*, §122 et seq.). The following terms are of note:

(1) *Economic interest*. A person's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive distributions from, the limited liability company. An economic interest does not include other rights of a member, including the right to vote or to participate in management, or, except as provided in *Corp.C. 17106* (*infra*, §154), any right to information concerning the business and affairs of the limited liability company. (*Corp.C. 17001(n)*.)

(2) *Electronic transmission*. A communication delivered by electronic communication, such as facsimile, electronic mail, or posting on an electronic message board or network. When *from* a limited liability company, the recipient must have provided an unrevoked consent to the means of transmission, and the transmission must meet the requirements of the Electronic Signatures in Global and National Commerce Act (15 U.S.C., §7001(c)(1)). When *to* a limited liability company, the company must have a method to verify the member or manager status of the sender. In either case, the communication must create a record that may be retained and rendered into legible, tangible form. (*Corp.C. 17001(o)*.)

(3) *Limited liability company and domestic limited liability company*. An entity organized under *Corp.C. 17000* et seq. having one or more members and subject to member liability under *Corp.C. 17101* (*infra*, §153). (*Corp.C. 17001(t)*.)

(4) *Majority in interest of members*. Unless otherwise provided in the operating agreement, more than 50% of the interests of members in current profits of the limited liability company. (*Corp.C. 17001(v)*.)

(5) *Member of record*. A member named as a member on the list maintained under *Corp.C. 17058(a)(1)*. (*Corp.C.*

17001(y); *infra*, §142.)

(6) *Subsidiary of specified limited liability company.* A limited liability company or other business entity in which shares, interests, or other securities possessing more than 50% of the voting power are owned by the specified limited liability company. (*Corp.C. 17001(a).*)

(7) *Transact intrastate business.* Entering into repeated and successive transactions of business in the state, other than interstate or foreign commerce. (*Corp.C. 17001(ap)*; see *Corp.C. 17001(ap)(1)* [status or intrastate business that foreign limited liability company's subsidiary may assume or engage in without parent being considered to be transacting intrastate business]; *Corp.C. 17001(ap)(2)* [activities that foreign limited liability company may conduct in state without being considered to be transacting intrastate business].)

(8) *Withdrawal.* Includes resignation or retirement of a member. (*Corp.C. 17001(as)*; *infra*, §159.)

A number of terms are defined in later sections:

(1) *Articles of organization.* (*Corp.C. 17001(b)*; *infra*, §§145, 146.)

(2) *Capital account.* (*Corp.C. 17001(d).*)

(3) *Distribution.* (*Corp.C. 17001(j)*; *infra*, §158.)

(4) *Manager.* (*Corp.C. 17001(w)*; *infra*, §165.)

(5) *Membership interest.* (*Corp.C. 17001(z)*; *infra*, §152.)

(6) *Member.* (*Corp.C. 17001(x)*; *infra*, §151.)

(7) *Operating agreement.* (*Corp.C. 17001(ab)*; *infra*, §147.)

SUPPLEMENT: [This section is current through the latest supplement]

Definitions: See 6B U.L.A. (Master Ed.), p. 558 (1996 Act); 6B U.L.A. (Master Ed.), p. 428 (2006 Act).



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 A. In General.
 5. Name.

9 *Witkin Sum. Cal. Law Partn* § 140

[§ 140] Name.

(1) *Requisites and Conditions.* The name of a limited liability company, as set forth in its articles of organization, must satisfy the following requirements:

(a) The name must contain either the words "limited liability company" or the abbreviations "LLC" or "L.L.C." as the last words in the name. The words "limited" and "company" may be abbreviated to "Ltd." and "Co." (*Corp.C. 17052(a).*)

(b) The name may contain the name of one or more members. (*Corp.C. 17052(b).*)

(c) The name may not contain the words "bank," "trust," "trustee," "incorporated," "inc.," "corporation," "corp.," or the words "insurer" or "insurance company" or similar words suggesting it is in the business of issuing insurance policies and assuming insurance risks. (*Corp.C. 17052(d).*)

(d) The name must not be a name likely to mislead the public or a name deceptively similar to (1) the name of a limited liability company that has executed and filed articles of organization (*Corp.C. 17070; infra, §§145, 146*), (2) the name of a foreign limited liability company properly registered to do business in California (*Corp.C. 17451; infra, §179*), or (3) a name that is reserved for another limited liability company (*Corp.C. 17053; see infra, this section*). However, a limited liability company may adopt a name that is substantially the same as the name of an existing domestic or foreign limited liability company on proof of consent by that entity and a finding by the Secretary of State that the public is not likely to be misled. (*Corp.C. 17052(c).*)

A limited liability company may be enjoined from using a name that violates *Corp.C. 17052* despite having filed articles of organization or a registration statement with the Secretary of State. (*Corp.C. 17052(e).*) (See C.E.B., *Limited Liability Companies* §7.2 et seq.; for name requirements of Uniform Limited Liability Company Act §105, see 6A U.L.A. (Master Ed.), p. 569.)

(2) *Certificate of Name Reservation.* On payment of the prescribed fee, an applicant may obtain from the Secretary of State a certificate of reservation of a name not prohibited by *Corp.C. 17052*. Issuance of the certificate reserves the name for 60 days. The same name may not be reserved for two or more consecutive 60-day periods by the same

applicant or for the use or benefit of the same person; nor may consecutive reservations be made by or for the use or benefit of the same person of names so similar as to fall within the prohibitions of *Corp.C. 17052(c)*. (*Corp.C. 17053*; on fictitious business names, see *supra*, §2 et seq.) (On prescribed fee, see *Govt.C. 12190(a)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Requisites and Conditions*. See 6B U.L.A. (Master Ed.), p. 565 (1996 Act); 6B U.L.A. (Master Ed.), p. 440 (2006 Act).



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 A. In General.
 6. Agent and Service of Process.

9 *Witkin Sum. Cal. Law Partn § 141*

[§ 141] Agent and Service of Process.

A limited liability company must maintain in California an agent for service of process. (*Corp.C. 17057.*)

The articles of organization of a domestic limited liability company, and the application for registration of a foreign limited liability company, must designate as its agent for service of process an individual residing in California, or a corporation that has complied with *Corp.C. 1505* (designating corporate agent; see 9 *Summary* (10th), *Corporations*, §76). If an individual is designated, the statement must set forth that person's complete business or residence address. (*Corp.C. 17061(d)(1)*; see *Corp.C. 17060(a)(2)* [biennial statement required], *infra*, §150.)

A foreign limited liability company transacting business in California without registration is deemed to appoint the Secretary of State as its agent for service of process regarding causes of action arising out of the transaction of business in California. (*Corp.C. 17456(d)*; *infra*, §180.)

If an agent files a signed and acknowledged written statement of resignation with the Secretary of State, the agent's authority to receive process ceases. The Secretary of State must, by written notice, notify the limited liability company of the resignation. (*Corp.C. 17061(d)(2)*.)

On the resignation, death, or termination of state residency of an individual agent or the resignation, dissolution, corporate suspension, or withdrawal from the state of a corporate agent, the limited liability company or foreign limited liability company must file an amended statement designating a new agent. (*Corp.C. 17062(d)(3)*; on amendment, see *Corp.C. 17060*, *infra*, §150.)

Process may be served on a domestic or foreign limited liability company in accordance with *C.C.P. 413.10 et seq.* (see 3 *Cal. Proc.* (4th), *Actions*, §920 *et seq.*) and *Corp.C. 17061*. (*Corp.C. 17061(a)*.)

Personal service on a domestic or foreign limited liability company is accomplished by delivery to the individual designated as its agent, or if the designated agent is a corporation, to a person named in the most recent certificate of the corporate agent. If a foreign limited liability company has appointed the Secretary of State as agent under *Corp.C. 17456(d)*, process must be hand-delivered to the Secretary of State or to an assistant or deputy. (*Corp.C. 17061(b)*.)

If an agent for service of process has resigned and has not been replaced, or cannot be found at the designated

address, and process cannot be served with reasonable diligence (as shown by affidavit), the court may order service by hand-delivery to the Secretary of State or specified persons in that office. (*Corp.C. 17061(c)(1).*)

SUPPLEMENT: [This section is current through the latest supplement]

Cross-Reference: 3 *Cal. Proc.* (5th), *Actions*, §1002 et seq.



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 A. In General.
 7. Office and Records.

9 *Witkin Sum. Cal. Law Partn* § 142

[§ 142] Office and Records.

(1) *Required Records.* A limited liability company must maintain an office in California (*Corp.C. 17057*) at which the following records must be kept:

(a) A current list of the full name and last known business or residence address of each member and of each holder of an economic interest in the limited liability company set forth in alphabetical order, together with the contribution and the share in profits and losses of each. (*Corp.C. 17058(a)(1)*.) The company must amend this list accordingly when a member withdraws. (*Corp.C. 17252(b)*; on withdrawal of member, see *infra*, §159.)

(b) If the articles of organization contain the statement described in *Corp.C. 17151(b)* (management by nonmember manager; *infra*, §165), a current list of the full name and business or residence address of each manager. (*Corp.C. 17058(a)(2)*.)

(c) A copy of the articles of organization and its amendments, together with any powers of attorney under which the articles or amendments were executed. (*Corp.C. 17058(a)(3)*.)

(d) Copies of the company's federal, state, and local income tax or information returns and reports for the 6 most recent taxable years. (*Corp.C. 17058(a)(4)*.)

(e) A copy of the company's operating agreement and its amendments, together with powers of attorney under which any written operating agreement or amendments were executed. (*Corp.C. 17058(a)(5)*.)

(f) Copies of financial statements for the 6 most recent fiscal years. (*Corp.C. 17058(a)(6)*.)

(g) The company's books and records as they relate to internal affairs for at least the current and past 4 fiscal years. (*Corp.C. 17058(a)(7)*.)

If a domestic or foreign limited liability company owns, claims, possesses, or controls property in California that is subject to local assessment, the company must maintain a true copy of business records relevant to the amount, cost, and value of the property. The records may be maintained at the company's principal office, the required office for record maintenance, or at a place mutually acceptable to the assessor and the company. (*Corp.C. 17058(b)*.)

(2) *Penalty for Failure To Keep Records.* Failure to keep or maintain the documents, books, and records required by *Corp.C. 17058* is subject to a maximum penalty of \$ 1,500, consisting of \$ 25 for each day the failure continues, beginning 30 days after a member requests in writing that the duty be performed. The maximum daily penalty for failure to comply with separate requests made on any 1 day or for the same act is \$ 250. The penalty is paid to the member or members making the request and who are damaged by the failure to perform if suit is commenced within 90 days after the written request. (*Corp.C. 17651(a).*) These penalties are in addition to other remedies available for the nonperformance of acts and duties imposed by law on the company or its managers. (*Corp.C. 17652.*) (On rights of members, see *infra*, §§154, 155.)

SUPPLEMENT: [This section is current through the latest supplement]



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 A. In General.
 8. Authorized Activity.

9 *Witkin Sum. Cal. Law Partn § 143*

[§ 143] Authorized Activity.

(1) *Nature of Business.* Subject to limitations in the articles of organization and other applicable laws, a limited liability company may engage in any lawful business activity, whether or not for profit, except banking, insurance, and trust company business. (*Corp.C. 17002.*)

(2) *Member's Transactions With Company.* Members may lend money to and transact other business with the limited liability company and, subject to other applicable law, have the same rights and obligations as nonmembers. (*Corp.C. 17004(a).*)

Except as authorized by the operating agreement or other agreement among all members, a member is not entitled to remuneration for acting in the limited liability company business, subject to the entitlement of managers or members winding up affairs to reasonable compensation under *Corp.C. 17352(c)* (infra, §174). (*Corp.C. 17004(b).*)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Nature of Business.* *Corp.C. 17002* was subdivided in 2005. The material discussed in the text is now contained in *Corp.C. 17002(a).*

Corp.C. 17002(b), added in 2005, permits a limited liability company to operate as a health care service plan under *Health & Saf.C. 1340* et seq. if the company is a subsidiary of a health care service plan already licensed under those provisions and is established to serve an existing line of business of the parent plan. Creation of a limited liability company under *Corp.C. 17002(b)* does not in any way limit or restrict the tort or contract liability of the company or its members.



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 A. In General.
 9. Statutory Powers.

9 Witkin Sum. Cal. Law Partn § 144

[§ 144] Statutory Powers.

Subject to limitations in the articles of organization and other applicable law, a limited liability company organized under *Corp.C. 17000* et seq. has all the powers of a natural person in conducting business. (*Corp.C. 17003*.) The following powers are expressly provided by statute:

- (1) Transact business, carry on its operations, qualify to do business, and exercise the powers granted by *Corp.C. 17000* et seq. in any domestic or foreign jurisdiction. (*Corp.C. 17003(a)*.)
- (2) In its own name, sue, be sued, maintain and defend actions, arbitrations, or proceedings of any nature. (*Corp.C. 17003(b)*.)
- (3) Adopt, use, and alter a company seal. (*Corp.C. 17003(c)*.)
- (4) Make contracts and guarantees, incur liabilities, act as a surety, and borrow money. (*Corp.C. 17003(d)*.)
- (5) Dispose of its property and assets. (*Corp.C. 17003(e)*.)
- (6) Acquire and deal with an interest in real or personal property. (*Corp.C. 17003(f)*.)
- (7) Lend money to and otherwise assist its members and employees. (*Corp.C. 17003(g)*.)
- (8) Issue obligations and secure them by mortgage, deed of trust, or security interest. (*Corp.C. 17003(h)*.)
- (9) Acquire, dispose of, use, and deal with stock or other interests and obligations. (*Corp.C. 17003(i)*.)
- (10) Invest its surplus funds, lend money in a manner appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and hold real and personal property as security for the payment of funds loaned or invested. (*Corp.C. 17003(j)*.)
- (11) Be a promoter, stockholder, partner, member, manager, associate, or agent of a person. (*Corp.C. 17003(k)*.)
- (12) Indemnify or hold harmless any person. (*Corp.C. 17003(l)*.)

- (13) Purchase and maintain insurance. (*Corp.C. 17003(m).*)
- (14) Acquire, own, dispose of, pledge, use, and deal with its own bonds, debentures, and other securities. (*Corp.C. 17003(n).*)
- (15) Pay pensions and establish retirement, incentive, and benefit plans, trusts, and provisions for current or former members, managers, officers, or employees of the company or its subsidiary or affiliated entities, and indemnify and purchase insurance on behalf of a fiduciary of a plan, trust, or provision. (*Corp.C. 17003(o).*)
- (16) Make donations, regardless of specific benefit to the company, to the public welfare or for community, civic, religious, charitable, scientific, literary, educational, or similar purposes. (*Corp.C. 17003(p).*)
- (17) Make payments or donations or do other acts, not inconsistent with *Corp.C. 17000* et seq. or other applicable laws, that further the business and affairs of the company. (*Corp.C. 17003(q).*)
- (18) Pay compensation to managers, officers, members, and employees for services previously rendered to the company, whether or not an agreement to pay the compensation was made before the services were rendered. (*Corp.C. 17003(r).*)
- (19) Insure for its benefit the life of a member, manager, officer, or employee; insure the life of a member for the purpose of acquiring the member's interest at the member's death, and continue the insurance after the relationship terminates. (*Corp.C. 17003(s).*)
- (20) Do every other act consistent with law to promote and attain the purposes articulated in the company's articles of organization. (*Corp.C. 17003(t).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 V. LIMITED LIABILITY COMPANY

B. Formation.

1. Articles of Organization.

a. Execution and Content.

9 *Witkin Sum. Cal. Law Partn* § 145

[§ 145] Execution and Content.

(1) *In General.* A limited liability company is formed by filing articles of organization. (*Corp.C. 17050(c)*.) One or more persons must execute and file the articles with the Secretary of State on a prescribed form. Either before or after filing, the members must enter into an operating agreement (*infra*, §147). Those who execute and file the articles may, but need not, be members of the limited liability company. (*Corp.C. 17050(a)*); on tax liability information required to be filed with form for filing articles, see *Corp.C. 17050(d)*.) (See C.E.B., *Limited Liability Companies*, §7.13 et seq.; *Cal. Transactions Forms*, 3 *Business Entities* §§16:15, 16:38; for Uniform Limited Liability Company Act §203 (articles of organization), see 6A U.L.A. (Master Ed.), p. 579; for state forms, see Secretary of State website, www.ss.ca.gov/business/business.htm.)

(2) *Filing Fee.* A filing fee is required. (See *Govt.C. 12190(b)*.) If the remittance accepted in payment of the fee is not paid on presentation, the Secretary of State may cancel the filing following proper notification. (*Corp.C. 17051(e)* [notice procedures].)

(3) *Effect of Articles.* A copy of the articles duly certified by the Secretary of State is conclusive evidence of the formation of the company and prima facie evidence of its existence. (*Corp.C. 17050(c)*.)

(4) *Recordation.* The company may record a certified copy of its articles with the recorder of the county in California in which the company has real property. The recording creates a conclusive presumption in favor of a bona fide purchaser or encumbrancer of that property of the statements in the articles. (*Corp.C. 17052(f)*.)

(5) *Number of Members.* A limited liability company must have at least one member. (*Corp.C. 17050(b)*.)

(6) *Optional Provisions.* The articles need not set out the powers enumerated in *Corp.C. 17000* et seq. (*Corp.C. 17051(b)*); *supra*, §144.) They may prescribe the manner in which the company's operating agreement may be altered or amended (*Corp.C. 17059*; *infra*, §147), and may contain the following:

(a) Provisions limiting or restricting the company's business activity or its powers, or both. (*Corp.C. 17051(c)(1)*.)

(b) Provisions governing the admission of members. (*Corp.C. 17051(c)(2)*.)

- (c) A statement specifying the time when the company is to dissolve. (*Corp.C. 17051(c)(3).*)
- (d) Provisions specifying events that will cause the company's dissolution. (*Corp.C. 17051(c)(4).*)
- (e) A statement specifying limitations on the authority of the company's managers or members to bind the company. (*Corp.C. 17051(c)(5).*)
- (f) The names of the company's managers. (*Corp.C. 17051(c)(6).*)
- (7) *Mandatory Provisions.* The articles of organization must set forth the following:
 - (a) The name of the limited liability company. (*Corp.C. 17051(a)(1);* supra, §140.)
 - (b) The following statement: "The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the Beverly-Killea Limited Liability Company Act." (*Corp.C. 17051(a)(2).*)
 - (c) The name and address of the initial agent for service of process meeting the qualifications specified in *Corp.C. 17061(b)(1)*, unless a corporate agent is designated, in which case only the name of the agent need be set forth. (*Corp.C. 17051(a)(4).*) (On agent and service of process, see supra, §141.)
 - (d) If the company is to be managed by one or more managers and not by all the members, or is to be managed by only one manager, statements reflecting those conditions. (*Corp.C. 17051(a)(5), 17151(b).*) (On management by nonmembers, see infra, §165.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *In General.* See 6B U.L.A. (Master Ed.), p. 575 (1996 Act); 6B U.L.A. (Master Ed.), p. 456 (2006 Act).



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B. Formation.

1. Articles of Organization.

b. Amendment.

9 Witkin Sum. Cal. Law Partn § 146

[§ 146] Amendment.

(1) *Manner.* Subject to *Corp.C. 17103(b)* (requiring majority vote for amendment; *infra*, §154), the articles may be amended at any time and in any manner the members may determine. However, the amended articles may only contain provisions that would have been lawful to include in original articles of organization filed *at the time of the amendment*. Otherwise, the articles may be amended regardless whether an amendment was permissible at the time of original organization. (*Corp.C. 17054(a).*)

(2) *Certificate of Amendment.* The articles are amended by filing a certificate of amendment executed by at least one manager, unless a greater number is specified in the articles. An amendment, on a form prescribed by the Secretary of State, sets forth (a) the company's name and the Secretary of State's file number, and (b) the text of the amendment. (*Corp.C. 17054(b).*) (For official form, see Secretary of State website, www.ss.ca.gov/business/business.htm.)

A certificate of amendment *must* be filed to effect the following:

(a) A change in the company's name. (*Corp.C. 17054(c)(1).*)

(b) A change in the statement referred to in *Corp.C. 17151(b)* (management by nonmembers; *infra*, §165). (*Corp.C. 17054(c)(2).*)

(c) A change in the time for dissolution stated in the articles of organization. (*Corp.C. 17054(c)(3).*)

(d) A change in the events that will cause dissolution. (*Corp.C. 17054(c)(4).*)

Managers must file a certificate of amendment within 30 days of discovering false or erroneous material statements in the articles or in previous amendments. (*Corp.C. 17054(d).*)

(3) *Liability.* A manager executing a certificate of amendment is liable for statements materially inconsistent with the operating agreement and for material misstatements of fact if the manager knew or should have known that the statements were false and if the person suffering a loss relied on the misstatements. (*Corp.C. 17054(e).*)

(4) *Restatement of Articles.* The articles may be restated at any time and filed with the Secretary of State. (*Corp.C.* 17054(f).)

SUPPLEMENT: [This section is current through the latest supplement]



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 B. Formation.
 2. Operating Agreement.

9 *Witkin Sum. Cal. Law Partn* § 147

[§ 147] Operating Agreement.

(1) *Definition.* A limited liability company's operating agreement is a written or oral agreement between all the members as to the affairs of the company and the conduct of its business in a manner that is consistent with law and the articles of organization. The agreement includes all amendments, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the company is organized. Additionally, the agreement may include, without more, an agreement between all the members to organize a limited liability company under *Corp.C. 17000* et seq. (*Corp.C. 17001(ab)*.)

(2) *Nature and Purpose.* To complete the formation of the company, members must enter into the operating agreement either before or after the filing of articles of organization. (*Corp.C. 17050(a)*.) Similar in nature to partnership agreements and corporate bylaws, the operating agreement generally regulates the company's affairs and business, and governs relations among its members. (See *Corp.C. 17005(a)*); on partnership agreement, see supra, §70; on corporation bylaws, see 9 *Summary* (10th), *Corporations*, §§73, 74; for forms, see Cal Transactions Forms, 3 Business Entities §16:27 et seq.; C.E.B., *Limited Liability Companies*, §8.1 et seq.; see also Uniform Limited Liability Company Act §103 (6A U.L.A. (Master Ed.), p. 567.)

(3) *Power To Alter, Amend, or Repeal.* Members may adopt, alter, amend, or repeal the operating agreement, and the articles of organization or a written operating agreement may prescribe the procedure. (*Corp.C. 17059*.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Nature and Purpose.* See 6B U.L.A. (Master Ed.), p. 563 (1996 Act); 6B U.L.A. (Master Ed.), p. 442 (2006 Act).



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 B. Formation.
 3. Certificate of Correction.

9 *Witkin Sum. Cal. Law Partn* § 148

[§ 148] Certificate of Correction.

(1) *Purpose and Filing.* A certificate of correction may be filed to correct a defectively executed document, or to correct typographical, transcription, or other technical errors, in a document filed with the Secretary of State. (*Corp.C. 17055(a).*)

(2) *Form and Content.* The certificate is filed on a prescribed form and executed in the same manner required for the document being corrected. (*Corp.C. 17055(b), (d).*) (For official form, see Secretary of State website, www.ss.ca.gov/business/business.htm.)

The form must set forth the following information:

(a) The company's name and the Secretary of State's file number. (*Corp.C. 17055(b)(1).*)

(b) The title of the document being corrected. (*Corp.C. 17055(b)(2).*)

(c) The name of each party to the document being corrected. (*Corp.C. 17055(b)(3).*)

(d) The date that the document being corrected was filed. (*Corp.C. 17055(b)(4).*)

(e) The provision in the document as previously filed and as corrected, and if applicable, the manner in which execution was defective. (*Corp.C. 17055(b)(5).*)

A certificate of correction may not make other changes or amendments that would not have complied with the requirements of *Corp.C. 17000* et seq. at the time the document being corrected was filed. (*Corp.C. 17055(c).*)

(3) *Prohibitions.* A certificate of correction may not do either of the following:

(a) Change the effective date of the document being corrected. (*Corp.C. 17055(e)(1).*)

(b) Affect a right or liability accrued or incurred before filing. However, a right or liability accrued or incurred because of the error or defect being corrected is extinguished by the filing if the person having the right has not

detrimentally relied on the original document. (*Corp.C. 17055(e)(2).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 4. Execution of Documents.

9 *Witkin Sum. Cal. Law Partn* § 149

[§ 149] Execution of Documents.

(1) *Authorized Persons.* Documents required to be executed and filed with the Secretary of State under *Corp.C. 17000* et seq. must be executed by one of the following:

(a) The person or persons organizing the limited liability company when the company has not yet been formed. (*Corp.C. 17056(a)(1).*)

(b) A manager. (*Corp.C. 17056(a)(2).*)

(c) The appropriate fiduciary, if the limited liability company is in the hands of a court-appointed fiduciary. (*Corp.C. 17056(a)(3).*)

In the case of a foreign limited liability company, documents must be executed in the manner required by the laws of the state of its organization. (*Corp.C. 17056(a)(4).*)

(2) *Delayed Effective Date and Revocation.* An instrument filed in connection with the company, other than the original articles of organization, may provide that the instrument becomes effective not more than 90 days after its filing date. If so specified, the instrument may be prevented from becoming effective by a certificate stating that an appropriate action has revoked the instrument. The certificate must be executed in the same manner as the original instrument and filed before the specified effective date. (*Corp.C. 17056(c).*)

(3) *Rejected Instrument and Resubmission with State Bar Member Opinion.* The Secretary of State may reject a nonconforming instrument and return it to the submitting party. The instrument may be resubmitted with a written opinion of a member of the State Bar of California, supported by points and authorities, that the specific objectionable provisions conform to law. The Secretary of State must rely on that opinion, with respect to disputed points of law, in determining whether the instrument conforms to law, other than in the application of *Corp.C. 17052* (company name), *Corp.C. 17053* (reservation of name), *Corp.C. 17451* (registration of foreign limited liability company), and *Corp.C. 17452* (registration certificate for foreign limited liability company). (*Corp.C. 17056(d).*)

(4) *Instrument Deemed Filed on Receipt.* An instrument is deemed filed when the instrument and the prescribed fee are received by the Secretary of State. (*Corp.C. 17062.*)

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 5. Biennial Statement.

9 *Witkin Sum. Cal. Law Partn* § 150

[§ 150] Biennial Statement.

(1) *Necessity.* A domestic or properly registered foreign limited liability company must file an information statement within 90 days after filing the original articles of organization, and then biennially. (*Corp.C. 17060(a).*) However, if there has been no change since the previously filed statement, the company may, in lieu of the statement, advise the Secretary of State on a prescribed form that no changes have occurred. (*Corp.C. 17060(b).*) (See C.E.B., Limited Liability Companies, §13.3; on filing fee for biennial statement, see *Govt.C. 12190(k)*; for official form, see Secretary of State website, www.ss.ca.gov/business/business.htm.)

(2) *Content.* The statement must contain the following:

(a) The company's name and the Secretary of State's file number and, in the case of a foreign limited liability company, the state where it is organized. (*Corp.C. 17060(a)(1).*)

(b) The name and street address of the agent for service of process required under *Corp.C. 17057* (supra, §141). If a corporate agent is designated, only the name of the agent is required. (*Corp.C. 17060(a)(2).*)

(c) The street address of the company's principal executive office and, in the case of a domestic company, the street address of the office required under to *Corp.C. 17057* (supra, §141). (*Corp.C. 17060(a)(3).*)

(d) The name and complete business or residence address of managers and the chief executive officer or, if there is no manager, the name and business or residence address of each member. (*Corp.C. 17060(a)(4).*)

(e) The general type of business that constitutes the principal business activity of the company (e.g., manufacturer of aircraft, wholesale liquor distributor, retail department store). (*Corp.C. 17060(a)(5).*)

(3) *Filing Period.* For purposes of filing the statement, the applicable filing period is the calendar month during which the company's original articles of organization were filed, or in the case of a foreign company, the month in which its application for registration was filed, and the immediately preceding 5 calendar months. (*Corp.C. 17060(c).*)

(4) *Correction.* If information required by *Corp.C. 17060(a)* changes, other than the name and street address of the agent for service of process, the company may file a current statement containing all the information required by

Corp.C. 17060(a). (*Corp.C. 17060(d).*)

When changing its agent for service of process or when the address of the agent changes, the limited liability company must file a current statement containing all the information required by *Corp.C. 17060(a)*. This statement supersedes previously filed statements. (*Corp.C. 17060(d).*)

(5) *Failure To File.* The Secretary of State must mail a notice of delinquency and potential penalty to a limited liability company that fails to file a statement. Failure to file within 60 days after the notice subjects the company to a monetary penalty, as specified. Relief may be requested for reasonable cause or unusual circumstances justifying failure to file. (*Corp.C. 17651(b).*)

Failure to file a statement may also result in a penalty assessed by the Franchise Tax Board (*Corp.C. 17653*; *Rev.C. 19141*), and may subject the company to suspension (*Corp.C. 17654*).

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V. LIMITED LIABILITY COMPANY
C. Members.
1. Definition.

9 Witkin Sum. Cal. Law Partn § 151

[§ 151] Definition.

A member of a limited liability company is (1) a person who has been admitted to the company as a member under the articles of organization or the operating agreement, or (2) the assignee of an interest in the company who has become a member pursuant to *Corp.C. 17303* (infra, §162) and who has not resigned, withdrawn, or been expelled as a member or (if not an individual) has not been dissolved. (*Corp.C. 17001(x)*.) For this purpose, a "person" is an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other domestic or foreign entity. (*Corp.C. 17001(ae)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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 C. Members.
 2. Membership Interest.

9 *Witkin Sum. Cal. Law Partn* § 152

[§ 152] Membership Interest.

(1) *Definition.* A membership interest is a member's right in the limited liability company, collectively, including the member's economic interest, the right to vote or participate in management, and the right to information concerning the business and affairs of the company. (*Corp.C. 17001(z).*)

(2) *Acquisition of Interest.* A person may become a member of a limited liability company in two ways:

(a) By acquiring a membership interest directly from the company in the manner specified in the articles of organization or the operating agreement. If neither the articles nor the operating agreement provides for acquisition of membership, a person may become a member on the vote of a majority in interest of the members, excluding the vote of the person acquiring the membership interest, and only on becoming a party to the operating agreement. (*Corp.C. 17100(a)(1).*)

(b) As an assignee of a membership interest, on compliance with *Corp.C. 17303(a)* (infra, §162), and at the time and in the manner provided in the articles of organization or the operating agreement, or if no provisions are made, then when the assignee becomes a party to the operating agreement. (*Corp.C. 17100(a)(2).*)

(3) *Certificate of Interest.* The operating agreement may provide that a membership interest be evidenced by a certificate of interest issued by the company, and may govern the form of the certificate and the transfer of interest represented by the certificate. (*Corp.C. 17105(a).*)

(4) *Termination of Interest.* The operating agreement may provide for complete or partial termination of membership or interest in the company. (*Corp.C. 17100(c).*)

(5) *Lab.C. 406 and 407 Are Inapplicable.* *Lab.C. 406* (property put up by employee or applicant is deemed bond) and *Lab.C. 407* (investments and sale of stock in connection with securing employment is illegal) do not apply to membership interests issued (a) to an employee of the company or a parent or subsidiary under a membership interest purchase or option plan or agreement, or (b) in a transaction to secure employment to a person who is or will be an officer or manager of the company. (*Corp.C. 17100(d).*)

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C. Members.
3. Personal Liability.

9 *Witkin Sum. Cal. Law Partn* § 153

[§ 153] Personal Liability.

(1) *General Rule of Nonliability.* Except as otherwise provided in *Corp.C. 17254* (prohibited distributions; *infra*, §158) or *Corp.C. 17101(e)* (agreement to be personally liable, see *infra*, this section), a member of a limited liability company is not personally liable for debts, obligations, or liabilities of the limited liability company solely by reason of being a member of the limited liability company. (*Corp.C. 17101(a)*; see C.E.B., *Limited Liability Companies*, §13.2.)

(2) *Liability Comparable to Shareholder Liability.* A member is subject to liability under the common law governing alter ego liability, and thus is personally liable for debts, obligations, or liabilities of the limited liability company under the same or similar circumstances and to the same extent as a shareholder of a corporation is personally liable for debts or obligations of the corporation. However, the failure to hold meetings of members or managers, or to observe formalities in calling or conducting meetings is not a factor in establishing that members have personal liability if the articles of organization or operating agreement do not expressly require meetings of members or managers. (*Corp.C. 17101(b)*.) (See *Warburton/Buttner v. Superior Court* (2002) 103 C.A.4th 1170, 1188, 127 C.R.2d 706, citing the text [in contract action against Indian tribe and its limited liability company, plaintiff was entitled to discovery to pursue alter ego allegations, despite lack of formal tribal resolution waiving sovereign immunity]; on personal liability of manager or officer, see *infra*, §168; on personal liability of limited partner, see *supra*, §76; on liability of corporate shareholder, see 9 *Summary* (10th), *Corporations*, §182 et seq.; on member as manager, see, *infra*, §164; on member as agent, see, *infra*, §167.)

(3) *Tort and Contract Liability.* The provisions of *Corp.C. 17101* do not relieve a member from liability arising from (a) the member's tortious conduct, or (b) the terms of a member's written guarantee or contractual obligation. (*Corp.C. 17101(c)*.)

(4) *Member Agrees to Liability.* A member may agree to be personally obligated for the company's debts and liabilities as long as that agreement is included in the articles of organization or in a written operating agreement specifically referring to *Corp.C. 17101(e)*. (*Corp.C. 17101(e)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Liability Comparable to Shareholder Liability.* See 45 *Santa Clara L. Rev.* 1009 [advocating elimination of veil-piercing doctrine from California's limited liability company jurisprudence].



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 V. LIMITED LIABILITY COMPANY

C. Members.

4. Rights of Members.

a. In General.

9 Witkin Sum. Cal. Law Partn § 154

[§ 154] In General.

(1) *Classes of Members.* The articles of organization or the operating agreement may provide for the creation of classes of members, and for relative rights, powers, and duties, including rights, powers, and duties senior to other classes of members. (*Corp.C. 17102.*)

(2) *Access to Records.* The rights of members to access company records and the procedures to do so generally are comparable to those for limited partners (*supra*, §78 et seq.). These rights extend to each member, manager, and holder of an economic interest of the company (*Corp.C. 17106(b)*) and cannot be waived (*Corp.C. 17106(h)*). (See C.E.B., Limited Liability Companies, §§1.20, 13.16; on access rights under Uniform Limited Liability Company Act §408, see 6A U.L.A. (Master Ed.), p. 599.)

(3) *Meetings.* Member meetings may be held at a place, either within or outside California, selected by the person or persons calling the meeting or as provided in the articles of organization or a written operating agreement. If no place is stated or fixed, meetings must be held at the company's principal executive office. The meeting may be by electronic video screen communication or electronic transmission (*supra*, §17). (*Corp.C. 17104(a)*.) Meetings may be called by a manager, or by a member or members representing more than 10% of members' interests to address matters on which members may vote. (*Corp.C. 17104(b)*.) Written notice of meetings must be given whenever members are required or permitted to take action. (*Corp.C. 17104(c)*); on notice, adjournment, quorum, proxies, and record date for members entitled to notice, see *Corp.C. 17104.*)

(4) *Voting.* The articles of organization or a written operating agreement may provide to all or certain identified members or a specified class or group of members the right to vote separately or with all or any class or group of members on any matter. Voting may be on a per capita, number, financial interest, class, group, or other basis. (*Corp.C. 17103(a)*.)

If the articles or operating agreement do not contain voting provisions, the unanimous vote of all members is required to amend the articles or the agreement. (*Corp.C. 17103(a)(2)*); see C.E.B., Limited Liability Companies, §§1.18, 13.17; on unanimity requirements of Uniform Limited Liability Company Act §404, see 6A U.L.A. (Master Ed.), p. 594.)

Regardless of provisions to the contrary in the articles, in no event may the articles be amended by a vote of less than a majority in interest of members. (*Corp.C. 17103(b)*.) Moreover, regardless of contrary provisions in the articles or operating agreement, members have the right to vote on dissolution under *Corp.C. 17350(b)* and on mergers under *Corp.C. 17551*. (*Corp.C. 17103(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Access to Records*. See 6B U.L.A. (Master Ed.), p. 596 (1996 Act); 6B U.L.A. (Master Ed.), p. 492 (2006 Act).

(4) *Voting*. On unanimity requirement, see 6B U.L.A. (Master Ed.), p. 591 (1996 Act); 6B U.L.A. (Master Ed.), p. 483 (2006 Act).



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4. Rights of Members.

b. Enforcement of Rights.

9 *Witkin Sum. Cal. Law Partn* § 155

[§ 155] Enforcement of Rights.

(1) *In General.* Members of limited liability companies are entitled to access to company records under *Corp.C. 17106* (supra, §154). In addition to other remedies, courts may enforce the statutory requirements and, for good cause, may extend the time limits. (*Corp.C. 17106(f)*.) In an action under *Corp.C. 17106*, the court may award reasonable costs to the person bringing the action, including attorneys' fees, if it finds that noncompliance with *Corp.C. 17106* is without justification. (*Corp.C. 17106(g)*.)

(2) *Proceeding by Attorney General.* On a complaint that a limited liability company is failing to (a) comply with *Corp.C. 17106* or (b) afford members rights provided in the articles of organization or the operating agreement, the Attorney General may send a notice of the complaint to the company. (*Corp.C. 17107(a)*.) If the company's answer is not received within 30 days of the date the notice was transmitted, or if the answer is not satisfactory, and if the enforcement of the rights of the aggrieved persons by private civil action, by class action, or otherwise would be so burdensome or expensive as to be impracticable, the Attorney General may institute, maintain, or intervene in actions before a court or an administrative agency for relief by injunction, dissolution of entities, appointment of receivers, or other temporary, preliminary, provisional, or final remedies appropriate for protecting the rights of members or to restore the position of the members for the failure to comply. All responsible or affected persons and entities may be joined as parties. (*Corp.C. 17107(b)*.)

(3) *Class Actions and Derivative Actions.* *Corp.C. 17500* and *17501* govern class and derivative actions. These provisions are substantially similar to *Corp.C. 15701* and *15702*, governing these actions for limited partners (supra, §104). (See C.E.B., *Limited Liability Companies*, §13.37; on shareholder derivative suits, see 9 *Summary* (10th), *Corporations*, §170 et seq.; on derivative actions under Uniform Limited Liability Company Act §1101 et seq., see 6A U.L.A. (Master Ed.), p. 646 et seq.)

In *PacLink Communications Int. v. Superior Court* (2001) 90 C.A.4th 958, 109 C.R.2d 436, plaintiffs were among the original eight members in P, a limited liability company created as an Internet service provider, and had membership interests equal to approximately 38%. Over several years, P's assets were transferred to new companies in which plaintiffs had no involvement. Plaintiffs brought a direct action against two successor companies for fraudulent transfer and conspiracy to defraud creditors and to commit conversion, and also sought a constructive trust. In essence, plaintiffs

alleged that the transfers were done without their knowledge or consent and that they never received their proportionate share of distributed money. Defendants demurred, arguing that plaintiffs lacked standing because the real party in interest was the limited liability company. The trial judge overruled the demurrer, finding that plaintiffs' action was a personal action, rather than a derivative one. *Held*, mandamus issued compelling the trial court to set aside the order and enter a new order sustaining the demurrer without leave to amend.

(a) The principles of derivative lawsuits for corporations apply to limited liability companies. The derivative suit seeks recovery for the benefit of the corporation. The action is in the corporate right if the complaint alleges injury to the corporation or its body of stock and property, or if it seeks to recover assets for the corporation or to prevent the dissipation of those assets. (90 C.A.4th 963.)

(b) Under *Corp.C. 17300* (infra, §160), members of a limited liability company hold no direct ownership interest in the company's assets. Thus, the members cannot be directly injured when the company is improperly deprived of those assets. The essence of plaintiffs' claim was that the assets were fraudulently transferred without compensation being paid to the company. This constitutes an injury to the company itself and was essentially a diminution in the value of plaintiffs' membership interests occasioned by the loss of the company's assets. Consequently, any injury to plaintiffs was incidental to the injury suffered by P, and could only be addressed through a derivative action. (90 C.A.4th 964.)

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Class Actions and Derivative Actions*. See 6B U.L.A. (Master Ed.), pp. 648, 649 (1996 Act); 6B U.L.A. (Master Ed.), p. 523 et seq. (2006 Act).



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 C. Members.
 5. Capital Contributions.

9 *Witkin Sum. Cal. Law Partn* § 156

[§ 156] Capital Contributions.

(1) *In General.* The articles of organization or the operating agreement may provide for capital contributions by members in money, property, or services (*Corp.C. 17200(a)*), and unless the articles or the operating agreement provide otherwise, members may not be required to make additional contributions (*Corp.C. 17200(b)*). (See *C.E.B., Limited Liability Companies*, §§1.13, 9.14 et seq.)

(2) *Promise To Contribute.* A member is obligated to perform a promise to contribute cash or property or to perform services, regardless of any reason including death, disability, and dissolution. (*Corp.C. 17201(a)(1)*.) If the member does not make a required contribution of property or services, the company may require the member to contribute a cash equivalent based on the fair market value or agreed value of the contribution. (*Corp.C. 17201(a)(2)*.) This option is in addition to other rights, including specific performance, granted to the company by the articles of organization, the operating agreement, or law. (*Corp.C. 17201(a)(2)*; see *Corp.C. 17201(a)(3)* [specific remedies for interest of member failing to make contribution].)

(3) *Conditional Obligations.* "A person with a claim against a limited liability company may not enforce a conditional obligation of a member unless the conditions have been satisfied or waived. Conditional obligations include, without limitation, a capital contribution payable upon a discretionary call of the limited liability company prior to the time the call occurs." (*Corp.C. 17201(c)*.)

(4) *Rights of Third-Party Creditors.* The provisions of *Corp.C. 17201* do not affect (a) the rights of third-party creditors of the company to seek equitable remedies, or (b) rights under the Uniform Fraudulent Transfer Act (see *C.C. 3439 et seq.*, 8 *Cal. Proc. (4th), Enforcement of Judgment*, §460 et seq.). (*Corp.C. 17201(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(4) *Rights of Third-Party Creditors.*

Cross-Reference: 8 *Cal. Proc. (5th), Enforcement of Judgment*, §488 et seq.



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6. Allocation of Profits and Losses.

9 Witkin Sum. Cal. Law Partn § 157

[§ 157] Allocation of Profits and Losses.

Profits and losses must be allocated among the members, and among classes of members, in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, profits and losses are allocated in proportion to each member's contributions. (*Corp.C. 17202.*)

SUPPLEMENT: [This section is current through the latest supplement]



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 7. Distributions to Members.

9 *Witkin Sum. Cal. Law Partn* § 158

[§ 158] Distributions to Members.

Corp.C. 17250 et seq. govern distributions and withdrawals and are generally similar to the statutes applicable to limited partners (see *Corp.C. 15661*; supra, §88 et seq.). (See C.E.B., Limited Liability Companies, §1.15.)

(1) *Distribution Defined*. A distribution is a transfer of money or property by a limited liability company to its members without consideration. (*Corp.C. 17001(j)*.)

(2) *Manner of Distributions*. Distributions must be made in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, distributions that are a return of capital must be made in proportion to the contributions made by each member. If not a return of capital, distributions must be in proportion to the allocation of profits. (*Corp.C. 17250*.)

(3) *Prohibited Distribution*. A distribution is prohibited if, after distribution, either of the following conditions apply:

(a) The company would not be able to pay its debts as they become due in the usual course of business. (*Corp.C. 17254(a)(1)*.)

(b) The company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members on dissolution that are superior to the rights of the member receiving the distribution. (*Corp.C. 17254(a)(2)*); on basis for determining that distribution is not prohibited, see *Corp.C. 17254(b)*.)

A member or manager voting for a distribution in violation of the operating agreement or *Corp.C. 17254* may be personally liable to the company for the amount of the distribution exceeding what could have been distributed without violating the statute or the operating agreement. (*Corp.C. 17255(a)*.)

(4) *Interim Distribution*. Subject to *Corp.C. 17254*, a member is generally entitled to receive distributions before withdrawal from the company and before the dissolution and winding up of the company, as provided in the operating agreement. (*Corp.C. 17251*; on winding up, see *infra*, §174.)

(5) *Form of Distribution.* A member may only demand and receive a distribution in the form of money, regardless of the nature of the member's contribution. (*Corp.C. 17253(a).*) Moreover, a member may not be compelled to accept a distribution of assets in kind in lieu of a proportionate distribution of money being made to other members. (*Corp.C. 17253(b).*) In addition, except on dissolution and winding up, a member may not be compelled to accept a distribution of an asset in kind. (*Corp.C. 17253(c).*)

(6) *Member as Creditor.* Subject to the distribution requirements of *Corp.C. 17254* and *Corp.C. 17353* (distribution after satisfying liabilities; *infra*, §175), a member entitled to receive a distribution becomes a creditor of the company and is thus entitled to creditors' remedies. (*Corp.C. 17250.*)

(7) *Return of Distribution.* A member or a member's assignee is obligated to return a distribution if the recipient had actual knowledge of the impropriety of the distribution and that the company's liabilities, other than liabilities to members or assignees based on their interests, exceed the fair market value of the company's assets. (*Corp.C. 17254(e).*) An action to enforce the return must be brought within 4 years after the distribution is made. (*Corp.C. 17254(f).*)

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8. Withdrawal.

9 Witkin Sum. Cal. Law Partn § 159

[§ 159] Withdrawal.

(1) *Articles or Operating Agreement.* The articles of organization or a written operating agreement may provide that a member may withdraw, resign, or retire at the time or on the happening of events specified in the operating agreement, or that the member does not have that right. (*Corp.C. 17252(a).*)

(2) *Member's Right.* Notwithstanding restrictions on a member's right to withdraw, a member may withdraw at any time by giving written notice to the other members. However, unless the articles or the operating agreement provide otherwise, that member is not entitled to payment of the member's interest in the company, and, beginning on the date of the withdrawal, the withdrawn member has only the right of a holder of an economic interest (*supra*, §139). (*Corp.C. 17252(a).*)

(3) *Wrongful Withdrawal.* If the member's withdrawal violates the operating agreement, the company may offset damages from the breach from amounts otherwise distributable to the member. (*Corp.C. 17252(a).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 D. Assignment of Membership or Economic Interest.
 1. Nature of Interest.

9 *Witkin Sum. Cal. Law Partn* § 160

[§ 160] Nature of Interest.

(1) *In General.* A membership interest and an economic interest in a limited liability company constitute personal property of the member or assignee. A member or assignee has no interest in specific limited liability company property. (*Corp.C. 17300.*) (See C.E.B., Limited Liability Companies, §12.3 et seq.; on economic interest, see *supra*, §139; on nature of membership interest, see *supra*, §152.)

(2) *Assignability.* Except as provided in the articles of organization or the operating agreement, a membership interest or an economic interest is assignable in whole or in part. However, no membership interest may be assigned without the consent of a majority in interest of members not transferring their interests as required under *Corp.C. 17303* (*infra*, §162). (*Corp.C. 17301(a)(1).*)

(3) *Grant of Security Interest.* The pledge or grant of a security interest, lien, or other encumbrance in a membership interest does not terminate the membership or grant to anyone else the power to exercise the rights or powers of a member. (*Corp.C. 17301(c).*)

(4) *Assignment of Economic Interest.* The assignment of an economic interest does not of itself dissolve the limited liability company or, unless otherwise provided in the articles of organization or the operating agreement, entitle the assignee to (a) vote or participate in the management and affairs of the company, or (b) become a member or exercise membership rights. (*Corp.C. 17301(a)(2).*) The assignment merely entitles the assignee to receive, to the extent assigned, the distributions and allocations of income, gain, loss, deductions, credit, or similar items to which the assignor would be entitled. (*Corp.C. 17301(a)(3).*) On assignment, the assignor must provide the manager or member responsible for maintaining the company's books and records with the name and address of the assignee, together with details of the interest assigned. (*Corp.C. 17301(a)(4).*)

(5) *Rights and Liabilities of Assignee.* Until the assignee becomes a member, the assignor continues to be a member and to have the power to exercise the rights and powers of a member, including the right to vote. In the case of a member who has assigned the member's entire economic interest in the company, the right to vote includes the right to vote in proportion to the interest in current profits that the assigning member would have had the assignment not been made. (*Corp.C. 17301(a)(4).*)

Except to the extent assumed by agreement, until an assignee of an *economic interest* becomes a member, the assignee has no liability to the company as to financing the company (*Corp.C. 17200* et seq.; supra, §156), or to distributions and withdrawals (*Corp.C. 17250* et seq.); supra, §§158, 159) solely as a result of the assignment. (*Corp.C. 17301(b)*.)

(6) *Assignor's Liability*. The assignor of a membership interest is not released from liability as a member solely as a result of the assignment. (*Corp.C. 17301(b)*.) An assignor is not released from liability to the company under *Corp.C. 17200* et seq. and *17250*, regardless whether the assignee becomes a member or not. (*Corp.C. 17303(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]



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D. Assignment of Membership or Economic Interest.
2. Rights of Creditors.

9 Witkin Sum. Cal. Law Partn § 161

[§ 161] Rights of Creditors.

On application by a judgment creditor of either a member or a member's assignee, the court may charge the assignable membership interest of the judgment debtor to satisfy the judgment. The court may also appoint a receiver for distributions to the judgment debtor. (*Corp.C. 17302(a)*.) However, *Corp.C. 17302* does not deprive a member or assignee of the benefit of applicable exemption laws. (*Corp.C. 17302(d)*.)

A charging order constitutes a lien on the judgment debtor's assignable membership interest, and the court may order foreclosure on the interest. (*Corp.C. 17302(b)*.) However, before foreclosure a charged membership interest may be redeemed in any of the following manners:

- (1) By the judgment debtor. (*Corp.C. 17302(c)(1)*.)
- (2) By other members with property other than property of the limited liability company. (*Corp.C. 17302(c)(2)*.)
- (3) By other members, with the consent of members whose interests are not charged, with limited liability company property. (*Corp.C. 17302(c)(3)*.)

Corp.C. 17302 is the exclusive remedy for a judgment creditor to satisfy a judgment out of the judgment debtor's membership interest in a limited liability company. (*Corp.C. 17302(e)*.)

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3. Membership of Assignee.

9 Witkin Sum. Cal. Law Partn § 162

[§ 162] Membership of Assignee.

(1) *Majority Vote of Members Is Required.* Except as otherwise provided in the articles of organization or the operating agreement, an assignee of an interest in a limited liability company becomes a member only if a majority in interest of the other members vote in favor of the assignee's admission to the company as a member. (*Corp.C. 17303(a).*)

(2) *Rights and Liabilities on Membership.* An assignee who has become a member has, to the extent assigned, the rights, powers, restrictions, and liabilities of a member under the articles of organization, the operating agreement, and *Corp.C. 17000 et seq. (Corp.C. 17303(b).*) The assignee is also liable for the obligations of the assignor to make contributions as provided in *Corp.C. 17200* (supra, §156), and to return unlawful distributions made to the assignee under *Corp.C. 17250 et seq.* or *Corp.C. 17350 et seq.* (supra, §158). However, the assignee is not obligated for liabilities that were unknown to the assignee on becoming a member and that could not be ascertained from the articles of organization or the operating agreement. (*Corp.C. 17303(b).*)

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4. Power of Member's Representative.

9 Witkin Sum. Cal. Law Partn § 163

[§ 163] Power of Member's Representative.

If a member dies or is adjudged by a court to be incompetent, the member's legal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including powers the member has under the articles of organization or the operating agreement to assign the right to become a member. (*Corp.C. 17304(a).*)

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E. Management.

1. Business and Affairs Managed by Members.

9 Witkin Sum. Cal. Law Partn § 164

[§ 164] Business and Affairs Managed by Members.

Unless the articles of organization state that management is vested in a manager or managers (see *Corp.C. 17151(b)*; *infra*, §165), the business and affairs of a limited liability company are managed *by the members*, whose management rights and duties may be enlarged or restricted by the articles or the operating agreement. (*Corp.C. 17150*; see C.E.B., Limited Liability Companies, §§1.17, 6.7 et seq.; on member as agent, see *infra*, §167.)

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 2. Business and Affairs Managed by Manager.

9 Witkin Sum. Cal. Law Partn § 165

[§ 165] Business and Affairs Managed by Manager.

(1) *Statement of Management by Nonmember.* The articles of organization may provide that the business and affairs of a limited liability company are to be managed by one or more managers who may, but need not, be members. (*Corp.C. 17151(a).*) If so, the articles *must* contain a statement that the company is managed by nonmembers. Neither the names nor the number of managers need be specified, but if management is vested in only *one* manager, the articles must so state. (*Corp.C. 17151(b).*) The articles or the operating agreement may prescribe the number and qualifications of managers who may, but need not, be natural persons. (*Corp.C. 17151(c).*)

(2) *Fiduciary Duty.* The fiduciary duties a manager owes to the limited liability company and to the members are those that a partner owes to a partnership and other partners (*supra*, §30). (*Corp.C. 17153.*)

(3) *Decision of More Than One Manager.* Unless the articles of organization provide otherwise, if the members have appointed more than one manager, decisions of the managers must be by majority vote at meetings, or by unanimous written consent. (*Corp.C. 17156.*)

(4) *Election of Managers.* If management is vested in one or more managers, the election of managers to fill initial positions or vacancies must be by affirmative vote of a majority in interest of members. (*Corp.C. 17152(a).*) Unless they resign or are removed, managers hold office until the expiration of the term for which elected, or until successors are elected and qualified. (*Corp.C. 17152(d).*)

(5) *Removal or Resignation of Managers.* Managers may be removed, with or without cause, by the vote of a majority in interest of the members at a meeting called expressly for that purpose. If there is a contract of employment, removals must be without prejudice to the manager's rights under that contract. (*Corp.C. 17152(b).*) A manager may resign at any time on written notice to the company without prejudice to the company's rights under a contract to which the manager is a party. (*Corp.C. 17152(c).*)

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3. Officers.

9 *Witkin Sum. Cal. Law Partn* § 166

[§ 166] Officers.

(1) *Written Operating Agreement.* A written operating agreement may provide for the appointment of officers, including, without limitation, a chairperson or a president, or both, a secretary, a chief financial officer, and other officers with titles, powers, and duties as specified in the articles of organization or the operating agreement, or as determined by the managers or members. An officer may, but need not, be a member or manager, and multiple offices may be held by the same person. (*Corp.C. 17154(a).*) (See *Corp.C. 17001(aa)* [officer is a person elected or appointed pursuant to *Corp.C. 17154*].)

(2) *Appointment and Resignation.* Officers must be appointed in accordance with the written operating agreement. If the operating agreement does not provide otherwise, officers must be appointed by the managers and serve at the managers' pleasure, subject to the rights of an officer under a contract of employment. (*Corp.C. 17154(b).*) An officer may resign at any time on written notice to the company without prejudice to the company's rights under a contract to which the officer is a party. (*Corp.C. 17154(b).*)

(3) *Authority To Execute Documents.* Written instruments executed and entered into by the company, when signed by the board chairperson or a specified officer, are not rendered invalid by a lack of authority of the signer if the other party lacked actual knowledge that the signer had no authority to execute the document. (*Corp.C. 17154(c).*)

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 4. Agents.

9 *Witkin Sum. Cal. Law Partn* § 167

[§ 167] Agents.

(1) *Member as Agent.* Unless the articles of organization state that the company is to be managed by one or more managers rather than the members (see *Corp.C. 17151(b)*; supra, §165), each member is an agent of the company for purposes of the company's business or affairs. (*Corp.C. 17157(a)*.) Thus, a member's act, including executing an instrument in the name of the company for the apparent purpose of carrying on the company's business or affairs, binds the company unless the member has in fact no authority to act for the company in the matter and the other party knows of that lack of authority. (*Corp.C. 17157(a)*.) However, if the articles of organization contain the statement referred to in *Corp.C. 17151(b)* (supra, §165), a member acting solely as a member is *not* an agent of the company and cannot bind the company or execute instruments on the company's behalf. (*Corp.C. 17157(b)(1)*.) (On agency generally, see 3 *Summary* (10th), *Agency and Employment*, §89 et seq.)

(2) *Manager as Agent.* If the articles of organization state that management is vested in a manager or managers, each manager is an agent of the company for purposes of the company's business or affairs, and the act of a manager binds the company. (*Corp.C. 17157(b)(2)*.)

(3) *Authority To Execute Documents.* An assignment or endorsement of a written instrument, executed or entered into between a limited liability company and another person, when signed by at least two managers (or by one manager when the articles of organization state that the company is managed by only one manager), is not invalidated as to the company by a lack of authority of the signing managers unless the other party has actual knowledge of the lack of authority. (*Corp.C. 17157(d)*.)

(4) *Act in Contravention of Restriction on Authority.* An act of a manager or member in contravention of a restriction on authority does not bind the company as to persons having actual knowledge of the restriction. (*Corp.C. 17157(c)*.)

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5. Personal Liability of Managers and Officers.

9 *Witkin Sum. Cal. Law Partn* § 168

[§ 168] Personal Liability of Managers and Officers.

A manager or officer is not personally liable under a judgment for debts, obligations, or liabilities of the limited liability company, however they arise, solely by reason of being a manager, officer, or both. (*Corp.C. 17158(a)*; see C.E.B., Limited Liability Companies, §6.28.)

However, a manager may agree to be personally obligated for the company's debts and liabilities under the following conditions:

(1) If the agreement to liability is included in the articles of organization or in a written operating agreement specifically referring to *Corp.C. 17158(b)*. (*Corp.C. 17158(b)(1)*.)

(2) Under a written guarantee or contractual obligation other than an operating agreement. (*Corp.C. 17158(b)(2)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(New) Tortious or criminal conduct: Managers of limited liability companies are not immune from personal liability if they have participated in tortious or criminal conduct while performing duties as managers. In *People v. Pacific Landmark (2005) 129 C.A.4th 1203, 29 C.R.3d 193*, M was the manager of a limited liability company that owned and leased strip mall space to others. One tenant was the subject of a red light abatement action (*P.C. 11225*; see *2 Cal. Crim. Law (3d), Crimes Against Public Peace and Welfare, §396*) for operating a business that was a front for prostitution and an illegal massage parlor. Despite repeated law enforcement efforts, including meetings with M's company counsel, the activity persisted even after M, at urging of counsel, served the tenant with a notice to cease the activity. A preliminary injunction issued enjoining M and his company from owning, leasing, maintaining, or managing property used for illegal purposes, and ordering them to fully cooperate with law enforcement and to comply with all laws and ordinances. M contended that the trial court impermissibly enjoined him because he was immune to judgment under *Corp.C. 17158(a)*. *Held*, injunction affirmed.

(a) *Corp.C. 17158(a)* states that a manager of a limited liability company may not be held liable for the company's wrongful conduct "solely by reason of being a manager," and by so circumscribing protection from liability the statute does not preclude personal liability for a manager's own conduct. This construction is consistent with *Corp.C. 17155* (text, §169), which permits a limited liability company to provide for indemnification and insurance for its managers

when the managers incur liability as a result of acting in their managerial capacity. Moreover, because P.C. 387(a) (2 *Cal. Crim. Law (3d), Crimes Against Public Peace and Welfare, §397*) imposes liability on managers for their responsibility or actual authority for a public offense, "it is reasonable to conclude that managers would not be shielded from personal liability by [*Corp.C. 17158(a)*] when they have actual authority over, or significant responsibility for, the wrong." (129 C.A.4th 1214.)

(b) It is well established in California that corporate officers and directors may be held criminally liable for acts which they control or in which they personally participate (see 9 *Summary (10th), Corporations, §101 et seq.*). Thus, consistent with these principles of corporate law and based on the wording of *Corp.C. 17158(a)*, managers of a limited liability company "may not be held liable for tortious or criminal wrongs committed by the company merely because of their status as managers, but may be personally liable for their participation in those wrongs." (129 C.A.4th 1216.)

(c) M was personally involved in allowing the nuisance to persist. He had full responsibility for and authority over the property and failed to take action to ensure that his tenant was in compliance with laws and ordinances and that, once the tenant vacated, all indicia of the illegal activity were disposed of. (129 C.A.4th 1217.)



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6. Indemnification.

9 Witkin Sum. Cal. Law Partn § 169

[§ 169] Indemnification.

Except for breach of a fiduciary duty (see *Corp.C. 17153*, supra, §165), the articles of organization or the operating agreement of a limited liability company may provide for indemnification of a manager, member, officer, employee, or agent of the company, against judgments, settlements, penalties, fines, or expenses incurred as a result of acting in those capacities. (*Corp.C. 17155(a)*); on purchasing liability insurance, see *Corp.C. 17155(b)*.)

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7. Failure To Execute or File Document.

9 Witkin Sum. Cal. Law Partn § 170

[§ 170] Failure To Execute or File Document.

(1) *Failure After Demand.* If a manager or member required under *Corp.C. 17000* et seq. to execute or file a document fails or refuses to do so within a reasonable time after a demand to do so, another manager, member, or court-appointed person may execute and file the document with the Secretary of State. (*Corp.C. 17650(a).*)

(2) *Costs and Attorneys' Fees in Action To Compel Execution.* A manager or member may petition the court to direct the execution of a document. (*Corp.C. 17650(b).*) If the failure or refusal to file a document was without justification, the court may award the petitioner reasonable costs and attorneys' fees. (*Corp.C. 17650(d).*)

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8. Penalty for False and Deceptive Acts.

9 Witkin Sum. Cal. Law Partn § 171

[§ 171] Penalty for False and Deceptive Acts.

An issuer limited liability company (as defined by the Sarbanes-Oxley Act of 2002; *15 U.S.C.*, §7201 et seq.) is subject to a civil penalty in an amount not exceeding \$ 1 million if the company has actual knowledge of and fails to report within 30 days to the Attorney General or appropriate governmental agency and to members and investors false reports, statements, or omissions made by a member, officer, director, manager, or agent that are intended to give the membership shares a materially greater or lesser apparent market value than they actually have. (*Corp.C. 17656(a).*) Notification is not required if the prohibited act is abated within the time prescribed for reporting. (*Corp.C. 17656(b).*) Moreover, the penalty is not applicable if the limited liability company reasonably and in good faith believes that it has complied with the notice requirement. (*Corp.C. 17656(c).*)

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F. Dissolution.
1. Nonjudicial Dissolution.

9 *Witkin Sum. Cal. Law Partn* § 172

[§ 172] Nonjudicial Dissolution.

(1) *In General.* A limited liability company is dissolved and its affairs must be wound up on the first to occur of the following events:

(a) At the time specified in the articles of organization, or on the happening of events specified in the articles or in a written operating agreement. (*Corp.C. 17350(a).*)

(b) By the vote of a majority in interest of the members, or a greater percentage of the voting interests of members as specified in the articles or a written operating agreement. (*Corp.C. 17350(b).*)

(c) Entry of a decree of judicial dissolution pursuant to *Corp.C. 17351* (infra, §173). (*Corp.C. 17350(c).*) (See C.E.B., Limited Liability Companies, Chap. 15.)

(2) *No Business Conducted.* A limited liability company that filed articles of organization on or after January 1, 2004, and has conducted no business, may be cancelled by a certificate of cancellation (infra, §177) executed and filed with the Secretary of State by a majority of members or managers, or if there are no members or managers, by the person signing the articles. The certificate must be filed within 12 months from the filing of the articles. (*Corp.C. 17350.5.*) (For official form, see Secretary of State website, ss.ca.gov/business/business.htm.)

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 2. Judicial Dissolution.

9 Witkin Sum. Cal. Law Partn § 173

[§ 173] Judicial Dissolution.

(1) *Action by Manager or Member.* In an action filed by a manager or member, a court may order dissolution of a limited liability company under any of the following circumstances:

(a) It is not reasonably practicable to carry on the business in conformity with the articles of organization or the operating agreement. (*Corp.C. 17351(a)(1).*)

(b) Dissolution is reasonably necessary to protect the rights or interests of the complaining members. (*Corp.C. 17351(a)(2).*)

(c) The business has been abandoned. (*Corp.C. 17351(a)(3).*)

(d) Management is deadlocked or subject to internal dissension. (*Corp.C. 17351(a)(4).*)

(e) Those in control of the company have been guilty of, or have knowingly countenanced, persistent and pervasive fraud, mismanagement, or abuse of authority. (*Corp.C. 17351(a)(5).*)

(2) *Avoiding Dissolution.* Other members may avoid the dissolution by purchasing for cash at fair market value the membership interests of the members initiating the dissolution proceeding ("moving parties"). (*Corp.C. 17351(b)(1)*); on fixing value and contents of court order, see *Corp.C. 17351(b)(1)*, (b)(2), (b)(3), (b)(5).) The moving parties must transfer their memberships on payment or tender of payment by the purchasing parties. (*Corp.C. 17351(b)(4).*)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Avoiding Dissolution.* See *Dickson v. Rehmke (2008) 164 C.A.4th 469, 477, 78 C.R.3d 874* [alternative decree issued under *Corp.C. 17351(b)(3)*, which orders either payment for member's interest or winding up and dissolution of company, is appealable].



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 3. Winding Up.

9 *Witkin Sum. Cal. Law Partn* § 174

[§ 174] Winding Up.

(1) *Continuation of Company for Specific Purposes.* A dissolved company continues to exist for purposes of winding up its affairs, prosecuting and defending actions in order to collect and discharge obligations, disposing of and conveying its property, and collecting and dividing its assets. Otherwise, the company must discontinue business. (*Corp.C. 17354(a).*)

(2) *Pending Actions.* Neither the dissolution of a limited liability company nor proceedings for its winding up and dissolution abate an action or proceeding to which it is a party. (*Corp.C. 17354(b).*)

(3) *Who May Wind Up.* A limited liability company may be wound up on dissolution by:

(a) The *managers* who have not wrongfully dissolved the limited liability company, or, if none, the *members*, unless the dissolution occurs pursuant to *Corp.C. 17350(c)* (supra, §172), in which event the winding up must be conducted in accordance with the decree of dissolution. (*Corp.C. 17352(a).*)

(b) A *court* on petition of a manager, member or members, or three or more creditors if winding up appears necessary for the protection of parties in interest. The decree must designate the managers or members who are to wind up the company's affairs. (*Corp.C. 17352(b).*)

(4) *Notice to Creditors and Claimants.* Persons winding up the affairs must mail written notice of the commencement of winding up to all known creditors and claimants. (*Corp.C. 17352(a).*)

(5) *Compensation.* Managers or members winding up the affairs pursuant to *Corp.C. 17352* are entitled to reasonable compensation, unless the articles or operating agreement provide otherwise. (*Corp.C. 17352(c).*)

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 4. Distribution.

9 *Witkin Sum. Cal. Law Partn* § 175

[§ 175] Distribution.

(1) *Payment of Known Debts and Liabilities.* Except as otherwise provided in the articles of organization or the operating agreement, all known debts and liabilities of a limited liability company that is winding up must be paid or adequately provided for before the remaining assets may be distributed. (*Corp.C. 17353(a).*) Although not the exclusive means, a debt or liability, whether the whereabouts of the creditor is known or unknown, is adequately provided for if the payment has been provided for by either of the following means:

(a) Payment has been assumed or guaranteed in good faith by one or more financially responsible persons or by the United States Government, and the provision, including the financial responsibility of the person, was determined in good faith and with reasonable care by the members or managers to be adequate at the time of a distribution of assets pursuant to *Corp.C. 17353.* (*Corp.C. 17353(c)(1).*)

(b) The amount of the debt or liability has been deposited as provided in *Corp.C. 2008* (deposit with State Treasurer, bank, or trust company; see 9 *Summary* (10th), *Corporations*, §219). (*Corp.C. 17353(c)(2).*)

If the winding up is by court proceeding or subject to court supervision, distribution must wait until expiration of the court-ordered period for presenting claims. (*Corp.C. 17353(b).*)

(2) *Manner of Distribution.* The remaining assets must be distributed among the members according to their respective rights and preferences as follows:

(a) To members in satisfaction of liabilities for distributions pursuant to *Corp.C. 17201* (supra, §156), *Corp.C. 17202* (supra, §157), or *Corp.C. 17255* (supra, §158). (*Corp.C. 17353(a)(1).*)

(b) To members for the return of contributions. (*Corp.C. 17353(a)(2).*)

(c) To members in the proportions in which those members share in distributions. (*Corp.C. 17353(a)(3).*)

(3) *Previously Omitted Assets.* Assets inadvertently or otherwise omitted from the winding up continue in the dissolved company for the benefit of the persons entitled to the assets on dissolution, and on realization must be distributed accordingly. (*Corp.C. 17354(c).*)

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 5. Action Against Dissolved Company.

9 *Witkin Sum. Cal. Law Partn* § 176

[§ 176] Action Against Dissolved Company.

(1) *Appropriate Defendant.* Causes of action against a dissolved limited liability company, whether arising before or after dissolution, may be enforced against any of the following:

(a) Against the dissolved company, to the extent of its undistributed assets, including the company's insurance assets available to satisfy claims. (*Corp.C. 17355(a)(1)(A).*)

(b) Against the members, to the extent the assets of the dissolved limited liability company have been distributed to them on dissolution. (*Corp.C. 17355(a)(1)(B).*)

As a procedural matter only and not for purposes of determining liability, members of the dissolved company may be sued in the name of the limited liability company on causes of action against the company. (*Corp.C. 17355(a)(3).*)

(2) *Time for Commencing Action.* Except for quiet title actions, causes of action against a member of a dissolved company arising under *Corp.C. 17355* must be commenced prior to the earlier of (a) the expiration of the applicable statute of limitations or (b) 4 years after the effective date of dissolution. (*Corp.C. 17355(a)(2).*)

(3) *Summons or Other Process.* Summons or other process against the company may be served by delivering a copy to a manager, member, officer, or person having charge of the assets or, if no person can be found, to an agent on whom process might be served at the time of dissolution. (*Corp.C. 17355(b).*) If proof by affidavit satisfies the court that none of these persons can be found with due diligence, the court may order service on the dissolved company by personal delivery of a copy to the Secretary of State or an assistant or deputy. (*Corp.C. 17355(b).*)

(4) *Quiet Title Actions.* A limited liability company survives and continues to exist indefinitely for purposes of being sued in quiet title actions. A judgment rendered binds every member, or other persons having an equity or other interest in the company, to the extent of their interest, and the action has the same force and effect as an action brought under *C.C.P. 410.50* and *410.60*. Service of summons or other process may be made as provided in *C.C.P. 413.10* et seq. or as provided in *Corp.C. 17355(b)*. (*Corp.C. 17355(c).*) (For discussion of quiet title action, see *3 Cal. Proc. (4th), Actions, §127* et seq.)

(5) *Contribution.* A member compelled to return distributed assets in an amount that exceeds the sum of the

member's pro rata share of the claim and the amount for which the member could otherwise be held liable under *Corp.C. 17254* or *17255* (supra, §158) may seek contribution for the excess from other members or managers, up to the sum of that other person's pro rata share of the claim and that other person's liabilities under *Corp.C. 17254* or *17255*. (*Corp.C. 17355(a)(1)(B)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(4) *Quiet Title Actions*.

Cross-Reference: 3 *Cal. Proc.* (5th), *Actions*, §133 et seq.(6) (*New Liability at Law*). The liability described in *Corp.C. 17355* is considered a liability at law for purposes of assessments against persons secondarily liable for taxes under *Rev.C. 19071* et seq. (*Corp.C. 17355(d)*, added in 2006.)



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CHAPTER XII - Partnership

Witkin Summary of California Law
 V. LIMITED LIABILITY COMPANY
 F. Dissolution.

6. Certificates of Dissolution, Cancellation, and Continuation.

9 *Witkin Sum. Cal. Law Partn* § 177

[§ 177] Certificates of Dissolution, Cancellation, and Continuation.

(1) *Certificate of Dissolution.* On dissolution, managers must file a certificate of dissolution with the Secretary of State, unless the event causing the dissolution is a judicial decree (*supra*, §173), in which case the managers or members conducting the winding up must file the certificate. (*Corp.C. 17356(a)(1).*) The certificate must set forth the name of the company and the Secretary of State's file number, and may contain information the managers or members wish to include. (*Corp.C. 17356(a)(2).*) (For official forms, see Secretary of State website, ss.ca.gov/business/business.htm.)

If a dissolution by the vote of members under *Corp.C. 17350(b)* (*supra*, §172) is by a *unanimous* vote, and a statement to that effect is added to the certificate of cancellation, a separate certificate of dissolution is not required. (*Corp.C. 17356(a)(3).*)

(2) *Certificate of Cancellation.* The managers or members filing the certificate of dissolution must also file a certificate of cancellation of the articles of organization on completion of winding up unless the event causing the dissolution is a judicial decree, in which case the managers or members conducting the winding up must file the certificate. (*Corp.C. 17356(b)(1).*)

The certificate must set forth the name of the company, the Secretary of State's file number, and a statement that tax liability will be satisfied on a taxes-paid basis or that a specified person or entity assumes the tax liability of the dissolving company. (*Corp.C. 17356(b)(2).*)

(3) *Certificate of Continuation.* A majority in interest of members may file a certificate of continuation with the Secretary of State notwithstanding the filing of a certificate of dissolution, in the following circumstances:

(a) The business of the company is to be continued pursuant to a unanimous vote of the remaining members. (*Corp.C. 17357(a)(1).*)

(b) The dissolution of the company was by vote of the members pursuant to *Corp.C. 17350(b)* (*supra*, §172), and each member who consented to the dissolution has agreed in writing to revoke the vote. (*Corp.C. 17357(a)(2).*)

(c) The company was not, in fact, dissolved. (*Corp.C. 17357(a)(3).*)

The certificate must set forth the name of the company, the Secretary of State's file number, and the grounds provided by *Corp.C. 17357(a)* that are the basis for filing the certificate. (*Corp.C. 17357(b)*.) (On filing fee, see *Govt.C. 12190(h)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Certificate of Cancellation. Corp.C. 17356(b)(2)* was amended in 2006 to delete the provisions regarding satisfaction of tax liability on a taxes-paid basis or assumption of liability, and to provide instead that the cancellation certificate must state that a final franchise tax return or final annual tax return, as defined, has been or will be filed with the Franchise Tax board as required under Rev.C. 18401 et seq.



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 V. LIMITED LIABILITY COMPANY
 G. Foreign Limited Liability Company.
 1. In General.

9 *Witkin Sum. Cal. Law Partn § 178*

[§ 178] In General.

(1) *Definition.* A foreign limited liability company is either an entity formed under the limited liability company laws of a state other than California, or an entity organized under the laws of a foreign country that is (a) an unincorporated association, (b) organized under a statute that permits formation of an association that affords each of its members limited liability with respect to the liabilities of the entity, and (c) *not* an entity that is required to be registered or qualified pursuant to *Corp.C. 100* (corporations) or *Corp.C. 15001* (partnerships). (*Corp.C. 17001(q).*) However, a foreign limited liability company does not include a foreign association, as defined in *Corp.C. 170* (business association organized as trust under laws of foreign jurisdiction). (*Corp.C. 17001(q).*) (See C.E.B., *Limited Liability Companies*, Chap. 14.)

(2) *Information and Inspection Rights.* Members of a foreign limited liability company residing in California and representing 25% or more of the voting interests of the company's members are entitled to all information and inspection rights provided in *Corp.C. 17106* for members of a domestic limited liability company (*supra*, §154). (*Corp.C. 17453.*)

(3) *Governing Law.* Subject to *Corp.C. 17453*, the laws of the state or foreign country under which a foreign limited liability company is organized govern its organization and internal affairs as well as the liability and authority of its managers and members. (*Corp.C. 17450(a).*)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Information and Inspection Rights.* Once the combined interest of California residents in a company reaches 25%, "any California member is entitled to the benefits of California law on inspection of the company's records." (*Burkle v. Burkle (2006) 141 C.A.4th 1029, 1041, 46 C.R.3d 562* [where defendant had 99% interest in company and plaintiff 1% and both lived in California, plaintiff was entitled to inspection rights; under *Corp.C. 17453*, both parties represented 100% of voting rights, which exceeds 25% as required by statute].)



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 G. Foreign Limited Liability Company.
 2. Registration.

9 *Witkin Sum. Cal. Law Partn* § 179

[§ 179] Registration.

(1) *Application for Registration.* Before transacting intrastate business in California, a foreign limited liability company must register with the Secretary of State by submitting an application for registration. The application must be signed by a person with authority to do so under the laws of the state of organization, submitted on a form prescribed by the Secretary of State, and accompanied by a fee. (*Corp.C. 17451(a)*, (c); on fee amount, see *Govt.C. 12190(c)*.) (For official form, see Secretary of State website, ss.ca.gov/business/business.htm.)

The application must set forth all of the following information:

(a) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in California. (*Corp.C. 17451(a)(1)*.)

(b) The state and date of organization and a statement that the company is authorized to exercise its powers and privileges in that state. (*Corp.C. 17451(a)(2)*.)

(c) The name and address of an agent for service of process meeting the requirements of *Corp.C. 17061(d)(1)* (*supra*, §141), unless a corporate agent is designated, in which case only the name of the agent must be set forth. (*Corp.C. 17451(a)(3)*.)

(d) A statement that the Secretary of State is appointed the agent for service of process if the company's agent has resigned and has not been replaced or if the agent cannot be found or served with the exercise of reasonable diligence. (*Corp.C. 17451(a)(4)*.)

(e) The address of the company's principal executive office and of its principal office in California. (*Corp.C. 17451(a)(5)*.)

In conjunction with registration, the Secretary of State must provide a notice regarding the company's obligation to pay an annual tax under Rev.C. 17941. (*Corp.C. 17451(d)*.)

Registration may not be denied by reason of differences between the governing law of the foreign limited liability company (*supra*, §178) and California law. (*Corp.C. 17450(b)*.)

(2) *Certificate of Good Standing.* The company must submit with its application either a certificate from an authorized public official of its state of organization attesting to the company's good standing in that state, or a statement that the laws of that state do not permit the issuance of a certificate. (*Corp.C. 17451(b).*)

(3) *Issuance of Certificate of Registration.* On proper application and payment of the fee, the Secretary of State must issue a certificate of registration to transact business in California, subject to California licensing requirements. (*Corp.C. 17452(a).*)

However, a certificate may not be issued to transact business under a name prohibited by *Corp.C. 17052(c)* (supra, §140). (*Corp.C. 17452(a).*) If the name does not satisfy the requirements of *Corp.C. 17052*, the company may either add the words "limited liability company" or the abbreviation "LLC" to its name, or use an available assumed name that satisfies the requirements of *Corp.C. 17052* and that the company agrees to use in dealing with the Secretary of State and in conducting business in California. (*Corp.C. 17452(b).*)

(4) *Amendment of False or Erroneous Statement.* If a statement in the application for registration was false when made or has become erroneous, the company must promptly file with the Secretary of State an amendment to the application that corrects the statement. (*Corp.C. 17454.*)

(5) *Cancellation of Registration.* The company may cancel its registration by filing with the Secretary of State a certificate of cancellation. However, a cancellation does not terminate the authority of the Secretary of State to accept service of process on the company with respect to causes of action arising out of the transaction of business in California. (*Corp.C. 17455.*)

(6) *Record Ownership of Real Property.* The company may record a certified copy of its application for registration or certificate of registration with the recorder of the county in California in which the company has real property. The recording creates a conclusive presumption in favor of a bona fide purchaser or encumbrancer of that property of the statements in the articles. (*Corp.C. 17052(f).*)

SUPPLEMENT: [This section is current through the latest supplement]



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G. Foreign Limited Liability Company.
3. Doing Business Without Registration.

9 Witkin Sum. Cal. Law Partn § 180

[§ 180] Doing Business Without Registration.

An unregistered foreign limited liability company transacting intrastate business in California may not maintain actions or proceedings in California courts. (*Corp.C. 17456(a).*) Moreover, an unregistered company is subject to a penalty of \$ 20 for each day it transacts unauthorized business, up to a maximum of \$ 10,000. Actions to recover the penalty may be brought as provided in *Corp.C. 2258* (unauthorized transaction of intrastate business by foreign corporations; see *9 Summary* (10th), *Corporations*, §229). (*Corp.C. 17456(b).*) In addition, the Attorney General may bring an action to restrain the company from transacting further intrastate business. (*Corp.C. 17457.*)

However, members of the company do not become liable for debts and obligations of the company solely by reason of the company transacting business in California without registration. (*Corp.C. 17456(c).*)

An unregistered company appoints the Secretary of State as its agent for service of process with respect to causes of action arising out of unauthorized business transactions. (*Corp.C. 17456(d).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 V. LIMITED LIABILITY COMPANY

H. Reorganization.

1. Conversion.

a. In General.

9 Witkin Sum. Cal. Law Partn § 181

[§ 181] In General.

(1) *Statutory Authorization.* *Corp.C. 17540.1* et seq. provide a comprehensive scheme for the conversion of a limited liability company into an other business entity, a foreign other business entity, or a foreign limited liability company. These provisions closely parallel those governing the conversions of partnerships (*supra*, §52 et seq.), and limited partnerships (*supra*, §106 et seq.). An "other business entity" includes a limited partnership, limited liability company, corporation, business trust, and real estate investment trust. (*Corp.C. 16901(12).*)

(2) *Member's Interest.* A limited liability company may convert to a permitted entity only if (a) each of the members of the converting company receives a percentage interest in profits and capital of the converted entity equal to the member's percentage interest in profits and capital of the converting company as of the time of conversion, and (b) if applicable, the membership interests of the same class are treated equally with respect to distributions of property of the converted entity, and the nonredeemable membership interests of the converting company are converted only to like interests or securities of the converted entity. (*Corp.C. 17540.2(a).*)

(3) *Governing Law Must Permit Conversion.* Conversion is permitted *only if* (a) the law under which the converted entity will exist expressly permits the conversion to and formation of that entity, and (b) the limited liability company complies with all other laws that apply to the conversion. (*Corp.C. 17540.2(b).*)

(4) *Conversion to Foreign Entity.* The conversion of a limited liability company into a foreign limited liability company or foreign other business entity must comply with *Corp.C. 17540.2*, and is subject to other rules specified in *Corp.C. 17540.5.* (*Corp.C. 17540.5.*)

SUPPLEMENT: [This section is current through the latest supplement]



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H. Reorganization.

1. Conversion.

b. Plan.

9 Witkin Sum. Cal. Law Partn § 182

[§ 182] Plan.

(1) *Content.* A converting limited liability company must have a plan of conversion that contains the following information:

(a) The terms and conditions of the conversion. (*Corp.C. 17540.3(a)(1).*)

(b) The place of organization of the converted entity and of the converting limited liability company, and the name of the converted entity. (*Corp.C. 17540.3(a)(2).*)

(c) The manner of converting the membership interests into securities, shares, or interests in the converted entity. (*Corp.C. 17540.3(a)(3).*)

(d) The provisions of the governing documents for the converted entity to which the holders of interests in the converted entity are to be bound. (*Corp.C. 17540.3(a)(4).*)

(2) *Approval and Amendment.* The plan must be approved by a vote of a majority in interest of the members of the converting limited liability company, or as may be specified in the articles of organization or a written operating agreement. However, if the members would become personally liable for obligations of the converted entity, the plan must be approved by all of the members, unless the plan provides that all members will have dissenters' rights under *Corp.C. 17600* (infra, §191). (*Corp.C. 17540.3(b).*) If the company is converting to a limited partnership, the conversion plan must also be approved by members who will become general partners. (*Corp.C. 17540.3(c).*)

The plan may be amended before conversion takes effect if approved by all members of the converting limited liability company. (*Corp.C. 17540.3(e).*)

(3) *Parties to Governing Document.* All members of the converting limited liability company, except those exercising dissenters' rights, are considered parties to the governing documents for the converted entity adopted as part of the conversion plan. (*Corp.C. 17540.3(d).*)

(4) *Abandonment.* The members of the converting limited liability company may abandon a conversion prior to its

effective date subject to contractual rights of third parties. (*Corp.C. 17540.3(f).*)

(5) *Conversion to Domestic Limited Liability Company.* An entity wishing to convert to a domestic limited liability company under *Corp.C. 17540.1* et seq. may do so if the laws under which that entity is organized do not prohibit the conversion. A converting entity must also approve a conversion plan or similar instrument required by the laws under which it is organized. Approval must be by the number or percentage required by the converting entity's organic document or the laws under which it is organized. (*Corp.C. 17540.8.*)

Filing a certificate of conversion (infra, §184) or articles of organization containing a statement of conversion has the effect of the converting entity filing a certificate of cancellation. Thus, the converting entity need not specifically file a certificate of cancellation as a result of the conversion. (*Corp.C. 17540.8(e).*)

(6) *Effective Date of Conversion.* Conversion is effective on the earliest date on which all of the following events have occurred:

- (a) The converting limited liability company members have approved the plan. (*Corp.C. 17540.4(a)(1).*)
- (b) All documents required to create the converted entity have been filed. (*Corp.C. 17540.4(a)(2).*)
- (c) The effective date, if set forth in the conversion plan, has occurred. (*Corp.C. 17540.4(a)(3).*)

SUPPLEMENT: [This section is current through the latest supplement]



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H. Reorganization.
1. Conversion.
c. Effect.

9 Witkin Sum. Cal. Law Partn § 183

[§ 183] Effect.

A limited liability company that converts to another entity under *Corp.C. 17540.1* et seq. is for all purposes the same entity that existed before the conversion. (*Corp.C. 17540.9(a).*) The rules governing rights and liabilities applicable generally to partnerships following a conversion (supra, §54) are applicable to a conversion involving a limited liability company. (*Corp.C. 17540.9(b).*)

In addition, if the other party to a transaction with the limited liability company reasonably believes that the limited liability company member is a general partner, the member is liable for an obligation incurred by the limited liability company within 90 days after the conversion. However, the member's liability for all other obligations of the limited liability company incurred after the conversion is that of a limited liability company member. (*Corp.C. 17540.9(e).*)

SUPPLEMENT: [This section is current through the latest supplement]



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H. Reorganization.

1. Conversion.

d. Statement.

9 Witkin Sum. Cal. Law Partn § 184

[§ 184] Statement.

(1) *Conversion to Domestic Limited Partnership.* If the conversion is to a domestic limited partnership, a statement of conversion must be completed on the certificate of limited partnership (*supra*, §71) for the converted entity. (*Corp.C. 17540.6(a)(1).*)

(2) *Conversion to Domestic Partnership.* If the conversion is to a domestic partnership, a statement of conversion must be completed on the statement of partnership authority (*supra*, §36). If no statement of partnership authority is filed, then a certificate of conversion must be filed separately. (*Corp.C. 17540.6(a)(2).*)

(3) *Conversion to Domestic Corporation.* If the conversion is to a domestic corporation, a statement of conversion must be completed on the articles of incorporation. (*Corp.C. 17540.6(a)(3).*)

(4) *Conversion to Foreign Limited Liability Company or Other Business Entity.* If the conversion is to a foreign limited liability company or foreign other business entity, a certificate of conversion must be filed. (*Corp.C. 17540.6(a)(4).*)

(5) *Form and Content.* A certificate or statement of conversion must be executed by all managers, unless otherwise provided in the articles of organization or operating agreement of the converting limited liability company, and must contain all of the following items:

(a) The name and the Secretary of State's file number of the converting limited liability company. (*Corp.C. 17540.6(b)(1).*)

(b) A statement that the principal terms of the conversion plan were approved by the required vote, as specified. (*Corp.C. 17540.6(b)(2).*)

(c) The form of organization of the converted entity. (*Corp.C. 17540.6(b)(3).*)

(6) *Record Ownership of Real Property.* A converting limited liability company or other business entity that has real property in California that vests in the converted entity may establish record ownership by filing statements or

certificates as specified with the appropriate county recorder. (*Corp.C. 17540.7.*)

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V. LIMITED LIABILITY COMPANY

H. Reorganization.

2. Merger.

a. In General.

9 *Witkin Sum. Cal. Law Partn* § 185

[§ 185] In General.

(1) *Statutory Authorization.* *Corp.C. 17550* et seq. govern mergers between limited liability companies and between limited liability companies and other business entities. The provisions closely parallel those governing mergers involving limited partnerships (*supra*, §110 et seq.). (See C.E.B., Limited Liability Companies, Chap. 11.)

(2) *Definitions.* The following terms are applicable to mergers involving limited liability companies:

(a) *Constituent limited liability company.* A limited liability company that is merged with or into one or more other limited liability companies or other business entities, including a surviving limited liability company. (*Corp.C. 17001(e).*)

(b) *Surviving limited liability company.* A limited liability company into which one or more other limited liability companies or other business entities are merged. (*Corp.C. 17001(am).*)

(c) *Disappearing limited liability company.* A constituent limited liability company that is not the surviving limited liability company. (*Corp.C. 17001(h).*)

(d) *Constituent other business entity.* An other business entity that is merged with or into one or more limited liability companies and includes a surviving other business entity. (*Corp.C. 17001(f).*)

(e) *Surviving other business entity.* An other business entity into which one or more limited liability companies are merged. (*Corp.C. 17001(an).*)

(f) *Disappearing other business entity.* A constituent other business entity that is not the surviving other business entity. (*Corp.C. 17001(i).*)

(3) *Conditions.* The merger of limited liability companies with other business entities is permitted only if the other business entities that are organized in California are authorized by the laws under which they are organized to effect the merger, and (a) if a limited liability company is the survivor, foreign other business entities are not prohibited by the laws under which they are organized from effecting the merger, and (b) if a foreign limited liability company or foreign

other business entity is the survivor, the laws of the jurisdiction under which the survivor is organized authorize that merger. If a domestic corporation is also a party to the merger, the merger may be effected only if, with respect to a foreign other business entity that is a corporation, the foreign corporation is authorized by the laws under which it is organized to effect that merger. (*Corp.C. 17550(b).*)

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H. Reorganization.
2. Merger.
b. Agreement.

9 Witkin Sum. Cal. Law Partn § 186

[§ 186] Agreement.

(1) *Approval of Agreement.* A limited liability company and other business entity that desire to merge must approve an agreement of merger. The agreement must be approved by a majority in interest of members of each constituent company unless a greater number is specified in the articles of organization or a written operating agreement. (*Corp.C. 17551(a).*)

If the members of a constituent limited liability company become personally liable for obligations of an entity as a result of the merger, the principal terms of the agreement must be approved by *all* members of the constituent limited liability company, unless the agreement provides that all members will have the dissenters' rights provided under Corp.C. 176001 et seq. (infra, §191). (*Corp.C. 17551(a).*)

The agreement must be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which they are organized. Other persons, including a parent of a constituent limited liability company, may be parties to the agreement of merger. (*Corp.C. 17551(a).*)

(2) *Contents of Agreement.* The agreement must contain the following information:

(a) The terms and conditions of the merger. (*Corp.C. 17551(a)(1).*)

(b) The name and place of organization of the surviving limited liability company, and of each disappearing limited liability company. (*Corp.C. 17551(a)(2).*)

(c) The manner of converting the interests of each constituent limited liability company into interests, shares, or other securities of the surviving entity; if interests are not to be solely so converted, then the property or interests the holders of the interests will receive, or a statement that the interests are cancelled without consideration. (*Corp.C. 17551(a)(3).*)

(d) The amendments to the articles of organization of the surviving limited liability company to be effected by the merger. (*Corp.C. 17551(a)(4).*)

(e) Other provisions required by the laws under which a constituent other business entity is organized. (*Corp.C. 17551(a)(5).*)

(3) *Equality Provisions.* Generally, interests of the same class of a constituent limited liability company must be treated equally with respect to distributions of property, rights, and interests. (*Corp.C. 17551(b).*) (On limited exceptions and permissive conversion of nonredeemable interests, see *Corp.C. 17551(b).*)

(4) *Amendment of Agreement.* The agreement of merger may be amended prior to its filing or the filing of the certificate of merger (infra, §187) under the following conditions: (a) The amendment must be approved by members of each constituent limited liability company in the same manner as required for approval of the original agreement of merger, and (b) if the amendment changes the principal terms of the agreement, the amendment must be approved by each constituent other business entity in the same manner as required for the approval of the original agreement of merger. (*Corp.C. 17551(c).*)

(5) *Amendment or Adoption of Operating Agreement.* An agreement of merger approved in accordance with *Corp.C. 17551(a)* may (a) effect amendments to the operating agreement of a constituent limited liability company, or (b) effect the adoption of a new operating agreement for a constituent limited liability company if it is the surviving entity. The amendment or adoption is effective at the effective time or date of the merger. However, if a greater number of members is required to approve an amendment to the operating agreement of a constituent limited liability company than is required to approve the agreement of merger under *Corp.C. 17551(a)*, and fewer than the required number of members approve the agreement of merger, the amendment or new operating agreement of the surviving limited liability company is effective only if the agreement of merger is approved by the required greater number. (*Corp.C. 17551(e).*)

(6) *Abandonment of Merger.* The members of a constituent limited liability company may abandon a merger in the same manner as required for approval of the agreement of merger, subject to contractual rights of third parties, including other constituent entities. (*Corp.C. 17551(d).*)

(7) *Repository for Agreement.* The surviving entity must keep the agreement of merger at the office referred to in *Corp.C. 17057(a)* or at the address specified in *Corp.C. 17552(a)(5)* (infra, §187). (*Corp.C. 15678.2(f).*)

(8) *Obligation To Provide Copy.* On the request of a member of a constituent limited partnership or a holder of shares, interests, or other securities of a constituent other business entity, a manager or member of the surviving limited liability company or the authorized person of the surviving other business entity must promptly deliver to the requesting party, at the expense of the surviving entity, a copy of the agreement of merger. A waiver of these rights is unenforceable. (*Corp.C. 17551(f).*)

SUPPLEMENT: [This section is current through the latest supplement]



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 2. Merger.
 c. Certificate of Merger.

9 Witkin Sum. Cal. Law Partn § 187

[§ 187] Certificate of Merger.

(1) *Filing.* If the surviving entity is a limited liability company or an other business entity (other than a corporation in a merger in which a domestic corporation is a constituent party), the constituent limited liability companies and constituent other business entities must file a certificate of merger with the Secretary of State on a prescribed form. (*Corp.C. 17552(a).*) (For official form, see Secretary of State website, ss.ca.gov/business/business.htm.)

If the surviving entity is a foreign limited liability company in a merger in which a domestic corporation is a disappearing other business entity, a copy of the agreement of merger and attachments required under *Corp.C. 1113(g)(1)* (9 *Summary* (10th), *Corporations*, §197) must be filed with the certificate of merger. (*Corp.C. 17552(a).*)

If the surviving entity is a domestic corporation or a foreign corporation, the surviving corporation must file a copy of the agreement of merger and attachments required under *Corp.C. 1113(g)(1)*. (*Corp.C. 17552(b).*)

The certificate may not be filed, however, until there has been filed, on behalf of each constituent entity that is taxed under the Bank and Corporation Tax Law, the Franchise Tax Board's certificate of satisfaction that all taxes have been paid or secured. (*Corp.C. 17552(e).*)

(2) *Execution and Acknowledgment.* The certificate of merger must be executed and acknowledged by (a) all managers of each domestic constituent limited liability company (unless the articles of organization or the operating agreement provides for a lesser number) and (b) the authorized persons of constituent foreign limited liability companies and foreign other business entities required to do so by the law under which the entity is organized. (*Corp.C. 17552(a).*)

If the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, the certificate must be executed and acknowledged by all managers of each domestic constituent limited liability company unless a lesser number is specified in the articles of organization or the operating agreement. (*Corp.C. 17552(b).*)

(3) *Contents.* The certificate of merger must set forth the following information:

(a) The names and the Secretary of State's file numbers of the constituent limited liability companies and constituent other business entities, separately identifying the disappearing entities. (*Corp.C. 17552(a)(1).*)

(b) If a vote of the members was required under *Corp.C. 17551* (supra, §186), a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and stating that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each. (*Corp.C. 17552(a)(2).*)

(c) If the surviving entity is a limited liability company, changes required in the articles of organization resulting from the merger, such as a change of name. (*Corp.C. 17552(a)(3)*; on effect as certificate of amendment, see *Corp.C. 17552(a)(3).*)

(d) The future effective date or time of the merger (which must be a date or time certain not more than 90 days subsequent to the date of filing), if the merger is not to be effective on the filing of the certificate of merger. (*Corp.C. 17552(a)(4).*)

(e) If the surviving entity is an other business entity or a foreign limited liability company, the full name, type of entity, jurisdiction of organization and governing laws, and address of the principal place of business. (*Corp.C. 17552(a)(5).*)

(f) Other information required to be stated by the laws under which each constituent other business entity is organized, including, if a domestic corporation is a party to the merger, information required by *Corp.C. 1113(g)(2)*. (*Corp.C. 17552(a)(6).*)

(4) *Effect as Certificate of Cancellation.* A certificate of merger or the agreement of merger, as applicable under *Corp.C. 17552(a)* or (b), has the effect of a certificate of cancellation for each disappearing limited liability company, and that company need not file a certificate of cancellation of articles of organization under *Corp.C. 17356* (supra, §177) as a result of the merger. (*Corp.C. 17552(c).*)

(5) *Effect of Filing by Foreign Corporations.* If a disappearing other business entity is a foreign corporation qualified to transact intrastate business in California, a certificate of satisfaction of the Franchise Tax Board required by Rev.C. 23334 must be filed with the certificate of merger or the agreement of merger. By filing the certificate or agreement of merger, the foreign corporation automatically surrenders its right to transact intrastate business. (*Corp.C. 17552(d).*)

(6) *Effective Date of Merger.* Unless a future effective date or time is provided in the certificate or agreement of merger, a merger is effective on the filing of the certificate or agreement of merger in the office of the Secretary of State. (*Corp.C. 17553(a)*; on evidentiary effect of copy of certificate of merger, see *Corp.C. 17553(b).*)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Filing.* *Corp.C. 17552(e)* was deleted in 2006. (5) *Effect of Filing by Foreign Corporations.* *Corp.C. 17552(d)* was amended in 2006 to delete the requirement of filing a certificate of satisfaction of the Franchise Tax Board.



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2. Merger.

d. Effect.

9 *Witkin Sum. Cal. Law Partn* § 188

[§ 188] Effect.

(1) *Succession.* On a merger of limited liability companies or limited liability companies and other business entities, the separate existence of the disappearing limited liability companies and other business entities ceases and the surviving limited liability company or surviving other business entity, without further act, succeeds to all the rights and property of each of the disappearing entities and is subject as well to their debts and liabilities as if the surviving limited liability company had incurred them. (*Corp.C. 17554(a)*)

(2) *Rights of Creditors.* The rights of creditors and liens on the property of each of the constituent limited liability companies and constituent other business entities are preserved unimpaired and may be enforced against the surviving limited liability company or surviving other business entity as if the underlying debt, liability, or duty had been incurred by the surviving entity. Liens are limited to the property affected immediately prior to the time the merger is effective. (*Corp.C. 17554(b)*.)

(3) *Action or Proceeding by or Against Entity.* An action or proceeding pending by or against a disappearing limited liability company or disappearing other business entity may be prosecuted to judgment, which binds the surviving entity. Alternatively, the surviving entity may be proceeded against or substituted in place of the disappearing limited liability company or other business entity. (*Corp.C. 17554(c)*.)

(4) *Effect on Former Debts of Disappearing Partnership.* The merger provisions (*Corp.C. 17550 et seq.*) do not affect the liability of a general partner of a disappearing partnership for the debts and liabilities of that partnership that existed prior to the effective date of the merger. (*Corp.C. 17554(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Succession.*

(*New*) *Assumption of tax liability:* Following a merger, the surviving limited liability company or other business entity is deemed to have assumed the California tax liability of the disappearing entity and must file the required tax and information returns and pay taxes due. (*Corp.C. 17554.5(a)*, added in 2005.)

If the surviving entity is a domestic limited liability company, domestic corporation, or registered limited liability partnership, or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State must notify the Franchise Tax Board of the merger. (*Corp.C. 17554.5(b)*, added in 2005.)



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2. Merger.

e. Merger of Domestic and Foreign Limited Liability Companies.

9 *Witkin Sum. Cal. Law Partn* § 189

[§ 189] Merger of Domestic and Foreign Limited Liability Companies.

Domestic limited liability companies may merge with foreign limited liability companies or foreign other business entities provided they comply with *Corp.C. 17550* (supra, §185). (*Corp.C. 17555(a)*.) In addition, depending on the nature of the surviving entity, the following rules apply:

(1) If the surviving entity is a domestic limited liability company or a domestic other business entity, merger with respect to that surviving entity and a domestic disappearing limited liability company must conform to the provisions governing the merger of domestic limited liability companies (*Corp.C. 17550 et seq.*). However, if the surviving entity is a foreign limited liability company or a foreign other business entity, the merger may be in accordance with the laws of the state or place of organization of the surviving entity, subject to specified California Corporation Code provisions. (*Corp.C. 17555(b)*.)

(2) If the surviving entity is a domestic limited liability company or domestic other business entity other than a domestic corporation, the certificate of merger is filed according to *Corp.C. 17552(a)*. Subject to *Corp.C. 17553(a)*, the merger is effective on that filing as to each domestic constituent limited liability company and domestic constituent other business entity. (*Corp.C. 17555(c)*.)

(3) If the surviving entity is a domestic corporation, the agreement of merger with attachments is filed according to *Corp.C. 17552(b)*. Subject to *Corp.C. 17553(a)*, the merger is effective on that filing as to each domestic constituent limited liability company and domestic constituent other business entity unless another effective date is provided for under *Corp.C. 1100 et seq.* (*Corp.C. 17555(c)*.)

(4) If the surviving entity is a foreign limited liability company or foreign other business entity, the merger is effective in accordance with the law of the jurisdiction in which the surviving entity is organized, but is effective as to a domestic disappearing limited liability company as of the time of effectiveness in that foreign jurisdiction on the filing in California of a certificate of merger or agreement of merger according to *Corp.C. 17552* (supra, §187). (*Corp.C. 17555(d)*.) In addition, the surviving foreign entity must file the following with the Secretary of State:

(a) An agreement that the entity may be served in California in proceedings (1) for the enforcement of an obligation

of a constituent entity and (2) to enforce the rights of holders of a dissenting interest or dissenting shares in a constituent domestic limited liability company or domestic other business entity. (*Corp.C. 17555(g)(1).*)

(b) An irrevocable appointment of the Secretary of State as its agent for service of process, and an address to which process may be forwarded. (*Corp.C. 17555(g)(2).*)

(c) An agreement to promptly pay a holder of a dissenting interest or dissenting share in a constituent domestic limited liability company or domestic other business entity the amount to which the person is entitled. (*Corp.C. 17555(g)(3).*)

(5) If a merger described in *Corp.C. 17555(c)* or (d) also includes a foreign disappearing limited liability company previously registered for the transaction of intrastate business in California, the filing of the certificate or agreement of merger automatically has the effect of a cancellation of registration for that foreign limited liability company pursuant to *Corp.C. 17456*. (*Corp.C. 17555(e).*)

(6) The provisions of *Corp.C. 17551(b)* (equality of distributions; *supra*, §186) and *Corp.C. 17600 et seq.* (rights of dissenting limited partners; *infra*, §191) apply to the rights of members of constituent limited liability companies that are domestic limited liability companies and of domestic limited liability companies that are parents of foreign constituent limited liability companies. (*Corp.C. 17555(f).*)

SUPPLEMENT: [This section is current through the latest supplement]



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2. Merger.
f. Record Ownership of Real Property.

9 Witkin Sum. Cal. Law Partn § 190

[§ 190] Record Ownership of Real Property.

When the laws of the state or place of organization (including California) of a disappearing limited liability company or disappearing other business entity provide that making and filing an agreement of merger or a certificate of merger vests in the surviving limited liability company or surviving other business entity all the real property of the disappearing entity, filing in a county recorder's office in California where the real property of the disappearing entity is located either (1) a certificate of merger certified by the Secretary of State, or other prescribed certificate, or (2) a copy of the agreement or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, evidences record ownership in the surviving entity of all interest of the disappearing entity in and to the real property. (*Corp.C. 17556.*)

SUPPLEMENT: [This section is current through the latest supplement]



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 3. Dissenting Member's Rights.

9 *Witkin Sum. Cal. Law Partn* § 191

[§ 191] Dissenting Member's Rights.

(1) *Governing Statutes.* *Corp.C. 17600* et seq. govern the rights and privileges of dissenting members in relation to reorganization. Except as noted below, these provisions generally parallel *Corp.C. 15679.1* et seq., governing these rights and privileges for dissenting limited partners. (See *supra*, §116 et seq.)

(2) *Dissenting Interest Defined.* For purposes of *Corp.C. 17600* et seq., a dissenting interest is a membership interest that satisfies all of the following conditions:

(a) The membership interest was outstanding on the date for determining members entitled to vote on the reorganization. (*Corp.C. 17601(b)(1).*)

(b) The membership interest either (1) was not voted in favor of the reorganization, or (2) was voted against the reorganization; provided, however, that *Corp.C. 17601(b)(1)* applies where the approval for the proposed reorganization is sought by written consent rather than at a meeting. (*Corp.C. 17601(b)(2).*)

(c) The member has demanded that the limited liability company purchase the member's interest at its fair market value in accordance with *Corp.C. 17602* (notice procedures required when member has right to require purchase of interests for cash). (*Corp.C. 17601(b)(3).*)

(d) The member submits evidence of the interest for endorsement, if applicable, in accordance with *Corp.C. 17603*. (*Corp.C. 17601(b)(4).*)

(3) *Application of Statute.* *Corp.C. 17600* et seq. applies to (a) domestic limited liability companies and (b) foreign limited liability companies if members holding more than 50% of the voting interests reside in California. (*Corp.C. 17612(a).*)

Corp.C. 17600 et seq. do not apply to membership interests governed by operating agreements the terms and provisions of which specifically set forth the amount to be paid in respect of those interests in the event of a reorganization. (*Corp.C. 17612(b).*) Nor do the provisions apply to a limited liability company with 35 or fewer members if all the members have waived the application of the statutory provisions in writing, whether in an operating agreement or otherwise. However, if, at the time of reorganization, the company had more than 35 members, the waiver

will be ineffective as to that reorganization. (*Corp.C. 17612(c).*)

(4) *Right of Member To Attack Reorganization.* A member having a right under *Corp.C. 17600* to demand payment of cash for the member's interest has no right to attack the validity of the reorganization, or to have the reorganization set aside or rescinded, except (a) in an action to test whether the vote or consent of members required to authorize or approve the reorganization was obtained in accordance with the operating agreement, or if there is no written operating agreement or (b) when the limited liability company action is fraudulent with respect to the complaining member. (*Corp.C. 17613(a).*)

SUPPLEMENT: [This section is current through the latest supplement]