

INTERIM REPORT

of

RE-RULPA DRAFTING COMMITTEE

of

THE FLORIDA BAR TAX SECTION

July 4, 2003

**The Florida Bar Tax Section Organizational Meeting
Amelia Island, Florida**

TABLE OF CONTENTS

REPORT BY COMMITTEE CHAIRMAN (includes NCCUSL Prefatory Note and a comparison chart (RE-RULPA against RULPA) 1

APPENDICES TO RE-RULPA COMMITTEE REPORT

RE-RULPA COMMITTEE MEMBERS and SUB-COMMITTEES Error! Bookmark not defined.

SUB-COMMITTEE I 4

FILING, ADMINISTRATION AND TRANSITIONAL MATTERS -- ARTICLE 1 OF RE-RULPA..... 5

ANALYSIS FROM FLORIDA DEPARTMENT OF STATE 11

PROPOSED LEGISLATION..... 15

SUB-COMMITTEE II 17

MEMORANDUM from Committee Chair Re: Organizational Meeting 18

RE RULPA ARTICLE 3 – SUMMARY OF COMPARISON CHART..... 20

RE-RULPA ARTICLE 4 SUMMARY OF COMPARISON CHART 32

RE-RULPA ARTICLE 5 COMPARISON CHART 35

RE-RULPA ARTICLE 5 SUMMARY OF COMPARISON CHART 44

SUB-COMMITTEE III 51

ANALYSIS OF ARTICLE 6..... 52

ANALYSIS OF ARTICLE 7 62

ANALYSIS OF ARTICLE 8..... 67

MEMORANDUM RE-RULPA ARTICLE 6 SUMMARY OF COMPARISON CHART..... 85

MEMORANDUM RE-RULPA ARTICLE 7 SUMMARY OF COMPARISON CHART.....	89
MEMORANDUM RE-RULPA ARTICLE 8 SUMMARY OF COMPARISON CHART.....	91
<u>SECTION 601</u> : DISSOCIATION AS LIMITED PARTNER.....	99
<u>SECTION 602</u> : EFFECT OF DISSOCIATION AS LIMITED PARTNER.....	101
<u>SECTION 603</u> : DISSOCIATION AS GENERAL PARTNER	102
<u>SECTION 604</u> : PERSON’S POWER TO DISSOCIATE AS A GENERAL PARTNER; WRONGFUL DISSOCIATION	104
<u>SECTION 605</u> : EFFECT OF DISSOCIATION AS GENERAL PARTNER.....	105
<u>SECTION 606</u> : POWER TO BIND AND LIABILITY TO LIMITED PARTNERSHIP BEFORE DISSOLUTION OF PARTNERSHIP OF PERSON DISSOCIATED AS GENERAL PARTNER	106
<u>SECTION 607</u> : LIABILITY TO OTHER PERSONS OF PERSON DISSOCIATED AS GENERAL PARTNER	107
<u>SUB-COMMITTEE IV</u>	121
MERGERS AND CONVERSIONS (Article 11 of RE-RULPA)	122
ACTIONS BY PARTNERS (Article 10 of RE-RULPA.....	130
RE-RULPA TASK FORCE MERGERS AND CONVERSIONS GROUP (ARTICLE 11) ISSUES.....	131
EFFECTS OF THE ULPA’S PROPOSED ADOPTION: A LITIGATOR’S PERSPECTIVE	137
<u>DELAWARE COMPARISON</u>	139
ANALYSIS OF THE UNIFORM LIMITED PARTNERSHIP ACT (2001) IN COMPARISON WITH THE DELAWARE LIMITED PARTNERSHIPS LAW AND DELAWARE REVISED UNIFORM PARTNERSHIP ACT.....	140
PROVISIONS OF RE-RULPA, DLP AND DRUPA MATCHED.....	145

INTERIM REPORT
BY
RE-RULPA DRAFTING COMMITTEE
OF THE FLORIDA BAR TAX SECTION

Reported by Gregory M. Marks, Chairman

The Committee commenced its meetings in August 2002 with the hope that it could draft proposed legislation consistent with NCCUSL's final version of the "Re-revised" Uniform Limited Partnership Act (2001) (RE-RULPA). Legislative sponsors and lobbyists were contacted and were ready to help the Committee advance this legislative project late last year. However, it later became apparent that the Legislature was consumed with other pressing matters that would likely require the RE-RULPA project to take a back seat and the Committee believed that it should spend more time carefully reviewing, evaluating and analyzing the new law, given that there were no circumstances justifying more urgent action on the part of Committee. It was decided that the final work product would be more sound and thorough if the Committee proceeded more slowly and deliberately, so at that time we discontinued our periodic "at-large" teleconferences and the members of each Sub-committee then worked together for the purpose of preparing the comparisons, summaries and reports attached to this Report as appendices.

The more relaxed time frame also allowed us to work out some organizational issues at the Sub-committee level. The communication flow between the Committee and each Sub-committee and among the Sub-committees seems to be working better at this time, but there is room for improvement. As in any committee process, there are those members who quickly assumed leadership roles or who were otherwise very proactive and involved on an ongoing basis, others who participate "when they can" and those who are "along for the ride." During the next few weeks, we will determine how to best utilize the skills and experience of each of our Committee members, and we can assure that each of us is making a meaningful contribution. If

a member cannot participate on an active basis, but otherwise can provide valuable insight, experience or other resources, then we will determine how the Committee can take advantage of the same while accommodating the other commitments of the member in question.

Attached to this Report (as the first appendix) is a list of the names of Committee members (grouped by Subcommittee) and the Committee's vice-chairs and the Sub-committee reporters. That appendix also describes the primary areas of responsibility that were allocated to each Sub-committee (the responsibility areas are essentially based upon the twelve (12) "articles" contained in the uniform act). Each of the Sub-committees was responsible for preparing a comparison (a chart or matrix) detailing the differences between Florida's existing partnership laws and corresponding provisions of RE-RULPA. Each Sub-committee was also invited (time and organizational factors permitting) to submit to the Committee an analysis of significant issues presented by those differences, along with preliminary thoughts or alternate approaches as to how they might be reconciled or otherwise addressed. These materials, if available, have been grouped by Sub-committee and are also attached to this Report as appendices (following the comparison charts of that Sub-committee). The Department of State was also kind enough to provide its analysis and comments to date, and these materials are contained under the "Sub-committee I" materials in the appendices. The appendices also contain a generalized comparison between the Delaware partnership statutes and the uniform act (which was prepared by Svetlana Melnick, a summer associate working in the New York offices of Greenberg Traurig). This comparison was quickly prepared only recently and we have not had an opportunity to review it in detail. As in the case of other updates to our business organizational laws, a knowledge of the Delaware counterparts will be helpful in making certain recommendations about comparable provisions in the new Florida partnership law.

To date we are aware of only two other states that have actively pursued the adoption of RE-RULPA (or a modified version thereof) at the legislative level: Hawaii and Kentucky. In May of this year a final version of the new law was enrolled and sent to the Hawaii Governor for signature. We understand that under Hawaiian law the enrolled bill automatically became law about a week ago because the Governor did not exercise her veto. The new Hawaii Uniform Limited Partnership Act will become effective July 1, 2004. When we last checked the status of the Kentucky bill it was still in the House Judiciary Committee and not likely to be passed

into law this year (the Kentucky legislative session just ended). Some other states have organized task forces like our own (Delaware, Minnesota, Iowa and Illinois), but according to a NCCUSL representative none of them will be in a position to adopt the new law until next year at the earliest. Therefore, we are hopeful that Florida will still have the distinction of being the first large state to adopt the new law. Our goal is to have the final draft of the new law in the hands of our legislative sponsors and lobbyists in time for its consideration and passage during the next legislative session. To get to that stage will require a lot of hard work, diligence and dedication on the part of all Committee members during the upcoming weeks and months.

While we are still in the process of identifying those issues that will require most of the Committee's attention in terms of reconciling old and new law differences (some of which require policy choices, or which because of the complexity of the competing views that need to be considered in making a final recommendation, will require time for meaningful analysis and debate), there are several issues that are evident at this time which the Committee should start to address and resolve as soon as possible. Our expectation is that after all Committee members have been provided with a reasonable opportunity to review the Sub-committee reports prepared to date (all of which are attached to this report), we will soon recommence our regular "at-large" sessions for the purpose of addressing these issues, agreeing upon language for the legislative bill and assigning drafting responsibilities to Committee members. These organizational steps are discussed more below.

We will hereafter refer to the newly proposed law as "RE-FRULPA" --- so that it is consistent with the titling tradition started by FRULPA and FRUPA, i.e., the Florida Revised Uniform Limited Partnership Act (1986) and Florida Revised Uniform Partnership Act (1995), respectively. (The credit for this new acronym must actually go to Richard Comiter, who gave the Chairman the idea a few weeks ago).

One of the most important issues confronting the Committee involves the "ripple effect" this new law will have on other Florida statutes. Since one of the most laudable objectives of the uniform act is to make the limited partnership act in each state a "stand-alone" statute that no longer needs to be linked to RUPA (as is currently the case with our FRULPA and FRUPA), we need to consider how closely the "general partner" provisions in FRUPA and RE-FRULPA

should parallel each other going forward or otherwise be “harmonized”. For example, to what extent should the non-waivable fiduciary duties (and permissible parameters for defining such duties in the partnership agreement) be the same in each statute? Likewise, should the disassociation rules for general partners be the same under each law? When comparing the rights and remedies of partners under the two statutes should the limited involvement (theoretically) of limited partners have an impact on how closely the “general partner” provisions in each statute track each other? Other areas that would seemingly require “symmetry” are voting rights of general partners, creditors’ remedies (and limits upon same), default rules for sharing of profits and losses, duties of general partner, partnership interest transfers and the provisions governing mergers and conversions.

For the most part, the prospect for disharmony under the existing partnership statutes is automatically alleviated (at least in theory) because the law governing general partners is contained in only one location and then “linked” to the limited partnership statute. Going forward, however, our analysis in these areas will always involve the inquiry of “why aren’t we also changing the FRUPA provision at the same time?” This also brings up another important focus of the Committee, which is the extent to which we want RE-FRULPA to be harmonized with the LLC and corporation statutes in Florida. Unless there are important policy issues at play or significant differences as a matter of law (and/or unless our objective is to foster meaningful “choices” in the area of entity selection), it would seem sensible to recommend that Florida’s business organization statutes be consistent with one another (or at least not significantly inconsistent). To that end, one of the “off-shoots” of our Committee’s project could be making recommendations for changes to the Florida LLC Act to the extent there are significant differences between it and the new partnership laws that cannot be rationalized as a matter of law or from a policy standpoint.

As the Sub-committees prepared their comparison charts and analyses during the last few months, several important topics and issues emerged, raising questions that will require discussion and further analysis at the Committee level. These topics are for the most part identified in the materials attached as appendices. Some of the more interesting questions and issues follow:

?? What are the over-riding principles and objectives that should guide our Committee in making recommendations on certain issues? Should we follow a more paternalistic or protective approach versus a “user beware” approach? Is it our mission to make the law “idiot proof” or can we assume that experienced and knowledgeable persons will be the most frequent “users” of RE-FRULPA? In other words, do we want the default features of RE-FRULPA to provide a “basic partnership relationship” that works in most cases (and which would protect the unwary in many cases) or do we want RE-FRULPA to be a source of “building blocks” navigable only by experienced partnership law and tax proficient professionals? Consider, for example, the NCCUSL commentary regarding the reason why there are no default rules for allocating profits and losses in the new law; their position is that such provisions are normally governed by federal tax law principles concerning partnership allocations (the inference is that “the tax lawyers will draft their own allocations, so why should we bother with a default rule”). Professor Don Weidner’s 1995 article (Donald J. Weidner, *RUPA and the Fiduciary Duty: The Texture of Relationship*, 58 *Law & Contemp. Prob.*, 81 (Vol. 58, No. 2)(1995)), does an excellent job of highlighting the competing views and policy choices when drafting partnership statutes.

?? Determining what should be included in the list of “non-waivable” statutory provisions, i.e., those provisions that will be “automatically implied” to exist in the partnership agreement, irrespective of any written agreement to the contrary. Also, to what extent should the parties be able to agree upon the parameters or standards that would control how these non-waivable provisions will govern their situation(or to agree upon safe-harbor definitions that would be dispositive).

?? Examining the application of fiduciary duties of general partners (that is, duties of care and loyalty) and the duties of good faith and fair dealing (that apply to limited partners as well). Should these be the same as for general partners in a general partnership? Should a limited partner have the same fiduciary duties when involved in governance or

when exercising a controlling voting right? Or when the limited partner is directly involved in a management activity (which in itself will no longer expose the limited partner to loss of limited liability under the new law). To what extent should these duties be harmonious with their counterparts under the LLC and corporation statutes?

?? Considering the effect of the Uniform Entity Transactions Act (currently being drafted by NCCUSL and formerly called the Uniform Mergers and Conversions Act) upon the merger and conversion provisions contained in RE-RULPA. NCCUSL contemplates that this new “junction box” statute could be enacted as an omnibus statute that overrides all of the business entity statutes in the state of adoption, but also mentions that it could be incorporated into existing business entity statutes “piecemeal” as well. We need to determine to what extent, if any, we should anticipate the adoption of this additional uniform law at a later date (or other “junction-box” alternatives, including those currently being considered by ABA task forces).

?? Determining the best approach for selecting names for new limited partnerships, including what type of “confusingly-similar” or other name-differentiation standards should apply. The Department of State has some definitive thoughts on this issue (see its analysis in appendices). We also need to integrate the RE-FRULPA “available name” provisions with the other business entity statutes, as well as the name bases in which the Department of State conducts its searches when new partnerships and other entities are organized at the Department of State level.

?? Identifying those default rules that will facilitate common estate planning goals, taking into account, among other issues, the following factors:

- Statutory provisions affecting the valuation of partnership interests upon certain events (e.g., dissolution caused by death or withdrawal, and disassociation events)

- IRC Chapter 14 implications (lapsing rights, applicable restriction and valuation discounts)
- Availability of judicial dissolution remedy (considered non-waivable under new uniform act)
- Non-waivable fiduciary duties and their effect on the “retained interest” rules under IRC 2036 et seq

These estate planning issues are very important. For that reason a separate “Estate Planning Issues” Sub-committee has recently been established to make sure that these and related subjects receive the careful analysis and attention they deserve.

?? RE-RULPA does not provide default rules for allocations of profits and losses (only distributions). Our current partnership law does so on the basis of unreturned contributions. While the new act addresses distribution allocations, it does so on the basis of contributions alone (whether returned or unreturned). Is there any reason why the rules for allocating distributions and profits and losses should be any different for general or limited partnerships? (Or for LLCs for that matter, which are typically accounted for as partnerships?)

?? The rights, powers and duties of disassociated partners need to be reviewed at length. As noted above, we need to determine whether there is any rationale for treating general partners in a limited partnership differently than their counterparts in a general partnership. The same can be said for the rights of creditors and other third parties concerning disassociated general partners. (Whether a general partnership is registered with the Department of State should affect this analysis).

?? To what extent should creditors' claims be foreclosed by using the new creditors' notification procedures of RE-RULPA? There is no corresponding provision in existing Florida law for partnerships or LLCs. NCCUSL is essentially following the approach it adopted in its uniform LLC and corporation acts.

?? While RE-FRULPA would be de-linked from FRUPA, to what extent should general partnership law principles still "fill the gaps?" Also, to what extent should the decisional law applicable to limited partnerships and general partnerships before adoption of RE-FRULPA continue to apply? While this is ultimately a question best resolved by the courts, should the new statutes contain any principles of construction one way or another?

?? RE-RULPA requires in many places the approval of partners to validate various actions. We need to determine the appropriate consent and voting thresholds that should apply on a default basis. This will apply to both general partner decisions and limited partner voting and approval rights. If a majority threshold applies, should it be on a per capita or percentage of interest basis? If a percentage rule applies, should it be based upon original or unreturned capital, or upon share of profits? What kinds of actions, if any, are so important that a super-majority or unanimity rule should apply by default? Should voting thresholds depend upon whether the action is deemed outside of the ordinary course of business (as is the case under the uniform act)? If so, how would such an amorphous standard be applied in practice?

?? What default and what "non-waivable" rules should apply to information requests, standards for denial of access, rights of successors and former partners to information, and time periods for responding to such requests? Likewise, to what extent should general partners have unilateral disclosure obligations with respect to their general duty to keep other partners reasonably informed? The uniform act's non-waivable rules require that this "affirmative duty" not be unreasonably restricted. Should this duty be

narrowly or broadly construed and should RE-FRULPA contain objective standards that could be helpful to general partners and the drafters of partnership agreements?

?? Should partners in a merging limited partnership have appraisal and dissenter remedies?

While existing Florida law contains such rights, the new act does not. contain any such rights. If these rights should extend to merger situations, should they also be granted to partners of a partnership involved in a conversion transaction, where the effect can be just the same to the partners “squeezed out” or who are required to accept an interest in an entity very different than the one surrendered in the transaction? This is another good example where “statute harmonization” concerns require us to compare how shareholders in a corporation or members of an LLC are treated under the same circumstances. This is also an area where the default voting thresholds are important considerations (as well as whether such thresholds should be non-waivable).

?? RE-RULPA has essentially removed all of the “in writing” requirements of the old law.

This change, along with the new “record” provisions of the uniform act need to be fully considered. These changes are intended to bring the traditional “in writing” (and Statute of Fraud) principles into the “technological age” where commerce occurs via email, phone mail and other “paperless” transmissions. Note that the new act even eliminates the requirement that capital contribution obligations be in writing (NCCUSL believes that it is sufficient if such an obligation is enforceable --- apparently promissory estoppel and similar judicial principles would enter into this determination). Given the general shift away from written documentation rules and the new and expansive definition of “record” should there be a “writing” requirement for certain fundamental matters (such as contribution obligations, waivers or rights or remedies, certain consents, etc.)?

?? RE-RULPA contains elaborate provisions concerning how the new law will apply to existing partnerships and legal relationships and the effect of prior law. Making a recommendation regarding the approach that RE-FRULPA should take with respect to

these matters will require us to consider the rights and obligations of partners and third parties under existing law and how to best address these existing relationships from a policy and “least disruption” standpoint. As a practical matter, the approach in RE-RULPA is not significantly different than that taken in FRULPA and FRUPA and we should be able to rely in large part on the historical approaches taken in Florida in these areas.

The foregoing are only some of those areas that require careful consideration and analysis, and should not be viewed as an exhaustive list of those matters that will receive the most attention of the Committee in the weeks and months ahead. In order to provide a “thumbnail” summary of many of the more important RE-RULPA provisions and how they compare with the prior uniform limited partnership act (RULPA), we have inserted at the end of this report (prior to the Appendices section) NCCUSL’s “Prefatory Note” to RE-RULPA.

The next at-large meeting of the Committee will occur in the first week of August. Prior to that date, all Committee members will be required to review this Report and the appendices hereto in detail, and to engage in any other research, analyses or investigations that they deem helpful to the Committee’s objectives. Prior to that date the Committee Chair will have one or two teleconferences with the Sub-committee Chairs to go over organizational matters and to review the preliminary reports contained in the appendices. The primary goal of those teleconferences will be to refine and supplement the comparisons and preliminary reports that are attached as appendices to this Report and to determine the optimal approach for debating/resolving open issues and then drafting the legislative bill containing RE-FRULPA. We will also at that time more formally organize and enlist members for the two new Sub-committees (Estate Planning Issues and Model Family Limited Partnership Agreement Project).

The full text of RE-RULPA can be downloaded from the NCCUSL website (www.NCCUSL.org).

The “Prefatory Note” of NCCUSL contained in the final version of RE-RULPA is set forth below.

[The following has been excerpted from the final version of RE-RULPA (2001) available at the NCCUSL website]

UNIFORM LIMITED PARTNERSHIP ACT (2001)

PREFATORY NOTE

The Act's Overall Approach

The new Limited Partnership Act is a "stand alone" act, "de-linked" from both the original general partnership act ("UPA") and the Revised Uniform Partnership Act ("RUPA"). To be able to stand alone, the Limited Partnership incorporates many provisions from RUPA and some from the Uniform Limited Liability Company Act ("ULLCA"). As a result, the new Act is far longer and more complex than its immediate predecessor, the Revised Uniform Limited Partnership Act ("RULPA").

The new Act has been drafted for a world in which limited liability partnerships and limited liability companies can meet many of the needs formerly met by limited partnerships. This Act therefore targets two types of enterprises that seem largely beyond the scope of LLPs and LLCs: (i) sophisticated, manager-entrenched commercial deals whose participants commit for the long term, and (ii) estate planning arrangements (family limited partnerships). This Act accordingly assumes that, more often than not, people utilizing it will want:

- strong centralized management, strongly entrenched, and
- passive investors with little control over or right to exit the entity

The Act's rules, and particularly its default rules, have been designed to reflect these assumptions.

The Decision to "De-Link" and Create a Stand Alone Act

Unlike this Act, RULPA is not a stand alone statute. RULPA was drafted to rest on and link to the UPA. RULPA Section 1105 states that "In any case not provided for in this [Act] the provisions of the Uniform Partnership Act govern." UPA Section 6(2) in turn provides that "this Act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith." More particularly, RULPA Section 403 defines the rights, powers, restrictions and liabilities of a "general partner of a limited partnership" by equating them to the rights, powers, restrictions and liabilities of "a partner in a partnership without limited partners."

This arrangement has not been completely satisfactory, because the consequences of linkage are not always clear. *See, e.g., Frye v. Manacare Ltd.*, 431 So.2d 181, 183-84 (Fla. Dist. Ct. App. 1983) (applying UPA Section 42 in favor of a limited partner), *Porter v. Barnhouse*, 354 N.W.2d 227, 232-33 (Iowa 1984) (declining to apply UPA Section 42 in favor of a limited partner) and *Baltzell-Wolfe Agencies, Inc. v. Car Wash Investments No. 1, Ltd.*, 389 N.E.2d 517, 518-20 (Ohio App. 1978) (holding that neither the specific provisions of the general partnership statute nor those of the limited partnership statute determined the liability of a person who had withdrawn as general partner of a limited partnership). Moreover, in some instances the "not inconsistent" rules of the UPA can be inappropriate for the fundamentally different relations involved in a limited partnership.

In any event, the promulgation of RUPA unsettled matters. RUPA differs substantially from the UPA, and the drafters of RUPA expressly declined to decide whether RUPA provides a suitable base and link for the limited partnership statute. According to RUPA's Prefatory Note:

Partnership law no longer governs limited partnerships pursuant to the provisions of RUPA itself. First, limited partnerships are not "partnerships" within the RUPA definition. Second, UPA Section 6(2), which provides that the UPA governs limited partnerships in cases not provided for in the Uniform Limited Partnership Act (1976) (1985) ("RULPA") has been deleted. No substantive change in result is intended, however. Section 1105 of RULPA already provides that the UPA governs in any case not provided for in RULPA, and thus the express linkage in RUPA is unnecessary. Structurally, it is more appropriately left to RULPA to determine the applicability of RUPA to limited partnerships. It is contemplated that the Conference will review the linkage question carefully, although no changes in RULPA may be necessary despite the many changes in RUPA.

The linkage question was the first major issue considered and decided by this Act's Drafting Committee. Since the Conference has recommended the repeal of the UPA, it made no sense to recommend retaining the UPA as the base and link for a revised or new limited partnership act. The Drafting Committee therefore had to choose between recommending linkage to the new general partnership act (i.e., RUPA) or recommending de-linking and a stand alone act.

The Committee saw several substantial advantages to de-linking. A stand alone statute would:

- be more convenient, providing a single, self-contained source of statutory authority for issues pertaining to limited partnerships;
- eliminate confusion as to which issues were solely subject to the limited partnership act and which required reference (i.e., linkage) to the general partnership act; and
- rationalize future case law, by ending the automatic link between the cases concerning partners in a general partnership and issues pertaining to general partners in a limited partnership.

Thus, a stand alone act seemed likely to promote efficiency, clarity, and coherence in the law of limited partnerships.

In contrast, recommending linkage would have required the Drafting Committee to (1) consider each provision of RUPA and determine whether the provision addressed a matter provided for in RULPA; (2) for each RUPA provision which addressed a matter not provided for in RULPA, determine whether the provision stated an appropriate rule for limited partnerships; and (3) for each matter addressed both by RUPA and RULPA, determine whether RUPA or RULPA stated the better rule for limited partnerships.

That approach was unsatisfactory for at least two reasons. No matter how exhaustive the Drafting Committee's analysis might be, the Committee could not guarantee that courts and practitioners would reach the same conclusions. Therefore, in at least some situations linkage would have produced ambiguity. In addition, the Drafting Committee could not guarantee that all currently

appropriate links would remain appropriate as courts begin to apply and interpret RUPA. Even if the Committee recommended linkage, RUPA was destined to be interpreted primarily in the context of general partnerships. Those interpretations might not make sense for limited partnership law, because the modern limited partnership involves fundamentally different relations than those involved in "the small, often informal, partnership" that is "[t]he primary focus of RUPA." RUPA, Prefatory Note. The Drafting Committee therefore decided to draft and recommend a stand alone act.

Availability of LLLP Status

Following the example of a growing number of States, this Act provides for limited liability limited partnerships. In a limited liability limited partnership ("LLLP"), no partner - whether general or limited - is liable on account of partner status for the limited partnership's obligations. Both general and limited partners benefit from a full, status-based liability shield that is equivalent to the shield enjoyed by corporate shareholders, LLC members, and partners in an LLP. This Act is designed to serve preexisting limited partnerships as well as limited partnerships formed after the Act's enactment. Most of those preexisting limited partnership will not be LLLPs, and accordingly the Act does not prefer or presume LLLP status. Instead, the Act makes LLLP status available through a simple statement in the certificate of limited partnership. See Sections 102(9), 201(a)(4) and 404(c).

Liability Shield for Limited Partners

RULPA provides only a restricted liability shield for limited partners. The shield is at risk for any limited partner who "participates in the control of the business." RULPA Section 303(a). Although this "control rule" is subject to a lengthy list of safe harbors, RULPA Section 303(b), in a world with LLPs, LLCs and, most importantly, LLLPs, the rule is an anachronism. This Act therefore eliminates the control rule and provides a full, status-based shield against limited partner liability for entity obligations. The shield applies whether or not the limited partnership is an LLLP. See Section 303.

Transition Issues

Following RUPA's example, this Act provides (i) an effective date, after which all newly formed limited partnerships are subject to this Act; (ii) an optional period, during which limited partnerships formed under a predecessor statute may elect to become subject to this Act; and (iii) a mandatory date, on which all preexisting limited partnerships become subject to this Act by operation of law. A few provisions of this Act differ so substantially from prior law that they should not apply automatically to a preexisting limited partnership. Section 1206(c) lists these provisions and states that each remains inapplicable to a preexisting limited partnership, unless the limited partnership elects for the provision to apply.

Comparison of RULPA and this Act

The following table compares some of the major characteristics of RULPA and this Act. In most instances, the rules involved are "default" rules - i.e., subject to change by the partnership agreement.

Characteristic	RULPA	this Act
relationship to general partnership act	linked, Sections 1105, 403; UPA Section 6(2)	de-linked (but many RUPA provisions incorporated)

permitted purposes	subject to any specified exceptions, "any business that a partnership without limited partners may carry on," Section 106	any lawful purpose, Section 104(b)
constructive notice via publicly filed documents	only that limited partnership exists and that designated general partners are general partners, Section 208	RULPA constructive notice provisions carried forward, Section 103(c), plus constructive notice, 90 days after appropriate filing, of: general partner dissociation and of limited partnership dissolution, termination, merger and conversion, Section 103(d)
duration	specified in certificate of limited partnership, Section 201(a)(4)	perpetual, Section 104(c); subject to change in partnership agreement
use of limited partner name in entity name	prohibited, except in unusual circumstances, Section 102(2)	permitted, Section 108(a)
annual report	none	required, Section 210
limited partner liability for entity debts	none unless limited partner "participates in the control of the business" and person "transact[s] business with the limited partnership reasonably believing . . . that the limited partner is a general partner," Section 303(a); safe harbor lists many activities that do not constitute participating in the control of the business, Section 303(b)	none, regardless of whether the limited partnership is an LLLP, "even if the limited partner participates in the management and control of the limited partnership," Section 303
limited partner duties	none specified	no fiduciary duties "solely by reason of being a limited partner," Section 305(a); each limited partner is obliged to "discharge duties . . . and exercise rights consistently with the obligation of good faith and fair dealing," Section 305(b)
partner access to information - required records/ information	all partners have right of access; no requirement of good cause; Act does not state whether partnership agreement may limit access; Sections 105(b) and 305(1)	list of required information expanded slightly; Act expressly states that partner does not have to show good cause; Sections 304(a), 407(a); however, the partnership agreement may set reasonable restrictions on access to and use of required information, Section 110(b)(4), and limited partnership may impose reasonable restrictions on the use of information, Sections 304(g) and 407(f)
partner access to information - other information	limited partners have the right to obtain other relevant information "upon reasonable demand," Section 305(2); general partner rights linked to general partnership act, Section 403	for limited partners, RULPA approach essentially carried forward, with procedures and standards for making a reasonable demand stated in greater detail, plus requirement that limited partnership supply known material information when limited partner consent sought, Section 304; general partner access rights made explicit, following ULLCA and RUPA, including obligation of limited partnership and general partners to volunteer certain information, Section 407; access rights provided for former partners, Sections 304 and 407
general partner liability for entity debts	complete, automatic and formally inescapable, Section 403(b) (n.b. - in practice, most modern limited partnerships have used a general partner that has its own liability shield; e.g., a corporation or limited liability company)	LLLP status available via a simple statement in the certificate of limited partnership, Sections 102(9), 201(a)(4); LLLP status provides a full liability shield to all general partners, Section 404(c); if the limited partnership is not an LLLP, general partners are liable just as under RULPA, Section 404(a)
general partner duties	linked to duties of partners in a general partnership, Section 403	RUPA general partner duties imported, Section 408; general partner's non-compete duty continues during winding up, Section 408(b)(3)
allocation of profits, losses and distributions	provides separately for sharing of profits and losses, Section 503, and for sharing of distributions, Section 504; allocates each according to	eliminates as unnecessary the allocation rule for profits and losses; allocates distributions according to contributions made, Section 503 (n.b. - in the default

	contributions made and not returned	mode, the Act's formulation produces the same result as RULPA formulation)
partner liability for distributions	recapture liability if distribution involved "the return of . . . contribution"; one year recapture liability if distribution rightful, Section 608(a); six year recapture liability if wrongful, Section 608(b)	following ULLCA Sections 406 and 407, the Act adopts the RMBCA approach to improper distributions, Sections 508 and 509
limited partner voluntary dissociation	theoretically, limited partner may withdraw on six months notice unless partnership agreement specifies a term for the limited partnership or withdrawal events for limited partner, Section 603; practically, virtually every partnership agreement specifies a term, thereby eliminating the right to withdraw (n.b. - due to estate planning concerns, several States have amended RULPA to prohibit limited partner withdrawal unless otherwise provided in the partnership agreement)	no "right to dissociate as a limited partner before the termination of the limited partnership," Section 601(a); power to dissociate expressly recognized, Section 601(b)(1), but can be eliminated by the partnership agreement
limited partner involuntary dissociation	not addressed	lengthy list of causes, Section 601(b), taken with some modification from RUPA
limited partner dissociation - payout	"fair value . . . based upon [the partner's] right to share in distributions," Section 604	no payout; person becomes transferee of its own transferable interest, Section 602(3)
general partner voluntary dissociation	right exists unless otherwise provided in partnership agreement, Section 602; power exists regardless of partnership agreement, Section 602	RULPA rule carried forward, although phrased differently, Section 604(a); dissociation before termination of the limited partnership is defined as wrongful, Section 604(b)(2)
general partner involuntary dissociation	Section 402 lists causes	following RUPA, Section 603 expands the list of causes, including expulsion by court order, Section 603(5)
general partner dissociation - payout	"fair value . . . based upon [the partner's] right to share in distributions," Section 604, subject to offset for damages caused by wrongful withdrawal, Section 602	no payout; person becomes transferee of its own transferable interest, Section 605(5)
transfer of partner interest - nomenclature	"Assignment of Partnership Interest," Section 702	"Transfer of Partner's Transferable Interest," Section 702
transfer of partner interest - substance	economic rights fully transferable, but management rights and partner status are not transferable, Section 702	same rule, but Sections 701 and 702 follow RUPA's more detailed and less oblique formulation
rights of creditor of partner	limited to charging order, Section 703	essentially the same rule, but, following RUPA and ULLCA, the Act has a more elaborate provision that expressly extends to creditors of transferees, Section 703
dissolution by partner consent	requires unanimous written consent, Section 801(3)	requires 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," Section 801(2)
dissolution following dissociation of a general partner	occurs automatically unless all partners agree to continue the business and, if there is no remaining general partner, to appoint a replacement general partner, Section 801(4)	if at least one general partner remains, no dissolution unless "within 90 days after the dissociation . . . partners owning a majority of the rights to receive distributions as partners" consent to dissolve the limited partnership; Section 801(3)(A); if no general partner remains, dissolution occurs upon the passage of 90 days after the dissociation, unless before that deadline limited partners owning a majority of the

		rights to receive distributions owned by limited partners consent to continue the business and admit at least one new general partner and a new general partner is admitted, Section 801(3)(B)
filings related to entity termination	certificate of limited partnership to be cancelled when limited partnership dissolves and begins winding up, Section 203	limited partnership may amend certificate to indicate dissolution, Section 803(b)(1), and may file statement of termination indicating that winding up has been completed and the limited partnership is terminated, Section 203
procedures for barring claims against dissolved limited partnership	none	following ULLCA Sections 807 and 808, the Act adopts the RMBCA approach providing for giving notice and barring claims, Sections 806 and 807
conversions and mergers	no provision	Article 11 permits conversions to and from and mergers with any "organization," defined as "a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other entity having a governing statute . . . [including] domestic and foreign entities regardless of whether organized for profit." Section 1101(8)
writing requirements	some provisions pertain only to written understandings; <i>see, e.g.</i> , Sections 401 (partnership agreement may "provide in writing for the admission of additional general partners"; such admission also permitted "with the written consent of all partners"), 502(a) (limited partner's promise to contribute "is not enforceable unless set out in a writing signed by the limited partner"), 801(2) and (3) (dissolution occurs "upon the happening of events specified in writing in the partnership agreement" and upon "written consent of all partners"), 801(4) (dissolution avoided following withdrawal of a general partner if "all partners agree in writing")	removes virtually all writing requirements; but does require that certain information be maintained in record form, Section 111

RE-FRULPA COMMITTEE MEMBERS
And
SUB-COMMITTEE MEMBERS

Chair

Gregory Marks

Vice Chairs

Scott Austin
Richie Comiter
Cristin Conley
Lou Conti
Nick Lioce
Joel Maser
Brian Sparks
Guy Whitesman

I --- Department of State; Transitional and Implementation Matters
Articles 1, 2, 9 and part of 12

Scott Austin – Reporter
Burt Bruton
Jay Kassees/Dave Mann (Florida Department of State)
Greg Marks
Ed Sawyer

II ---General Partner Rights and Duties; LP Rights; and Operations
Articles 3, 4 and 5

Nick Lioce – Reporter
Jim Barrett
Alan Baseman
Richie Comiter
Alan Daniels
Joe Gomez
Rick Josepher
Mike Kosnitzky
Elliott Manning
Brian Sparks
Don Weidner

III --- Disassociation, Transfers and Dissolution
Articles 6, 7 and 8 and parts of 12

Joel Maser – Reporter
Scott Austin
Alan Baseman
Mark Hasner
Nick Lioce
John Macdonald
Elliott Manning
Mark Mohler
Marshall Pasternack
Brian Sparks

IV --- Conversions and Mergers
Articles 10 and 11

Cristin Conley – Reporter
Burt Bruton
Lou Conti
Jay Kassees
Greg Marks
Mark Mohler

V --- Estate Planning Issues

Brian Sparks – Reporter
Richie Comiter
Mark Dahle
David Dryer
George Hartz
John Hough
Lester Law
Frank Pilotte
Scott Tufts
Tom Wells
Guy Whitesman

VI --- Model Family Limited Partnership Agreement Project

Guy Whitesman - Reporter
[Participating members in Subcommittees I - V]

Sub-Committee I

FILING, ADMINISTRATION AND TRANSITIONAL MATTERS

ARTICLE 1 OF RE-RULPA

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
The following are contained in FRULPA:	
<p>620.101 - Title ?? Florida Revised Uniform Limited Partnership Act.</p>	<p>Section 101 - Title ?? Uniform Limited Partnership Act LP ?? Considering this is revision of our revised Act should we delete Revised to be consistent with RE-RULPA and use its current title. ?? RE-RULPA recently adopted in Hawaii (effective 7/1/04) omits Revised in title</p>
<p>620.102- Definitions ?? Short (12 items) and linked to definitions in FRUPA, e.g. Sections 620.8101 and 620.8901 ?? RE-RULPA definitions do not include unique Florida definitions for: “Business” (.8101) “Partnership at will” (.8101) “Partnership interest” (.8101) “Property” (.8101) “Registration” (.8101) “Statement” (.8101) Must determine if any or all should be retained. ? RE-RULPA definitions for “General Partner” and “Limited Partner” are more specific and detailed than those in 620.8901(see RE-RULPA 102 (8) and (10))</p>	<p>Section 102 - Definitions ?? Extensive additions needed to be consistent with new RE-RULPA ((23 definitions) provisions and provide for de-linking. Suggest using all RE-RULPA definitions to be consistent even where current FRULPA definition is close (e.g. “Partner”) ?? Some RE-RULPA definitions should be discussed : “partnership agreement” expressly includes implied agreements, and as amended; broader definition of “transfer” ?? New definitions include: “Designated Office” ?? (suggest using Registered Office as in Hawaii Act; also note that 620.8106 refers to “chief executive office” for its internal affairs rule – should we define in new act?); “Person Dissociated as a General Partner”, “Principal Office”, “Record”, “Required Information”, “Sign”, “Transferable Interest” and “Transferee” ?? Section 1101 provides additional</p>

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
	definitions within Article 11
<p>620.118 - Filing; Scope of Notice</p> <ul style="list-style-type: none"> ?? Limits notice to limited status and GPs designated ?? 620.8102 Closer to RE-RULPA section 103, which combines our sections .118 and .8102 to allow de-linking ?? Note 620.8303(a) exception must be added relating to limitation of authority does not apply unless filed in real estate records. 	<p>Section 103 – Notice</p> <ul style="list-style-type: none"> ?? Provides separate and independent avenues through which a person can have notice of a fact. A person has notice of a fact as soon as any of the avenues applies. ?? Provides specific 90 day constructive ?? notice periods for certain organic changes: dissolution, termination, conversion, merger, and dissociation of a partner after the effective date of the event.
<p>620.107 – Nature of Business that May Be Carried On</p> <ul style="list-style-type: none"> ?? Any business permitted of a general partnership (linked) ?? Entity separate form partners is linked to 620.8201 	<p>Section 104 – Nature, Purpose and Duration</p> <ul style="list-style-type: none"> ?? Any lawful purpose ?? Entity separate form partners ?? Perpetual duration added; compare with 620.108(d) requiring statement of latest date for dissolution
<p>620.125 – General Rights, Powers . . . of GP</p> <ul style="list-style-type: none"> ?? Linked; defers to powers of partner under FRUPA; see e.g., 620.8301 (power to bind partnership), .8401 (rights in accounts, profits, management, voting), .8405 (rights to maintain actions against partners or partnership), .8602 (power to dissociate), .8702 (power to bind of dissociated partner), .8804 (power to bind after dissolution) 	<p>Section 105 – Powers</p> <ul style="list-style-type: none"> ?? RE-RULPA omits as unnecessary any detailed list of specific powers. The power to sue and be sued is mentioned specifically so that Section 110(b)(1) can prohibit the partnership agreement from varying that power. The power to maintain an action against a partner is mentioned specifically to establish that the limited partnership itself has standing to enforce the partnership agreement.
<p>620.184 – Construction and Application of Act</p> <ul style="list-style-type: none"> ?? Provides uniformity provision to apply to limited partnerships and conform with other states that have enacted similar law (!?) ?? Provides detailed transition dates relating to specific transactions; i.e. contributions, distributions, certificate amendments and affidavit filings ?? See also 620.186 (linking FRULPA to 	<p>Section 106 – Governing Law</p> <ul style="list-style-type: none"> ?? To partially define its scope, this section uses the phrase “relations among the partners of a limited partnership and between the partners and the limited partnership.” Section 110(a) uses essentially identical language in defining the proper realm of the partnership agreement: “relations

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
<p>FRUPA); 620.167 (allowing jurisdiction of organization to control internal affairs of foreign LPs); and FRUPA section 620.8106 (providing governing law for internal affairs as the jurisdiction in which the partnership has its chief executive office)</p> <p>?? See also 620.8103 (Act FRUPA/FRULPA governs where partnership agreement fails to provide)</p>	<p>among the partners and between the partners and the partnership.”</p> <p>?? The partnership agreement may not vary the rule stated in this section. See RE-RULPA section 110(b)(2)</p>
<p>620.8104 - Supplemental Provisions of Law</p> <p>?? FRUPA provision only; no equivalent in FRULPA</p> <p>?? Note Interest rate provision references 687.01 which in turn references 55.03</p>	<p>Section 107 – Supplemental Principles of Law; Rate of Interest</p> <p>?? This language comes from RUPA Section 104 and does not address an important question raised by the de-linking of this Act from the UPA and RUPA – namely, to what extent is the case law of general partnerships relevant to limited partnerships governed by this Act?.</p>
<p>620.103 –Name</p> <p>?? See also 620.168 (foreign LP name requirements – requires limited or ltd.)</p> <p>?? See also FRUPA 620.8705 (use of name after partner’s dissociation) and 620.8105 (filing registration statement creates no presumption of ownership in name beyond common law)</p> <p>?? Must be distinguishable from all names in DOS database (corps, LLCs LPs) not just other LPs</p>	<p>Section 108 – Name</p> <p>?? Allows L.P. and LP suffix</p> <p>?? Recognizes L.L.L.P. and LLLP suffixes</p> <p>?? Allows LLLP’s to drop required limited partnership suffix.</p>
<p>No Equivalent – Reservation of Name</p> <p>?? In 1988, the Florida legislature repealed all name reservation provisions for all state-formed entities and business entities intending to register or qualify to do business in the state.</p> <p>??</p>	<p>Section 109 - Reservation of Name</p> <p>?? Provides for foreign and domestic entities to reserve names</p> <p>?? Provides for renewals</p> <p>?? Provides for transfers of reserved names</p>
<p>620.8103 - Effect of Partnership Agreement; nonwaivable provisions</p> <p>?? Omits limitations on power to sue, be sued or defend as provided in RE-</p>	<p>Section 110 – Effect of Partnership Agreement; nonwaivable provisions</p> <p>?? Subject only to subsection (b), the partnership agreement has plenary</p>

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
<p>RULPA 110(b)(1)</p> <p>?? Omits limitation on varying governing law of internal affairs as provided in RE-RULPA 110(b)(2)</p> <p>?? Omits power to impose reasonable restrictions on availability and use of information required under RE-RULPA 111, 304 or 407</p> <p>?? Does not include prohibition against unreasonably restricting derivative actions</p> <p>?? Permits greater restrictions on conversion and merger than RE-RULPA (FRUPA limitation limited to changes to notice provisions in conversion and merger statutes); see RE-RULPA 1110</p>	<p>power to structure and regulate the relations of the partners <i>inter se</i>. Although the certificate of limited partnership is a limited partnership's foundational document, among the partners the partnership agreement controls. See Section 201(d)</p>
<p>620.106 - Records to be Kept</p> <p>?? Contains provision limiting inspection to ordinary business hours and reasonable request</p> <p>?? Inspection provisions under 620.134 and 620.8403</p> <p>?? Adds requirement to disclose rights to distributions that include return of contributions</p>	<p>Section 110 – Required Information</p> <p>?? Provides additional requirements for filed articles of conversion or merger, amendments to partnership agreement, last 3 years annual reports, and the last 3 years records of votes or consents of any partner</p> <p>?? Adds requirement to list ownership interest of person that is both general and limited partner</p> <p>?? Sections 304 and 407 govern access to the information required by this section, as well as to other information pertaining to a limited partnership</p>
<p>620.122 - Business Transactions of Partner with Partnership</p> <p>?? FRULPA adds “Except as in partnership agreement” suggesting greater flexibility for restriction if partners desire.</p>	<p>Section 112 – Business Transactions of Partner with Partnership</p> <p>?? RE-RULPA does not discriminate against a creditor of a limited partnership that also happens to be a partner.</p> <p>?? Based upon RULPA Section 107. See also RUPA Section 404(f) and ULLCA Section 409(f).</p>
<p>620.126 - Contributions by General Partner</p>	<p>Section 113 – Dual capacity</p>

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
<p>?? Allows GP to make contributions and share in profits, losses and distributions as LP</p>	<p>?? RULPA Section 404, redrafted for reasons of style.</p>
<p>620.105 – Record Keeping; Agent for Service of Process</p> <p>?? Agent can be Florida resident individual, Florida corp., or foreign corp. authorized to business in Florida</p> <p>?? Does not recognize non-corporate entities as registered agents</p> <p>?? Required records to be kept at office as listed in 620.106</p> <p>?? See also 48.091 requiring registered office time open 10 – noon and presence of at least one registered agent</p> <p>?? Appears to require foreign and domestic to have office in Florida (see Cohn and Ames comment to 602.105) but “limited partnership” is defined as domestic only under 620.102</p> <p>?? See also 620.169 for foreign corporations</p>	<p>Section 114 – Office and Agent for Service of Process.</p> <p>?? RE-RULPA essentially the same but does not have requirements for records to be kept at designated office as in 620.105.</p> <p>?? RE-RULPA does not require foreign LP to maintain office in Florida.</p> <p>?? Needs signature requirement and written acceptance clause for agent for service of process (DOS)</p> <p>?? Need to add administrative dissolution to dissolution section for failure to maintain RA</p> <p>??</p>

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
The following are contained in FRULPA:	
<p>620.1051 - Change of Registered Office or Registered Agent; change of address ?? See above</p>	<p>Section 116 – Resignation of Agent for Service of Process ?? ULLCA Section 110 ?? Add signature provisions as above.</p>
<p>No express corresponding -- but see 620.105, 620.108, 620.169 and 620.192 ?? No true equivalent in RERULPA; ?? 105 and 108 establish registered agent as party to accept service; 607.192 provides right of Department of Legal Affairs to obtain information, derived from FBCA Section 607.0505</p>	<p>Section 117 – Service of Process ?? ULLCA Section 111 ?? Provides specific effective dates and times of service by Secretary of State</p>
<p>620.620.133 (3) – Voting Rights of Limited Partners ?? Allows partnership agreement to provide consent and proxies as part of voting procedures.</p>	<p>Section 118 – Consent and Proxies of Partners ?? ULLCA Section 404(d) and (c) ?? Provides specific proxy procedures and does not appear tied to partnership agreement</p>

ANALYSIS FROM FLORIDA DEPARTMENT OF STATE

UNIFORM LIMITED PARTNERSHIP ACT 2001

FILING, PROCESS OR PROPOSED CURRENT EVENT LEGISLATION LAW

	<u>RE-RULPA</u>	<u>Existing Law</u>
Name Reservations	Provision for: Yes Who: Florida and Foreign Term: 120 days Content: Incomplete (Need name and address of applicant.) Signature(s): Specified Copy and Receipt: Yes	Provision for: No
Name Reservation Renewals	Provision for: Yes Who: Florida and Foreign Term: 120 days Due: Between 90-120 th day Content: Incomplete (Need name and address of applicant.) Signature(s): Specified Copy and Receipt: Yes	Provision for: No
Name Reservation Transfers	Provision for: Yes Who: Florida and Foreign Content: Complete Signature(s): Specified Copy and Receipt: Yes	Provision for: No
Certificate of Limited Partnership	Provision for: Yes Who: Florida Content: Complete Signature(s): Specified Copy and Receipt: Yes	Provision for: Yes Who: Florida
Affidavit/Supplemental Affidavit of Capital Contributions	Provision for: No	Provision for: Yes Who: Florida and Foreign
Amendment Certificate/Foreign Application	Provision for Florida: Yes Provision for Foreign: No Content: Complete Signature(s): Specified Copy and Receipt: Yes	Provision for: Yes Who: Florida and Foreign
Statement of Correction	Provision for: Yes Who: Florida and Foreign	Provision for: No

	Content: Complete Signatures: Specified Copy and Receipt: Yes	
Restatement Certificate	Provision for: Yes Who: Florida Content: Complete Signature(s): Specified Copy and Receipt: Yes	Provision for: Yes Who: Florida
Statement of Termination	Provision for: Yes Who: Florida Content: Incomplete (Should require statement LP is dissolved and has completed winding up) Signature(s): Specified Copy and Receipt: Yes	Provision for: Yes Who: Florida Current Title: Certificate of Cancellation
Articles of Conversion	Provision for: Yes Who: No exclusions Content: Complete Signature(s): Specified Copy and Receipt: Yes	Provision for: Yes Who: GP to LP LP to GP
Articles of Merger	Provision for: Yes Who: No Exclusions Content: Complete Signature(s): Specified Copy and Receipt: Yes	Provision for: Yes Who: No Exclusions
Statement of Dissociation	Provision for: Yes Who: Florida Content: Incomplete Signature: Specified Copy and Receipt: Yes	Provision for: No
Statement of Withdrawal	Provision for: Yes Who: Florida Content: Incomplete Signature: Specified Copies and Receipts: Yes	Provision for: Yes Who: Florida
Statement of Change – Amend Agent and/or Designated Office	Provision for: Yes Who: Florida and Foreign Content: Complete Signature(s): Incomplete (New Agent’s signature) Copy and Receipt: Yes	Provision for - Registered Agent: Yes Registered Office: Yes Designated Office: No Who: Florida and Foreign
Statement of Resignation – Resignation of Agent for Service of Process	Provision for: Yes Who: Florida and Foreign Content: Incomplete Signatures: Complete	Provision for: Yes Who: Florida and Foreign

	Copy and Receipt: Yes	
Delayed Effective Date	Provision for: Yes Who: Florida and Foreign Exceptions: Statement of Resignation and Statement of Correction	Provision for Florida: Yes Provision for Foreign: No
Annual Report	Provision for: Yes Who: Florida and Foreign Due: January 1 – April 1 (Prefer January 1 – May 1) Content: Incomplete (Include GP information) Required Form: No Signature: Specified	Provision for: Yes Who: Florida and Foreign Due: January 1 – May 1 Required Form: Yes
Record of Determination	Provision for: Yes Who: Florida Content: Incomplete	Provided for: Yes Who: Florida Current Title: 60 Days' Notice
Declaration of Dissolution	Provision for: Yes Who: Florida Content: Complete	Provision for: Yes Who: Florida Current Title: Certificate of Revocation
Reinstatement Application	Provision for Florida: Yes Provision for Foreign: No Time Limit: Yes – 2 yrs. Content: Complete (Substitute AR Format. Delete reference to taxes) Signature(s): Specified Copy and Receipt: Yes	Provision for: Yes Who: Florida and Foreign Time Limit: No
Certificate of Authority	Provision for: Yes Who: Foreign LP's/LLLP's Content: Complete Proof of Existence: Yes Signature(s): Specified Copy and Receipt: Yes	Provision for Foreign LP's: Yes Provision for Foreign LLLP's: No Proof of Existence: No
Notice of Cancellation	Provision for: Yes Who: Foreign Content: Incomplete Signature: Specified Copy and Receipt: Yes	Provision for: Yes Who: Foreign Current Title: Certificate of Cancellation
LLLP Status	Provision for Florida: Yes Provision for Foreign: Yes	Provision for Florida: Yes Provision for Foreign: No
Change in LLLP Status	Provision for Florida: Yes Provision for Foreign: Yes	Provision for Florida: Yes Provision for Foreign: No

Name Distinguishable	Provision for: Yes Who: Florida and Foreign Noted Exceptions: Yes	Provision for: Yes Who: Florida and Foreign Noted Exceptions: No
Alternate Name for Foreign	Provision for: Yes Who: Foreign	Provision for: Yes Who: Foreign
Agent for Service of Process	Provision for: Yes Who: Florida and Foreign	Provision for: Yes Who: Florida and Foreign
Office Address of Agent	Provision for: Yes Who: Florida and Foreign Street Address: Yes Florida Street Address: No Mailing Address: Yes	Provision for: Yes Who: Florida and Foreign Street Address: Yes Florida Street Address: Yes Mailing Address: No
Declaration of Reinstatement	Provision for: Yes Who: Florida Content: Complete Copy: Yes	Provision for: No
Notice of Revocation	Provision for: Yes Who: Foreign	Provision for: Yes Who: Foreign Current Title: Certificate of Revocation
Activities Not Constituting the Transaction of Business in Florida	Provision for: Yes Who: Foreign	Provision for: No
Revocation of Certificate of Authority	Provision for: Yes Who: Foreign	Provision for: Yes Who: Foreign
Written Acceptance of Agent for Service of Process	Provision for: No	Provision for: No

PROPOSED LEGISLATION

I. ADVANTAGES/IMPROVEMENTS

Overall:

1. Deletes Affidavit and Supplemental Affidavit requirements.
2. Allows for flat filing fees.
3. States Reinstatements are retroactive.

Florida:

1. Allows “L.P.” and “LP” suffix.
2. Recognizes “L.L.L.P.” and “LLLP” as suffixes.
3. Allows LLLP’s to drop required limited partnership suffix.

Foreign:

1. Allows for Foreign LLLP’s.
2. Addresses what does not constitute the transaction of business in Florida.
3. Requires proof of existence.
4. Allows for delayed effective dates.

II. DISADVANTAGES/NEEDED IMPROVEMENTS

Overall:

1. Certificates of existence require too much information.
2. Annual Report due date does not coincide with other AR’s due date.
3. General Partner’s names and addresses not included in AR information. (Should be required to allow for address changes.)
4. New legislation would require significant updates and changes to database.
5. Mailing copies and receipts would require staffing increase.
6. AR and Reinstatement should be on forms prescribed by this office.
7. Reinstatement application should follow AR format.
8. AR does not require GP information – needed for GP address changes.

9. Imposes 2-year term limit for Reinstatements.
10. Need signature requirement and written acceptance clause for Agent for Service of Process.
11. Need filing fees added for new filing types.

Florida:

1. Does not allow Administrative Dissolution for failure to maintain agent.

Foreign:

1. Does not allow for Foreign Reinstatements.
2. Does not allow for Foreign Amendments.

Sub-Committee II

NASON, YEAGER, GERSON, WHITE & LIOCE, P.A.

MEMORANDUM

TO: Members of Group II, Re-RULPA Review Committee
CC: Greg Marks, Chairman
FROM: Domenick R. Lioce
DATE: September 23, 2002
RE: Organizational Meeting

Members of Group II:

<u>Attended</u>	<u>Not Attended</u>		<u>Attended</u>	<u>Not Attended</u>	
?		Joe Gomez – Miami	?		Richie Comiter - WPB
	?	Mike Kosnitzky – Miami		?	Alan Daniels - Orlando
?		Elliott Manning – Miami	?		Nick Lioce - WPB
?		Don Weidner – Tallahassee		?	Brian Sparks - Tampa
?		Jim Barrett – Miami		?	Alan Baseman - Ft. Lauderdale

Responsibilities: Review revision and comment on Re-RULPA as regards: (i) the rights and duties of general and limited partners; and (ii) general operations of the entity. We will review the entirety of the act, but we will specifically be responsible for Articles 3, 4 and 5.

The following individuals will be primarily responsible on the delineated assignments:

1. Article 3 Jim Barrett, Alan Baseman and Brian Sparks
2. Article 4 Don Weidner, Richie Comiter and Nick Lioce
3. Article 5 Elliott Manning, Joe Gomez, Mike Kosnitzky and Alan Daniels

Note, however, everyone will be responsible to review all three Articles. Further, everyone shall be responsible to review the entire Act for applicability to our assigned Articles, most particularly, the definitions contained in Article 1.

We have agreed to work off of the final Act of 2001, with preparatory notes and comments found at: <http://www.law.upenn.edu/bll/ulc/upla/final2001.htm>

It is our intent to meet in Tampa at the Section Meeting, perhaps along with other members of the Re RULPA Committee. I hope to discuss a time and place at tomorrow's conference call. Please let me know which of you plan to be at the Tampa meeting.

**ARTICLE 3
SUMMARY OF COMPARISON CHART**

CHARACTERISTIC	RE-RULPA	FLORIDA RULPA
Section 301: Admission of limited partner.	Per partnership Agreement, conversion, merger or consent of all partners.	Later of: Certificate of limited partnership filed or date stated in records of partnership.
Comment: Agreement, with its broad definition of RE-RULPA is preferable. Conversion and merger references appropriate. Consent of all partners rather than majority-in-interest more appropriate default standards. Cf. Fla. Stat. §608.4232 (majority interest standard in Fla. LLC Act.		
Section 301: Admission of LP after filing of certificate.	No special rule.	Partnership agreement consent of all partners.
Comment: RE-RULPA approach more economical-separate rule not necessary.		
Section 301: Admission of LP after filing of certificate: assignee.	No special rule.	Partnership agreement or consent of all partners.
Comment: RE-RULPA approach more economical. Separate rule not necessary.		
Section 302: LP's right to bind.	Except as provided for in partnership agreement – LP no right to bind partnership.	LP no right to “control” partnership.
Comment: RE-RULPA standard consistent with status based limitation of liability and potential management role for LP's.		
Section 303: Status based limited liability of LP's.	Status based limited liability.	Possible liability for limited partner participating in control of partnership. Extensive discussion of LP activities that do not constitute participation in control.

RE-RULPA provision is appropriate. No special transitional rule appears warranted since new rule protects LP's and only permits them to participate in management of partnership if provided for in partnership agreement.

CHARACTERISTIC	RE-RULPA	RULPA
Section 304: LP right to required information.	Required information must be made available with 10 days notice – subject to reasonable restrictions in partnership agreement as to availability and use.	Required information must be supplied. No 10 day time period for response.
Comment: RE-RULPA's ability to impose reasonable restrictions on even required information is appropriate. Ten day period, subject to reasonable amendment in partnership agreement, is appropriate.		
Section 304: LP right to information other than required information.	Generally some standards. Some material difference - must be "directly connected to the limited partner's purpose".	GP's arguably can set "reasonable standards" affecting access and use of information even though right is not found in partnership agreement.
Comment: RE-RULPA's additional requirement a helpful clarification. Independent right of GP's to set standards not pursuant to partnership agreement is, on balance, better left out.		
Section 304: Procedure for responding to LP information request.	10-day period and contents of response specified in default rule.	No specification.
Comment: RE-RULPA specification is helpful.		
Section 304: Right of disassociated LP to inspect.	Right and parameters specified in default rule.	No specification.
Comment: RE-RULPA specification is helpful.		

CHARACTERISTIC	RE-RULPA	RULPA
----------------	----------	-------

Section 304: Rights of a deceased LP.	Rights to inspect information specified in default rule.	No specification.
Comment: Cross reference in RE-RULPA arguably unnecessary but on balance is helpful.		
Section 304: Limitations on use of information.	Right to impose.	No specification beyond the ability of partnership agreement or the GP's to set "reasonable standards".
Comment: RE-RULPA clarification is helpful.		
Section 304: Requirement to inform LP's with information relevant to consent.	Obligation of partnership to provide "all information material to" consent decision.	No obligation of partnership to provide the information.
Comment: Consider "information reasonably required for proper exercise of LP's right and performance of LP's duties under the partnership agreement..." to mirror Fla. Stat. §608.4101(3)(a) and take into account possible expanded management role of LP's. Foregoing language would replace RE-RULPA language requiring the partnership to supply "all information material to LP's decision that limited partnership knows." The RE-RULPA default standard may be too high.		
Section 304: Assignee's limited right to information.	Specified limitations for transferee.	Limitations not specified.
Comment: RE-RULPA specification is helpful.		
Section 305: Limited duties of LP.	No fiduciary duty – duty of good faith and fair dealing specified.	No specification of duty of good faith and fair dealing.

Comment: RE-RULPA's specification of duty of good faith and fair dealing is helpful. Does ability of LP to have management role but no fiduciary duty create a gap not applicable to GP's? As such, should fiduciary duties imposed on GP's apply to LP's given GP-like managerial authority? Arguably not since authority is contract based. See RE-RULPA at §§408(b),(c).

CHARACTERISTIC	RE-RULPA	RULPA
Section 305.	LP right to act in self interest specified.	[LP right to act in self interest not specified.]
Comment: RE-RULPA specification is helpful.		
Voting rights for LP's.	No enabling provision concerning voting rights and procedures provision.	Enabling provision specifying that relative voting rights, quorum and other related issues may be specified in partnership agreement.
Comment: Fla. Stat. §608.4231 contains a voting rights provision. RE-RULPA arguably should include such a provision. However, as an enabling provision, it likely adds nothing unless it contains default rules like those found in the Fla. LLC Act at Fla. Stat. §608.4231. Such a default rule appears to be inappropriate for limited partnerships.		
Section 306: Person erroneously believing self to be LP.	Clarifies right to withdraw even if a breach of an agreement with the other co-owners of an enterprise.	
Comment: RE-RULPA clarification is helpful. Section 306 should be a non-waivable provision under RE-RULPA.		

ANALYSIS OF ARTICLE 4

Characteristic	<u>RE-RULPA</u>	Florida RULPA	FRUPA
<p>Section 401, Becoming a General Partner</p>	<p><u>A person may become a general partner as provided in the partnership agreement, under section 801(3)(B), as the result of a conversion or merger or with the consent of all parties. A person's status as general partner is no longer dependent on being designated such under the Certificate of Limited Partnership.</u></p>	<p>Under section 620.102(5) a general partner is named as such in the Certificate of Limited Partner. Section 620.123 states that additional general partners can be admitted either as provided for in the Partnership Agreement or if the Partnership Agreement does not provide for such with the written consent of all partners. This section differs from RE-RULPA because it does not provide that a merger or a conversion can result in a person becoming a general partner. In addition, Section 620.123 adds that each general partner that is a legal or commercial entity and not an individual must be organized or otherwise registered with the Department of State as required by law, must maintain an active status, and must not be dissolved, revoked or withdrawn.</p>	<p>Section 620.8401(9) states that a person may become a partner only with the consent of all the partners. Again, this section differs from RE-RULPA in that it does not provide for becoming a general partner as result of conversion or merger.</p>
<p>Section 402, General Partner Agent of</p>	<p><u>Each general partner is an agent of the limited partnership for the purposes of its activities. An act of the general partner binds the limited partnership unless the</u></p>	<p>No such section.</p>	<p>Section 620.8301 states that each partner is an agent of the partnership</p>

<p>Limited Partnership</p>	<p><u>general partner did not have the authority to act in that particular manner on behalf of the limited partnership and the person with which the general partner was dealing knew, had received a notification, or had notice under section 103(d) that the general partner lacked authority. If the general partner is carrying on acts that are not in the ordinary course of the limited partnership these acts only bind the partnership if they were actually authorized by all of the other partners. Section 103(d) refers to five categories of notice. RE-RULPA substitutes "activities" for "business".</u></p>		<p>for the purpose of its business whereas RE-RULPA referred to each partner as an agent of the partnership for the purpose of its activities. This section also states that a partner is an agent of the partnership for the purpose of its business "including the execution of an instrument in the partnership name". RE-RULPA refers to this differently, it says it includes "the signing of a record in the partnership's name". This section also substitutes "business" for "activities". This section also includes the geographic area in which the partnership operates to modify the area of the partnership's business. In addition, this section deals with the person with "whom" the partner was dealing and RE-RULPA deals with the person with "which" the general partner was dealing. This section also deals with whether the person "knew or had received notification that the partner" with whom the person was dealing "lacked authority" whereas RE-RULPA states that the person with which the general partner was dealing "knew, had received notification, or had notice under section 103(d) that the general partner lacked authority".</p>
----------------------------	---	--	---

			Furthermore this section states that a partner binds a partnership only if the act was "authorized" by all of the other partners whereas RE-RULPA binds a limited partnership only if the act was "actually authorized" by all of the other partners.
Section 403, Limited Partnership Liable For General Partner's Actionable Conduct	<u>This section makes a limited partnership vicariously liable for a partner's misconduct. The source of this rule is based on RUPA section 305.</u>	No such section.	Section 620.8305 is RE-RULPA verbatim except that "Business" is substituted for the term "activities". "Partnership" is substituted for "limited partnership" and "partner" is substituted for "limited partner".
Section 404, General Partner's Liability	<u>Except as otherwise provided in this section, GPs are liable jointly and severally for all obligations of the limited partnership. There is no personal liability for an obligation that existed before their arrival. An obligation that is incurred when a limited partnership is a limited liability limited is solely the obligation of the limited partnership. The source of this rule is RUPA section 306.</u>	Section 620.125 describes the general rights, powers, restrictions, and liabilities of a general partner. This section does not state that general partners are liable jointly and severally. This section also doesn't provide that a general partner is not personally liable for an obligation incurred before they became a general partner. This section also doesn't take account for obligations incurred while the limited partnership is a limited liability limited. In addition, this section does not provide that there is no personal liability for a general partner solely	Section 620.8306 is RE-RULPA verbatim, except that (3) differs from RE-RULPA after "Notwithstanding". What comes after "Notwithstanding" is unimportant. FRUPA also substitutes "vote" for "consent" under this subsection.

		<p>by reason of being or acting as a general partner. This section states that except as provided in this act or in the partnership agreement, a GP of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.</p>	
<p>Section 405, Actions By and Against Partnership and Partners</p>	<p><u>A general partner may be joined in an action against the limited partnership or named in a separate action. This section also discusses judgments against limited partnerships and judgment creditors of a general partner. The source for this section is RUPA section 307.</u></p>	<p>Section 620.153 deals with the rights of a judgment creditor of a partner. Section 620.163 deals with the right of a limited partner to bring a derivative action to recover a judgment in its favor if the general partners with the authority to do so have refused to bring an action or in an effort to cause those general partners to bring the action is not likely to succeed. This section does not provide that general partners may be joined in an action against the limited partnership or named in a separate action. This section does not state that a judgment against the limited partnership is not in itself a judgment against the general partner. This doesn't lay out the five</p>	<p>Section 620.8307 is almost RE-RULPA verbatim. This section differs from RE-RULPA by adding that a judgment creditor of a partner may "perfect a judgment lien but may not proceed against or otherwise" levy or execute against the assets of the partner to satisfy a judgment arising from a partnership obligation or liability. This section also adds that "this section applies to any partnership liability or obligation resulting from representation by a partner or purported partner under section 620.8308".</p> <p>Re-RULPA and FRULPA does not cover a purported partner under this section.</p>

		exceptions to when a partner is personally liable for a claim against the partnership as does RE-RULPA and FRUPA.	
Section 406, Management Rights of a General Partner	Section 406(a) allows a simple majority for all actions, both ordinary and extraordinary, of all general partnership activities when there is more than one partner. Section 406(b) sets forth limitations requiring the consent of "each partner", which means all general partners and all limited partners. Section 406(c): states that a limited partnership shall reimburse a general partner for payment made and indemnify for liabilities incurred in the ordinary course of business. The commentary indicates that there is no parallel provision for limited partners reimbursement, based on the assumption that they intend to be passive. Section 4(f): Provides that "a general partner is not entitled to remuneration for services performed by the partnership". However, in the commentary to this section, it states that it is providing for no	Section 620.125 refers us to the general rights, powers, restrictions and liabilities of a general partner. This section does not lay out specifics of management rights or when the consent of a partner is needed for certain activities or when a general partner shall be reimbursed by the limited partnership as does section 406 of RE-RULPA. In addition, this section does not discuss when a payment or advance by the partner to the limited partnership constitutes a loan. In addition, this section does not state that a GP is not entitled to remuneration for services performed for the partnership.	Section 620.8401(10) deviates from RE-RULPA in that it provides for the consent of all general partners for differences arising "outside the ordinary course of business". Differences arising "in the ordinary course of business of a partnership" may be decided by a majority of the partners. RE-RULPA does not make the distinction between differences arising outside the ordinary course of business and those arising in the ordinary course of business. "Business" is replaced by "activities". Section 620.8401(8) mirrors RE-RULPA section 406(f) except that section 620.8401(8) makes an exception for reasonable compensation for services rendered in winding up the business of the partnership.

	<p>compensation only in situations where the entity is winding up. This is not consistent with the language of the Florida statute. FRUPA § 620.8401(a) provides for no compensation <u>EXCEPT</u> in winding up situation.</p>		
<p>Section 407, Right of General Partner and Former General Partner to Information</p>	<p><u>A GP without having any particular purpose for seeking the information, may inspect and copy during regular business hours. Each GP and Limited partnership shall furnish to a GP (1) without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the GP's rights and duties; and (2) on demand, any other information unless unreasonable or improper. This section also adds on 10 days demand made in the record received by the limited partnership a person dissociated as a general partner may have access to the information and records if: (1) the information or record pertains to the period during which the partner was a general partner; (2) the person seeks the information or record in good faith; and (3) the person satisfies the requirements imposed on a limited partner by section 304(b). This section states if a general partner dies section 704 applies. This section also states that a limited partnership may impose reasonable restrictions on the use of information under this section. A general partner or a person associated as a general partner may exercise the rights under this section through an attorney or other agent. Any restrictions imposed under subsection (f) dealing with reasonable restrictions on the use of information under this section or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as general partner. The rights under this section do not extend to a person as transferee but the rights under subsection (c) of a person disassociated as a general may be exercised by the legal representative of an individual</u></p>	<p>Section 620.106(2) states that any partner may inspect records at their request and expense. This section does not discuss a former partner's access to records or any agent's or attorney's access to records. This section also does not discuss a disassociated partner and his/her access to records.</p>	<p>Section 620.8403 does not discuss a disassociated partner's access to records. This section also adds that records should be kept at the chief executive office of the partnership.</p>

	<p><u>who disassociated as a general partner under section 603(7)(B) or (C). This sections structure parallels the structure of section 304 of RUPA and RUPA section 403(c).</u></p>		
<p>Section 408, General Standards of General Partner's Conduct</p>	<p><u>GPs owe the fiduciary duties of loyalty and care to the limited partnership and the other partners. A general partner's duty of loyalty to the limited partnership and other partners is limited to the following: (1) to account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner or limited partnership property including the appropriation of a limited partnership opportunity; (2) to refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of the party having an interest adverse to the limited partnership; and (3) to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities. A general partner's duty of care to the limited partnership and other partners 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 knowing violation of law. Under subsection (d) in this section a general partner shall discharge the duties to the partnership and other partners under this act or under the partnership agreement and exercise any rights consistently with the obligations of good faith and fair dealing and subsection (e) a general partner does not violate a duty or obligation under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest. This section source comes from RUPA section 404.</u></p>	<p>No such section.</p>	<p>Under Section 620.8404 the general standards of a partner's conduct are discussed. This section is similar to RE-RUPLPA with some additions and minor differences. A difference under this section is that in s. 408(c) there is a duty "to refrain from competing with the partnership in the conduct or winding up of the limited partnership's activities" and in s. 620.8404(2)(c) there is a duty " to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership". Section 620.8404(6) states that "a partner may lend money to and transact other business with the partnership and as to each loan or transaction, rights and obligations of the partner are the same as those of the person who is not a partner subject to other applicable law". This section is not provided for in RE-RULPA. Section 620.8404(7) says that "this section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if</p>

			<p>the person were a partner". This is not discussed in RE-RULPA. Again this section refers to "business" and RE-RULPA refers to the term "activities" in place of business. While RE-RULPA limits a general partner's duty of loyalty to the limited partnership and other partners to the following: accounting, refraining from dealing as an adverse party and refraining from competing whereas, FRUPA states that a general partner's duty of loyalty includes "without limitation" the duty to account, the duty to refrain from dealing as an adverse party and the duty to refrain from competing.</p>
--	--	--	---

H:\08PERS\dr1\DAanalysisArticleIV.KSS/ssm-ljl-ssm

MEMORANDUM

RE-RULPA ARTICLE 4 SUMMARY OF COMPARISON CHART

The following is a summary of the major differences between RE-RULPA Article IV as compared to FRULPA and FRUPA. The headings refer to the appropriate sections of RE-RULPA.

Section 402 - General Partner Agent of Limited Partnership.

This section was added to the Limited Partnership Act in the authors' efforts to make the Act stand alone. It is virtually identical to the language found in F.S. § 620.8301 for partners in a general partnership. However, it fails to include important provisions under F.S. § 620.8303, .8304 and .8305 regarding the ability of a partnership to limit or deny authority of a general partner. Such limitations could be included as alternatives under either F.S. § 620.125 or 620.108 (the Certificate).

RE-RULPA adds "or had notice under § 103(d)" to the list of situations in which a third party will not be bound by an act of a general partner apparently carrying on in the ordinary course of business." § 103(d) notice is NOT all "reason to know" notice. Rather, it refers to five separate categories of notice.

§ 402(b), when describing the "activities of kind carried on by the limited partnership" did not carry forward the further restriction of F.S. § 620.8301 which added the following: "..., in the geographic area in which the partnership operates."

Section 405 - Actions by and Against Partnership and Partners.

RE-RULPA Section 405 is basically a restatement of RUPA § 307, which was incorporated in Florida Statutes under F.S. § 620.8307. Basically, it delineates the rights of creditors against the partnership as opposed to the general partner. No provision was made here under § 405 for language relating to the liability of a "purported partner" as set forth under F.S. § 620.8308.

Section 406 - Management Rights of General Partner.

Because of the breadth of this section, I will segregate my comments by each subsection:

Section 406(a): This section deviates from F.S. § 8620.8401(10) in that in entities with multiple general partners, a simple majority is required for all actions, both ordinary and extraordinary, of all general partnership activities. However, subsection (10) of FRUPA differentiates between decisions that involve "ordinary course of business" and those acts "outside the ordinary course of business". The former provides for a simple majority. The latter provides for the consent of all general partners.

Section 406(b): This subsection sets forth limitations requiring the consent of "each partner", which means all general partners and all limited partners. While I understand the

requirement for such unanimity for § 406(b)(1) (Partnership Agreement Amendment and for § 406(b)(2) - (change from LLP status), I question such a rigorous requirement for sale, etc. of substantially all of the partnerships property under § 406(b)(3). Many times, the majority or supermajority, of all partners, along with the consent of the majority or supermajority of the general partners, would be reasonable, or preferred.

Section 406(c): The commentary indicates that there is no parallel provision for limited partners reimbursement, based on the assumption that they intend to be passive. I think this is a bad assumption, and I believe that limited partners' advances for the benefit of the partnership should be just as reimbursable in the same manner as general partners. There are many times when a deep-pocket limited partner has to step up and pay delinquent or currently due items such as taxes, loan payments, salaries, etc. in order to protect the partnership and its assets. The general partner does not always have the cash to do so, and the limited partner stepping up should be similarly protected.

Section 4(f): Provides that "a general partner is not entitled to remuneration for services performed by the partnership". However, in the commentary to this section, it states that it is providing for no compensation only in situations where the entity is winding up. This is not consistent with the language of the Florida statute. F.S. § 620.841(a) provides for no compensation EXCEPT in winding up situation. These provisions and comments need to be consistent.

Section 407 - Right of General Partner and Former General Partner to Information

This section is basically a rewrite of F.S. § 620.8403. However, the expanded language seems only to clarify the intent set forth under F.S. § 620.8403. Some interesting additions are:

1. The provision does not require any particular purpose of a general partner for seeking the information, unless he is a former partner in which case it must be in good faith, etc.
2. § 407(i) clarifies that these rights to information do not extend to a person as a transferee.

Section 408 - General Standards of General Partners' Conduct

While ostensibly this section follows F.S. § 620.8404, the following significant differences occur:

1. RE-RULPA provides a duty to refrain from competing with the partnership "in the conduct or winding up of the limited partnership's activities" rather than "in the conduct of the partnership business before the dissolution of the partnership".
2. It eliminates F.S. § 620.8404(6) which states: "a partner may lend money to and transact other business with the partnership, and as to each loan or transaction, the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law."

3. It eliminates F.S. § 620.8404(7) which states: "this section applies to a person winding up the partnership business as the personal representative or legal representative of the last surviving partner as if the person were a partner."

NOTE: But see, § 110(5) and (6) for exceptions to these duties.

RE-RULPA ARTICLE 5 COMPARISON CHART

NAME OF SECTION	RE-RULPA	RULPA	FRULPA	FRUPA
-----------------	----------	-------	--------	-------

Form of Contribution	§ 501	§ 501	§ 620.135	None
----------------------	-------	-------	-----------	------

COMMENTS: RE-RULPA § 501 expands on the language of what is a permitted contribution. RE-RULPA § 501 makes it clear that contributions of “intangible” property are allowed as well as “agreements,” as opposed to just “notes or other obligations,” to contribute cash, property or services. FRUPA contains no comparable provision. It defines “property” in Section 622.8101(12) as all property real, personal, or mixed tangible or intangible, in or any interest therein. Neither RE-RULPA , FRULPA, nor RULPA define “Property.”

Liability for Contribution	§ 502		§ 502	§ 620.136	None
----------------------------	-------	--	-------	-----------	------

COMMENTS RE-RULPA § 502 does not contain language found in FRULPA § 620.136 and RULPA § 502 that “a promise by a limited partner to contribute to the limited partnership is not enforceable unless it is set out in writing signed by the limited partner.”

RE-RULPA § 502 changes the circumstances, in part, under which a partner is obligated to make a contribution to the limited partnership. RE-RULPA § 502 provides that the obligation remains even if the partner is unable to perform because of his death or disability, or “*other inability to perform personally.*” The language found in FRULPA § 620.136 and RULPA § 502 states that the obligation remains even if the partner is unable to perform because of his or her death or disability “*or any other reason.*”

Section 502(c) provides that a creditor who extends credit or otherwise acts in reliance on the fact that a partner “has obligated himself to make a contribution may enforce such obligation provided he has extended the credit or otherwise acted in reliance “*without notice of any compromise.*” This is different from FRULPA § 620.136 and RULPA § 502 which state that such creditor may enforce the obligation “*before the amendment or cancellation of the writing to indicate the compromise.*” This

change seems to make logical sense since FRULPA and RULPA's language is arguably confusing.

Continued next page

Liability for Contribution

COMMENTS: [continued]

Finally, FRULPA § 620.136 contains a provision not found in either RE-RULPA § 502 or RULPA § 502 that suggests alternative remedies for a partner's failure to make a contribution. It reads as follows:

“(4) A partnership agreement may provide that the interest of any partner who fails to make any contribution that he or she is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing the defaulting partner's proportionate interest in the limited partnership, subordinating his or her partnership interests to that of non-defaulting partners, a forced sale of his or her partnership interest, the forfeiture of his or her partnership interest, the lending by other partners of the amount necessary to meet his or her commitment, a fixing of the value of his or her partnership interest by appraisal or by formula and redemption or sale of his or her partnership interest at such value, or other penalty or consequence.

Sharing of Profits
& Losses

None § 503 § 620.137 None

COMMENTS:

There appears to be an intentional omission in that RE-RULPA does not contain a provision that provides how profits and losses are to be allocated in the absence of a partnership agreement. FRULPA § 620.137 and RULPA § 503 provide that in the absence of a Partnership Agreement, profits and losses are shared in proportion to contributions that have not been returned. *See also* FLLCA § 608.4261 containing a similar provision. No such provision is found in RE-RULPA.

Sharing of Distributions

§ 503 § 504 § 620.138 None

COMMENTS:

There appears to be another omission. In RE-RULPA 503, it provides for sharing of distributions in proportion to “contributions” only, while FRULPA § 620.138 and RULPA § 504 provide for sharing of distributions in proportion to contributions “*that have not been returned.*” *See also* FLLCA § 608.426(1) (which also provides for sharing of distributions in the same manner as FRULPA § 620.138 and RULPA § 504). Sharing

of distributions in proportion to contributions only does not seem to make sense since it does not necessarily track a member's investment in the limited partnership.

Interim Distributions	§ 504	§ 601	§ 620.139	None
-----------------------	-------	-------	-----------	------

COMMENTS: RE-RULPA § 504 states that a partner does not have a right to any distribution before the dissolution and winding up of the limited partnership “*unless the limited partnership decides to make an interim distribution.*” FRULPA § 620.139 and RULPA § 601 are different in that they provide that a partner is “*entitled*” to receive distributions before his withdrawal and before dissolution and winding up to the extent, or upon the happening of events, specified in the partnership agreement, provided, however, no such entitlement to interim distribution exists where the partnership is insolvent.

No Distribution on Account of Dissociation	§ 505	§ 604	§ 620.144	§ 620.8701
--	-------	-------	-----------	------------

COMMENTS: RE-RULPA § 505 provides that a “person” does not have a right to receive a distribution on account of dissociation. A “person” is defined in § 102(14) of RE-RULPA. Presumably, a “person” includes a partner, transferee, and a creditor taking an interest in the partnership by assignment or otherwise. RE-RULPA § 505 is distinctly different from FRULPA § 620.144 and RULPA § 604 in that those sections provide that (except for distributions which would render the partnership insolvent) a withdrawing partner is entitled to receive within a reasonable time after withdrawal (unless otherwise provided in a partnership agreement) the “fair value” of his interest in the limited partnership as of the date of withdrawal based upon his or her right to share in the distributions from the limited partnership. FRUPA has a similar provision. Under FRUPA § 620.8701, the partnership is required to purchase the dissociated partner’s interest at a “buy out” price within 120 days of dissociation. Therefore, RE-RULPA § 505 appears to be a departure from RULPA’s, FRULPA’s, and FRUPA’s provisions, which require a partnership to purchase a departing partner’s interest.

Distribution in Kind	§ 506	§ 605	§ 620.145	§ 620.8402
----------------------	-------	-------	-----------	------------

COMMENTS: RE-RULPA § 506, RULPA § 605, and FRULPA § 620.145, all essentially provide in the first sentence of each of their respective provisions that a partner does not have a right to demand “*or*” receive any distribution from a limited partnership in any form other than cash. Both RULPA § 605 and FRULPA § 620.145 have the same provision except that the word “*and*” in both such

provisions is used rather than the word “or,” found in RE-RULPA § 506. The difference does not appear to be material.

The second sentence of RE-RULPA § 506 is somewhat different from RULPA § 605 and FRULPA § 620.145.

[continued next page]

Distribution in Kind
(continued)

COMMENTS:

RE-RULPA § 506 states that a limited partner (subject to § 812(b)) 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. FRULPA § 605 and FRULPA § 620.145 state virtually the same thing (except in a different fashion) by stating that a partner may *not be compelled* to accept a distribution to the extent that the percentage of the asset distributed to the partner *exceeds* a percentage of the asset which is equal to the percentage in which he shares in distributions from the limited partnership.

FRUPA § 620.8402 is different from all the other three in that it provides that a "partner has no right to receive, and may not be required to accept, a distribution in kind.

Right to Distribution

§ 507

§ 606

§ 620.146

None

COMMENTS:

RE-RULPA § 507 is substantially similar to RULPA § 606 and FRULPA § 620.146 in that all provide that when a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. The only difference between the three provisions in this respect is that RE-RULPA § 507 also provides that "a transferee" of a partner also has such rights.

RE-RULPA § 507 also is different from the other two by providing that the limited partnership may *offset* any amount owed to the limited partnership by the partner or disassociated partner on whose account the distribution is made.

Limitations on Distribution

§ 508

§ 607

§ 620.147

None

COMMENTS:

FRULPA § 620.147 and RULPA § 607 are rather short provisions stating that a partner may not receive a distribution from a limited partner to the extent that after giving effect to the distribution, all liabilities of the limited partnership (other than liabilities to partners on account of their partnership interests) exceed the fair value of the partnership assets.

RE-RULPA § 508 is different in several respects. First, it provides that distributions may not be made in violation of the

partnership agreement. Second, the definition of “insolvency” and related provisions are essentially taken from the RMBCA. RE-RULPA §§ 508(b) and (c) are substantially equivalent to FBCA §§ 607.06401(3) and (4). RE-RULPA §§ 508(d), (e), (f), and (g) are substantially equivalent to FBCA §§ 607.06401(6)(a), (7), and (8).

[continued on next page]

Limitations on Distribution
(continued)

COMMENTS: Thus, in addition to other changes, RE-RULPA § 508 alters the test for insolvency by adding an additional test found in RMBCA: “the equity insolvency test,” requiring a limited partnership to be able to pay its debts as they become due in the ordinary course of business. This test, it has been suggested, can be difficult to determine objectively.

Liability for Improper Distributions	§ 509	§ 609	§ 620.148	None
---	-------	-------	-----------	------

COMMENTS: FRULPA § 620.148 and RULPA § 609 provide that if a *partner has received* the return of any part of his contribution without violation of the partnership agreement or the Act, he is liable to the partnership for a period of *1 year*, but only to the extent necessary to discharge the partnership’s liabilities to creditors who extended credit to the partnership during the period the contribution was held by the partnership. However, if a *partner has received* a contribution *in violation* of the partnership agreement or the Act, then the period is for *6 years* rather than one year.

RE-RULPA § 509 is completely different in that it is based almost entirely on a provision found in RMBCA. *See* FBCA § 607.0834 (which is modeled after a similar provision in RMBCA). First, it is different first because it imposes liability on a *general partner* who votes in favor of the distribution and, those partners or transferees that *knowingly* received a distribution in violation of § 508 of RE-RULPA. Second, unlike FRULPA § 620.148 and RULPA § 609, it imposes no liability for distributions made without violation of the Act. Similar to FBCA § 607.0834, it provides that an action arising from an improper distribution must be brought within *2 years after the distribution*. Compare this with FLLCA § 608.426, which imposes a 2 year limitation against *managers or managing members who vote* in favor of a wrongful distribution, and § 608.428 of FLLCA which imposes liability for a period of *3 years* against *a member who received* the wrongful distribution. The 1999 amendments to the FLLCA did away with the 1 year and 6 year periods which were similar to, and, undoubtedly modeled after, FRULPA § 620.148 and RULPA § 609.

Finally RE-RULPA § 509 allows a person against whom an action is commenced to implead other responsible parties. This provision is modeled after FBCA § 607.0834.

RE-RULPA ARTICLE 5 SUMMARY OF COMPARISON CHART

The following is a summary of the major differences between RE-RULPA Article 5 and comparable provisions of RULPA, FRULPA, and FRUPA, as discussed more fully in the RE-RULPA Article 5 Comparison Chart (the ‘Comparison Chart’) attached hereto. This summary also discusses certain provisions found in FBCA and FLLCA to the extent such provisions are comparable and/or shed light on provisions found in RE-RULPA Article 5.

RE-RULPA Section 501 (Form of Contribution)

The sentence found in this section expands on the language of what is a permitted contribution. Since this provision serves mainly to clarify and slightly expand the scope of permitted contributions, the changes are appropriate and recommended.

RE-RULPA Section 502 (Liability for Contribution)

RE-RULPA § 502 deletes the requirement found in FRULPA § 620.136 and RULPA § 502 that “a promise by a limited partner to contribute to the limited partnership is not enforceable unless it is set out in writing signed by the limited partner.” It is not clear why this language was removed, except that it is consistent with the rest of RE-RULPA, which removes virtually all writing requirements. *See* § 111 of RE-RULPA which does require that certain information be maintained by the partnership in record form, including the “times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made.” The official RULPA comment as to why this provision was in there in the first place was because “unlike the prior uniform acts, the 1985 Act does not require that promises to contribute cash, property, or services be described in the partnership certificate; to protect against fraud it requires instead that such important promises be in a signed writing.” Section 201 of RE-

RULPA addresses the items required to be included in a certificate of limited partnership; similar to RULPA, it does not require that promises to contribute cash, property, or services be described in the partnership certificate. Adopting § 111 of RE-RULPA and keeping the “affidavit” requirement of FRULPA § 620.108, however, may be enough “anti-fraud” protection to support the deletion of such language.

Another change made in RE-RULPA § 502 concerns the circumstances under which a partner is obligated to make a contribution to the limited partnership. RE-RULPA § 502 provides that the obligation remains even if the partner is unable to perform because of his death or disability, or “*other inability to perform personally,*” while the language in FRULPA § 620.136 and RULPA § 502 states that the obligation remains even if the partner is unable to perform because of his or her death or disability “*or any other reason.*” RE-RULPA’s language of limiting the circumstances solely to “personal” events makes logical sense. The adoption of other clarifying language found in Section 502(c) is also recommended. *See* Comments to Section 502 of Comparison Chart. Finally, FRULPA § 620.136(4) contains a provision not found in either RE-RULPA § 502 or RULPA § 502 that suggests alternative remedies for a partner’s failure to make a contribution. *See* text of § 620.136(4) in the Comments to Section 502 of Comparison Chart. Those persons involved in Florida’s adoption of FRULPA should consider whether the reasons for such provision’s original inclusion are sufficiently compelling to add that same provision here.

RE-RULPA Section 503 (Sharing of Distributions)

RE-RULPA does not contain a provision that provides how profits and losses are to be allocated in the absence of a partnership agreement. FRULPA § 620.137 and RULPA § 503 provide that in the absence of a partnership agreement, profits and losses are shared in proportion

to contributions that have not been returned. According to NCCUSL comments addressing this particular issue, the provision on how profits and losses are allocated was removed because it was considered “unnecessary; in the default mode, RE-RULPA’s formulation produces the same result as the RULPA formulation.” However, it is not clear why a “default” provision for allocation of profits and losses is not desirable, or how the same result is produced by simply having a provision which addresses how distributions are shared.

What RE-RULPA 503 does contain is a provision that addresses the sharing of distributions. It provides that distributions are shared in proportion to “contributions” only. FRULPA § 620.138 and RULPA § 504 provide for sharing of distributions in proportion to contributions “*that have not been returned.*” See also FLLCA § 608.426(1) (which also provides for sharing of distributions in the same manner as FRULPA § 620.138 and RULPA § 504). RE-RULPA § 503 seems materially deficient. Neither sharing of distributions in proportion to contributions nor even contributions that have been unreturned appears to be an appropriate default rule; nor does the FRUPA § 620.8401(2) per capita rule. If we include the FRUPA § 620.8401(1) provision for capital accounts, the appropriate sharing should be in proportion to capital accounts that take into consideration not only contributions and distributions, but also profits and losses. This is especially important when partners are admitted at different times and there are accumulated earnings. Of course, a limited partnership can also provide the right result in the agreement, but a sensible default rule should be provided for simple partnerships, that may, nevertheless, not include only partners admitted at the same time.

RE-RULPA Section 504 (Interim Distributions)

RE-RULPA § 504 states that a partner does not have a right to any distribution before the dissolution and winding up of the limited partnership “*unless the limited partnership decides to*

make an interim distribution.” FRULPA § 620.139 and RULPA § 601 are different in that they provide that a partner is “*entitled*” to receive distributions before his withdrawal and before dissolution and winding up to the extent, or upon the happening of events, specified in the partnership agreement, provided, however, no such entitlement to interim distribution exists where the partnership is insolvent. If a goal of our committee is to support a harmonization of the business entities statutes, then this change is logical, since none of the other business entity statutes contain the “entitlement” language found in FRULPA § 620.139 and RULPA § 601. For example, compare such language with FLLCA § 608.426 (“the limited liability company *may* make distributions to its members . . .”), and FBCA § 607.06401 (“a board of directors *may* authorize and the corporation *may* make distributions to its shareholders . . .”).

RE-RULPA Section 505 (No Distributions on Account of Dissociation)

RE-RULPA § 505 is a departure from comparable provisions in RULPA 604, FRULPA § 620.144, and FRUPA § 620.8701 which require a limited partnership to purchase a departing partner’s interest. RE-RULPA 505 provides that a “person” does not have a right to receive a distribution on account of dissociation. Requiring a partnership to acquire a dissociated partner’s interest is at odds with provisions of other business entity statutes, which impose no such “put right” or “redemption obligation.” The change made by RE-RULPA would therefore appear to support harmonization of the business entity statutes. On the other hand, although RE-RULPA § 505 providing no distribution on account of dissociation may make sense for voluntary dissociation, it is less clear that it makes sense if the limited partner is compulsorily dissociated by reason of death or other events specified in RE-RULPA § 601. This means that the successor loses all partnership rights. A deceased shareholder's successor continues to have all the rights of a shareholder, including the right to vote. Perhaps the matter should be dealt with by looking

at RE-RULPA § 601 and related provisions on dissociation. In addition, a limited partner who wants out has different and probably less rights to seek judicial dissolution under RE-RULPA § 802 than a shareholder under FBCA § 607.1430(2) and (3). RE-RULPA § 802 is, however, consistent with FLLCA § 608.441(3). The FRUPA provision, § 620.8801(5) is somewhere in between. One of the most common problems in closely held business is the lock in of a participant's capital when other participation rights are denied. Arguably, there should be no reason to be harder on limited partners than corporate shareholders.

RE-RULPA Section 506 (Distributions in Kind)

The changes made in RE-RULPA Section 506 are recommended, although they are not significantly different from existing law. *See* Comments to Section 506 of Comparison Chart.

RE-RULPA Section 507 (Right to Distribution)

RE-RULPA § 507 is substantially similar to RULPA § 606 and FRULPA § 620.146 in that all provide that when a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. The main difference in RE-RULPA § 507 from the other two is that it allows the limited partnership to *offset* any amount owed to the limited partnership by the partner or disassociated partner on whose account the distribution is made. This change makes sense and therefore is recommended.

RE-RULPA Section 508 (Limitation on Distribution)

RE-RULPA § 508 is modeled after a provision in RMBCA, which is substantially equivalent to FBCA § 607.06401. Among other changes from existing FRULPA § 620.147 and RULPA § 607, RE-RULPA § 508 alters the test for insolvency by adding an additional test

found in RMBCA: “the equity insolvency test,” requiring a limited partnership to be able to pay its debts as they become due in the ordinary course of business. The equity insolvency test creates some ambiguity in that it can be difficult to determine objectively. RE-RULPA § 508 is also different in that it provides that distributions may not be made in violation of the partnership agreement. As before, if a goal of our Committee is to harmonize the various business statutes, this may be one area where requiring harmony is appropriate. *Compare* with FLLCA § 608.426, which is similar to FBCA §§ 607.06401, and also imposes the “equity insolvency test.” RE-RULPA § 508 seems generally sound in using the FBCA approach. We believe, however, that we should comment on the fact that FRUPA does not contain an equivalent provision. Although the absence of a distribution limit makes sense for a general partnership with unlimited liability for the partners, it does not make sense where this is limited liability.

RE-RULPA Section 509 (Liability for Improper Distributions)

RE-RULPA § 509 is based almost entirely on a provision found in RMBCA, which is substantially equivalent to FBCA § 607.0834. Like FBCA § 607.0834, RE-RULPA § 509 provides that an action based on an improper distribution (either against the general partner who voted in favor of it or the person who knowingly received the wrongful distribution) must be brought within 2 years after the distribution. FRULPA § 620.148 and RULPA § 609 provide that such an action against a partner *receiving such distribution* must be brought within 1 year if the distribution is “rightful,” and 6 years if the distribution is wrongful. Thus, RE-RULPA abandons the prior recapture provisions in favor of the RMBCA approach. Compare this with FLLCA § 608.426, which imposes a 2 year limitation against *managers or managing members who vote* in favor of a wrongful distribution, and § 608.428 of FLLCA, which imposes liability for a period of 3 years against *a member who received* the wrongful distribution. Adoption by the Committee

of RE-RULPA 509 should be seriously considered; at the same time, it should, arguably, be reconciled with the provisions of the FLLCA referenced herein.

Sub-Committee III

ANALYSIS OF ARTICLE 6

Characteristic	<u>RE-RULPA</u>	FRULPA	FRUPA
Dissociation as Limited Partner	<p>SECTION 601. A person does not have a right to dissociate as a limited partner before the termination of the limited partnership. A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:</p> <p>(1) 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;</p> <p>(2) an event occurring agreed to in the partnership agreement as causing the person's dissociation as a limited partner;</p> <p>(3) the person's expulsion as a limited partner pursuant to the partnership agreement;</p> <p>(4) the person's expulsion as a limited partner by the unanimous consent of the other partners if:</p> <p>(A) it is unlawful to carry on the limited partnership's activities with the person as a limited partner;</p> <p>(B) there has been a transfer of all of the person's transferable interest in the limited partnership, or a court order charging the person's interest;</p> <p>(C) the person is a corporation and, within 90 days notification of expulsion as a limited partner because it has filed a certificate of dissolution, its charter has been revoked, or its right to conduct business has been suspended, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct</p>	<p>SECTION 620.143. This section replaces "withdrawal" with disassociation. This section does not state that a partner does not have the right to dissociate before the termination of the partnership as Re-Rulpa does. This section does not have a list of events that upon the occurrence of any of the events, the person becomes dissociated from the partnership as Re-Rulpa does. This section adds that it applies to all limited partnerships formed on or after January 1, 1996. This section also applies to limited partnerships formed before January 1, 1996 unless, on December 31, 1995, its agreement did not specify in writing the time or the events upon the happening of which a limited partner could withdraw or a definite time for dissolution and the winding up of the limited partnership. If the Agreement did not specify the above, then the provisions of this section which were in effect prior to January 1, 1996 shall apply. However, if on or after January 1, 1996, this Agreement is amended in writing, to specify a time or event upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, this section as effective January 1, 1996 shall apply.</p>	<p>SECTION 620.8601. This section is essentially the same as Re-Rulpa except that this section does not state that a person does not have the right to dissociate before the termination of the partnership. Instead of "person", this section replaces such term with "partner". This section adds that if the partnership has notice of the partner's "express will to immediately withdraw" instead of just "withdraw" as it states in Re-Rulpa. Instead of "unanimous consent", this section refers to "unanimous vote". "Business" is substituted for "activities". Instead of this section stating "a transfer of all the person's transferable interest", this section states there has been a transfer of "all" or "substantially all" of the partner's transferable interest. In place of "corporation", this section replaces such term with "corporate partner". This section does not refer to the person as a "limited liability company" or a "partnership". Instead, it just refers to a partnership that is a "partner". Instead of "application by the limited partnership", this section states "on application by the partnership or another partner". "Judicial determination" is in place of "judicial order". Instead of specifically stating "obligation of good faith and fair dealing", this section just states "a duty owed to the partnership". This section replaces "person" with a ""partner" who willfully or</p>

	<p>business; or</p> <p>(D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;</p> <p>(5) on application by the limited partnership, the person's expulsion as a limited partner by judicial order because:</p> <p>(A) the person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;</p> <p>(B) the person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under Section 305(b); or</p> <p>(C) the person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner;</p> <p>(6) in the case of a person who is an individual, the person's death;</p> <p>(7) in the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;</p> <p>(8) in the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;</p> <p>(9) termination of a limited partner that is not an individual partnership.</p>		<p>consistently committed a material breach of the Partnership Agreement" and RE-RULPA states or "the obligation of faith and fair dealing," which this section replaces this phrase with "a duty owed to the partnership or other partners". This section adds the following to the events causing a partner's withdrawal: partners becoming a debtor in bankruptcy; executing an assignment for the benefit of creditors; seeking, consenting to, or acquiescing in the appointment of a trustee, receiver or liquidator of such a partner or of all or substantially all of such partner's property; or failing, within 90 days after appointment, to have vacated or have 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 of failing within 90 days after the expiration of a stay to have the appointment vacated; this section adds, in the case of a partner who is an individual: the appointment of a guardian or general conservator for the partner; or a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the Partnership Agreement. This section does not provide for the termination of a partner who is not an limited liability company. This section does not refer to the partnership's participation in a conversion or merger.</p>
--	---	--	---

	<p>limited liability company, corporation, trust, or estate; (10) the limited partnership's participation in a conversion or merger under [Article] 11, if the limited partnership: (A) is not the converted or surviving entity; or (B) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.</p>		
<p>Effective dissociation as limited partner.</p>	<p>SECTION 602. (a) Upon a person's dissociation as a limited partner: (1) subject to Section 704, the person does not have further rights as a limited partner; (2) the person's obligation of good faith and fair dealing as a limited partner under Section 305(b) continues only as to matters arising and events occurring before the dissociation; and (3) subject to Section 704 and [Article] 11, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee. (b) A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a limited partner.</p>	<p>No such section.</p>	<p>SECTION 620.8603. This section is similar. However it states that if a partner's dissociation results in a dissolution or winding up of the partnership business, then apply sections 620.8801 through 620.8807; otherwise apply sections 620.8701 through 620.8705. Again, "partner" is in place of "person". Re -Rulpa does not have further rights as a limited partner subject to s.704. This section does not state this, instead, this section states that a partner's right to "participate in the management and conduct of the partnership business terminates". Instead of referring to the obligations of good faith and fair dealing as Re-Rulpa does, this section refers to the "duty of loyalty and the duty of care". This section adds that the duty of loyalty and care continue only with matters arising and events occurring before the partner's disassociation, and this section adds "unless the partner participates in winding up the partnership's business pursuant to section 620.8803". This section does not say anything about a transferable interest owned</p>

			<p>by the person in that person's capacity as just being owned now as a mere transferee. This section does not state that the person's dissociation does not of itself discharge the person from any obligation to the partnership or other partners which the person incurred while they were a partner.</p>
Dissociation as General Partner	<p>SECTION 603. A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:</p> <p>(1) the limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;</p> <p>(2) an event agreed to in the partnership agreement;</p> <p>(3) the person's expulsion as a general partner pursuant to the partnership agreement;</p> <p>(4) the person's expulsion as a general partner by the unanimous consent of the other partners if:</p> <p>(A) it is unlawful to carry on the limited partnership's activities with the person as a general partner;</p> <p>(B) there has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, or a court order charging the person's interest;</p> <p>(C) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution, its charter has been revoked, or</p>	<p>SECTION 620.124 provides a laundry list of the events for withdrawal of a general partner. This section has some major differences from that of Re-Rulpa. This section starts out by saying that "except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events...". This section adds that a general partner can withdraw as provided in Section 620.142. This section adds when the general partner ceases to be a member of a limited partnership, instead of expulsion, this section refers to removal. Instead of execution of an assignment for the benefit of creditors, this section refers to "makes" an assignment for the benefit of creditors. Instead of "becoming a debtor in bankruptcy", this section refers to a "voluntary petition in bankruptcy" and refers to being "adjudged a bankrupt or insolvent or has entered against her or him an order for any relief in any bankruptcy or insolvency proceeding". This section adds filing "a petition or</p>	<p>SECTION 620.8601. Instead of "express will to withdraw", this section states "express will to immediately withdraw." "Partner" replaces "person". "Partner" replaces "general partner". "Unanimous vote" replaces "unanimous consent". "Partnership" replaces "limited partnership". This section adds "other than a transfer for security purposes" when referring to a transfer of all or substantially all of the partner's transferable interest in the partnership. This section adds "which has not been foreclosed" at the end of subsection (b) stating "a court order charging the partner's interest." This section does not refer to "the person is a corporation" as Re-Rulpa does. "Corporate partner" replaces "person". After certificate of dissolution, this section adds "or the equivalent". Instead of "its right to conduct business has been suspended". This section states "its right to conduct business has been suspended by the jurisdiction of its incorporation". Instead of "no reinstatement of its charter or its right to conduct business". this section states</p>

	<p>its right to conduct business has been suspended, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or</p> <p>(D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;</p> <p>(5) on application by the limited partnership, the person's expulsion as a general partner by judicial determination because:</p> <p>(A) the person engaged in wrongful conduct that adversely and materially affected the partnership activities;</p> <p>(B) the person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 408; or</p> <p>(C) the person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;</p> <p>(6) the person's:</p> <p>(A) becoming a debtor in bankruptcy;</p> <p>(B) execution of an assignment for the benefit of creditors;</p> <p>(C) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or</p> <p>(D) 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</p>	<p>answer seeking for herself or himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation". This section adds "files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against her or him in any proceeding of this nature". This section adds "unless otherwise provided in writing in the Partnership Agreement: (a) when, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed". This section adds (c) "when, 90 days after the expiration of any such stay, the appointment has not been vacated". Instead of "judicial determination", this section refers to "entry of an order by a court of competent jurisdiction". Instead of a judicial determination that the person is otherwise incapable of performing the person's duties, this section refers to adjudicating her or him incompetent to manage her or his person or property. This section adds in case of a general partner that is a separate partnership upon the dissolution and the commencement of winding up of the separate partnership. This section provides for a general partner that is a corporation whereas Re-Rulpa states "the person is a corporation. Re-Rulpa refers to, in the case of a person that is an estate or is acting as a general partner by virtue of being a personal</p>	<p>"no reinstatement of the corporate partner's charter or the corporate partner's right to conduct business". Instead of "the person is a limited liability company or partnership that has been dissolved and whose business is being wound up", this section states "a partnership that is a partner has been dissolved and its business is being wound up". Instead of "on application by the limited partnership", this section refers to "an application by the partnership or another partner". "Business" replaces "activities". Instead of "distribution of the trust's entire transferable interest in a limited partnership, but not merely by reason of the substitution of the successor trustee", this section states "in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of the trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reasons of the substitution of a successor trustee". This section does not state upon termination of a limited liability company. This section also does not include the partnership's participation in a conversion or merger if the limited partnership is not the converted or surviving entity or is the converted or surviving entity but as a result of the conversion or merger, the person ceases to be a general partner.</p>
--	---	---	--

	<p>substantially all of the person's property obtained without the person's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;</p> <p>(7) in the case of a person who is an individual:</p> <p>(A) the person's death;</p> <p>(B) the appointment of a guardian or general conservator; or</p> <p>(C) a judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;</p> <p>(8) distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;</p> <p>(9) in the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;</p> <p>(10) termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or</p> <p>(11) the limited partnership's participation in a conversion or merger under [Article] 11, if the limited partnership:</p> <p>(A) is not the converted or surviving entity; or</p> <p>(B) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.</p>	<p>representative of an estate, and this section refers to "in the case of a general partner that is an estate." Re-Rulpa refers to "distribution of the estate's entire transferable interest," and this section refers to "the distribution by the fiduciary of the entire interest of the estate in the partnership." This section does not talk about the "termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate." Furthermore, this section does not discuss the partnership's participation in conversion or merger.</p>	
<p>Person's Power to Dissociate as General Partner:</p>	<p>SECTION 604. (a) A person has the power to dissociate as a general partner at any time,</p>	<p>SECTION 620.142. This section does not provide a laundry list of wrongful</p>	<p>SECTION 620.8602. This section is essentially the same as Re-Rulpa. However</p>

<p>Wrongful Dissociation</p>	<p>rightfully or wrongfully, by express will pursuant to Section 603(1). (b) A person's dissociation as a general partner is wrongful only if: (1) it is in breach of an express provision of the partnership agreement; or (2) it occurs before the termination of the limited partnership, and: (A) the person withdraws as a general partner by express will; (B) the person is expelled as a general partner by judicial determination under Section 603(5); (C) the person is dissociated as a general partner by becoming a debtor in bankruptcy; or (D) in the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated. (c) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to Section 1001, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.</p>	<p>dissociation, instead a GP can withdraw at any time by giving written notice to the partners as long as withdrawal does not violate the partnership agreement, if so, damages will be offset.</p>	<p>Re-Rulpa states that a person's dissociation as general partner is wrongful only if, and it lists several items. One of the items is: if "it occurs before the termination of the limited partnership". In place of this, this section states "in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking".</p>
<p>Effect of Dissociation as General Partner</p>	<p>SECTION 605. (a) Upon a person's dissociation as a general partner: (1) the person's right to participate as a general partner in the management and conduct of the partnership's activities terminates; (2) the person's duty of loyalty as a general partner under Section 408(b)(3) terminates; (3) the person's duty of</p>	<p>No such section.</p>	<p>SECTION 620.8603. Instead of stating "upon a person's dissociation as general partner", this section states "if a partner's dissociation results in a dissolution and winding up of the partnership business, ss. 620.8801 - 620.8807 apply; otherwise, ss. 620.8701 - 620.8705 apply." "Business" replaces "activities". "Partner's" replaces "person's". This</p>

	<p>loyalty as a general partner under Section 408(b)(1) and (2) and duty of care under Section 408(c) continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;</p> <p>(4) the person may sign and deliver to the [Secretary of State] for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated; and</p> <p>(5) subject to Section 704 and [Article] 11, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.</p> <p>(b) A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a general partner.</p>		<p>section adds "except as otherwise provided in Section 620.8803" to the partner's right to management and conduct of the partnership terminating. The duty of care and loyalty continues only with regards to events occurring before dissociation, "unless the partner participates in the winding up of the partnership's business pursuant to s. 620.8803." This section adds the "unless... This section does not discuss a transferable interest now being owned by the person as a mere transferee. This section also does not state that a person's dissociation as general partner does not of itself discharge the person from any other obligation to the partnership or to the partners incurred while the person was a general partner.</p>
<p>Power to Bind and Liability to Limited Partnership Before Dissolution of Partnership of Person Dissociated as GP</p>	<p>SECTION 606. (a) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under [Article] 11, or merged out of existence under [Article] 11, the limited partnership is bound by an act of the person only if:</p> <p>(1) the act would have bound the limited partnership under Section 402 before the dissociation; and</p> <p>(2) at the time the other party enters into the transaction:</p> <p>(A) less than two years has passed since the dissociation; and</p>	<p>No such section.</p>	<p>SECTION 620.8702. This section is very different from Re-Rulpa. This section states that for one year after a partner dissociates without resulting in a dissolution and winding up the partnership, the partnership is bound by the partner's acts if the other party had no notice or knowledge that the partner was no longer a partner of the p/s and such person reasonably believed the partner to be a partner of the partnership. The dissociated partner is liable to the p/s for any damages arising from such obligation.</p>

	<p>(B) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.</p> <p>(b) If a limited partnership is bound under subsection (a), the person dissociated as a general partner which caused the limited partnership to be bound is liable:</p> <p>(1) to the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection (a); and</p> <p>(2) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.</p>		
<p>Liability to Other Persons of Person Dissociated as GP</p>	<p>SECTION 607. (a) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (b) and (c), the person is not liable for a limited partnership's obligation incurred after dissociation.</p> <p>(b) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under Section 404 on an obligation incurred by the limited partnership under Section 804.</p> <p>(c) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's</p>	<p>No such section.</p>	<p>SECTION 620.8703. This section is essentially the same as Re-Rulpa. However, again "partner" is substituted for "person". This section adds "is not deemed to have had knowledge under s. 620.8303(4) or notice under s. 620.8704(4)." This section does not state that a person whose dissociation as general partner resulted in dissolution and winding up of the partnership's activities is liable to the same extent as a general partner under section 404 on an obligation incurred by the limited partnership under section 804. This section adds that a partner who disassociates without resulting in a dissolution or winding up is liable as a partner to any other partner to a transaction entered into by the partnership or a surviving partnership under Section 620.8901 through Section 620.8908 within one year after the partner's disassociation only if the</p>

	<p>activities is liable on a transaction entered into by the limited partnership after the dissociation only if:</p> <p>(1) a general partner would be liable on the transaction; and</p> <p>(2) at the time the other party enters into the transaction:</p> <p>(A) less than two years has passed since the dissociation; and</p> <p>(B) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.</p> <p>(d) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.</p> <p>(e) A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.</p>		<p>partner is liable for the obligation under 620.8306 and at the time of entering into the transaction, the other party reasonably believed that the disassociated partner was then a partner or did not have notice of the partner's disassociation and was not deemed to have knowledge or notice. Whereas, Re - Rulpa states that a person that has dissociated as general partner but whose disassociation did not result in dis solution and winding up is liable on the transaction after dissociation only if a general partner would be liable on the transaction and at the time the other party enters into the transaction less than two years has passed since the disassociation and the other party did not have notice of the disassociation and reasonably believes that the person is a general partner.</p>
--	--	--	--

ANALYSIS OF ARTICLE 7

Characteristic	<u>RE-RULPA</u>	FRULPA	FRUPA
Partner's Transferable Interest	<p><u>SECTION 701. The only interest of a partner which is transferable is the partner's transferable interest. A transferable interest is personal property.</u></p>	<p>SECTION 620.149. A partnership interest is personal property. This section does not discuss a transferable interest or state that a transferable interest is personal property.</p>	<p>SECTION 620.8502. This section is similar to Re-Rulpa, however this section states that the only interest that is transferable of the partner is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. Instead of stating "a transferable interest is personal property" as Re-Rulpa does, this section states "a partner's interest in the partnership is personal property".</p>
Transfer of Partner's Transferable Interest	<p>SECTION 702. (a) A transfer, in whole or in part, of a partner's transferable interest:</p> <p>(1) is permissible;</p> <p>(2) does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and</p> <p>(3) does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (c), or to inspect or copy the required information or the limited partnership's other records.</p> <p>(b) A transferee has a right to receive, in accordance with the transfer:</p> <p>(1) distributions to which the transferor would otherwise be entitled; and</p> <p>(2) upon the dissolution and winding up of the limited</p>	<p>SECTION 620.152. This section is different from Re-Rulpa. Instead of dealing with the transfer of a partner's transferable interest, this section deals with assignment of a partnership interest. This section adds that unless otherwise provided in the Partnership Agreement, the partnership interest is assignable in whole or in part. Instead of stating as Re-Rulpa does that it does not by itself cause the partner's dissociation or dissolution and winding up of the partnership's activities, this section states "an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights or powers of a partner." This section adds that "an assignment entitles the assignee to share in profits and losses, to receive such distribution and distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled. to the</p>	<p>SECTION 620.8503. This section is essentially similar to Re-Rulpa. However, "business" is substituted for "activities". "Partnership" is substituted for "limited partnership". When talking about the transferee in the management or conduct of the partnership or access to information, this section does not state as Re-Rulpa does that "except as otherwise provided in subsection (c)" with regards to requiring access to information. In regards to inspection and copying, this section substitutes "partnership books or records" for "the required information or the limited partnership's other records". This section adds that they can seek a judicial determination that it is equitable to wind up the partnership business. Instead of a "transferee entitled to an account of the partnership's transactions only from the date of dissolution", this section states that they are entitled to this "only from the</p>

	<p>partnership's activities the net amount otherwise distributable to the transferor.</p> <p>(c) In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.</p> <p>(d) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.</p> <p>(e) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.</p> <p>(f) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.</p> <p>(g) A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under Sections 502 and 509. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.</p>	<p>extent assigned." This section states that "a partner ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all of his or her partnership interests." This section also adds that "the partnership agreement may provide that a partner's interest in a limited partnership may be evidenced by a certificate of partnership interest issued by the limited partnership and may also provide for the assignment or transfer of any partnership interest represented by such a certificate and make other provisions with respect to such certificates." This section does not say anything about not entitling the transferee to participate in the management or conduct of the activities of the partnership or giving them access to information and to inspect and copy required information. This section does not state upon dissolution and winding up, that they will receive the net amount otherwise distributable to the transferor. This section does not state that in dissolution and winding up, the transferee is entitled to an account of the transactions only from the date of dissolution. This section does not state that upon transfer, the transferee retains rights of the partner other than the interest and distributions transferred and retains all duties and obligations of a partner. In addition, this section does not state that a limited partnership may not give effect to the transferee's rights until notice has been given of the transfer. The section also does not state that a transfer of the partner's interest in violation of the partnership is in-effective. This section also does not state that a transferee that becomes a partner with respect to the</p>	<p>date of the latest account agreed to by all the partners". This section refers to "the transferor retaining the rights and duties of the partner" rather than the rights, duties and obligations of the partner as Re-Rulpa does. This section does not state that a transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under Sections 502 and 509 and furthermore that the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.</p>
--	---	---	---

		transferable interest is liable for the transferor's obligations, however the transferee is not obligated for liabilities unknown at the time to the transferee at the time they became partner.	
Rights of Creditor of Partner or Transferee	<p>SECTION 703. (a) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.</p> <p>(b) A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.</p> <p>(c) At any time before foreclosure, an interest charged may be redeemed:</p> <p>(1) by the judgment debtor;</p> <p>(2) with property other than limited partnership property, by one or more of the other partners; or</p> <p>(3) with limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.</p>	<p>SECTION 620.153. This Section is essentially similar to Re-Rulpa, however "assignee" is in place of "transferee". This section does not discuss a transferee at all. This section does not say that "the court may appoint a receiver of the share of the distributions due or become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the changing order." This section does not state that "a charging order constitutes a lien" or that the "court may order a foreclosure upon the interest" or that "the purchaser at a foreclosure sale has the rights of a transferee." This section does not state that "at any time before foreclosure, an interest charge may be redeemed." There is no list of who the interest may be redeemed by.</p>	No such section.

	<p>(d) This [Act] does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.</p> <p>(e) This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.</p>		
<p>Power of Estate of Deceased Partner</p>	<p>SECTION 704. If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in Section 702 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under Section 304.</p>	<p>SECTION 620.155. This section encompasses a lot more than Re-Rulpa. This sections also provides for an incompetent partner. Re - Rulpa says "if a partner dies", this section says "if a partner who is an individual dies". This section adds "or a court of competent jurisdiction adjudges a partner who is an individual to be incompetent to manage his or her person or property may exercise the rights of such person". Re - Rulpa specifically states "personal representative or other legal representative". This section refers to "the partner's executor, administrator, guardian, conservator, or other legal representative." This section does not provide for a transferee. Re -Rulpa provides, under this section, that the personal representative or other legal representative "may exercise the rights of a current limited partner." This section specifically states that they "may exercise all the partner's rights for the purpose of settling the partner's estate or administering his or her property, including any power the partner had to give an assignee the right to become a limited partner." This section adds "if a partner is a corporation, trust, or other entity and is dissolved or</p>	<p>No such section.</p>

		terminated, the powers of that partner may be exercised by its legal representative or successor."	
--	--	--	--

ANALYSIS OF ARTICLE 8

Characteristic	<u>RE-RULPA</u>	FRULPA	FRUPA
<p>Non-Judicial Dissolution</p>	<p>SECTION 801. Except as otherwise provided in Section 802, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following: (1) the happening of an event specified in the partnership agreement; (2) the consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; (3) after the dissociation of a person as a general partner: (A) if the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership 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; or (B) if the limited partnership does not have a remaining general partner, the passage of 90 days after the dissociation, unless before the end of the period: (i) consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and (ii) at least one person is admitted as a general partner in accordance with the consent;</p>	<p>SECTION 620.157 This section has some similarities with Re-Rulpa. Re-Rulpa starts out this section by saying this is "except as otherwise provided in Section 802", and there is no "except as otherwise provided" in this section. "Affairs" is substituted in place for "activities". Instead of "only upon the occurrence of any of the following" as Re-Rulpa states, this section states "upon the happening of the first to occur of the following events". This section adds "at the time specified in the certificate of limited partnership". Re-Rulpa states upon "the consent of all general partners and of limited partners owning a majority of rights to receive distributions as limited partners at the time the consent is to be effective". And this section states "when all partners have given their written consent". Instead of "dissociation", this section replaces such a term with "withdrawal". Instead of "after the dissociation", this section states "the happening of an event of withdrawal". Instead of "a person as a general partner", this section states just "a general partner". Instead of "at least one person is admitted as a general partner in accordance with the consent", this section states "at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and the partner does so; but the</p>	<p>SECTION 620.8801 This section has some major differences from Re-Rulpa. For example, this section discusses a partnership-at-will. It also discusses a partnership for a definite term or particular undertaking. This sections adds that dissolution will occur "if an event which makes it unlawful for all or substantially all of the business of the partnership to be continued." Instead of just "signing and filing of a declaration of dissolution" as Re-Rulpa states this section states "on application by a partner, a judicial determination that: (a) the economic purpose of the partnership is likely to be unreasonably frustrated; (b) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practical to carry on the business..." or (c) it is "not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement." This section specifically provides for "on application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business: (a) After the expiration of the term or completion of the undertaking..." or "any time, if the partnership was a partnership at will."</p>

	<p>(4) the passage of 90 days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner; or</p> <p>(5) the signing and filing of a declaration of dissolution by the [Secretary of State] under Section 809(c).</p>	<p>limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired." The partners must agree in writing to dissolve and wind up the partnership whereas in Re-Rulpa, there just needs to be consent from all partners to do this. Instead of "the signing and filing of a declaration of dissolution", this section states "entry of a decree of judicial dissolution". Re-Rulpa states a partnership is dissolved "after the dissociation of a person as general partner: (A) If the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given with 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". This section states that a partnership is dissolved by "the happening of an event of withdrawal of a general partner, unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so." This section states that the partnership does not have to be dissolved after withdrawal of a general partner if the parties agree in writing to continue the business of the limited partnership and to appoint one</p>	
--	---	--	--

		or more additional general partners if necessary or desired whereas Re-Rulpa states that a partnership is not dissolved even if the limited partnership does not have a remaining general partner if consent to continue the activities of a limited partnership is given by limited partners owning a majority of the rights to receive distributions and they admit at least one general partner.	
Judicial Dissolution	SECTION 802. On application by a partner the [appropriate court] may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.	SECTION 620.158. This section is essentially the same as Re-Rulpa except in place of the "[appropriate court]", this section refers to the "circuit court". Instead of "on application by a partner", this section states "on application by or for a partner".	No such section.
Winding Up	SECTION 803. (a) A limited partnership continues after dissolution only for the purpose of winding up its activities. (b) In winding up its activities, the limited partnership:(1) may amend its certificate of limited partnership to state that the limited 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 limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in Section 203, and perform other necessary acts; and (2) shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the	SECTION 620.159. This section has some similarities with Re-Rulpa, although this section is stated rather differently. Re-Rulpa states "a limited partnership continues after dissolution only for the purpose of winding up its activities", this section states "unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership, or, if none, the limited partners, may wind up the limited partners' affairs." This section adds that "the circuit court, upon cause shown, may wind up the limited partnership's affairs upon application of any partner or her or his legal representative or assignee, and in connection therewith may appoint a liquidating trustee." Re-Rulpa states that a limited partnership may amend its certificate of limited partnership to state that it's dissolved. This section discusses that upon	SECTION 620.8802. This section is similar to Re-Rulpa. However, there are some differences. This section says that a partnership is terminated when the winding up of its business is completed. This section adds that after dissolution of the partnership, before the winding up is completed, all the partners, including any dissociating partner other than a wrongfully dissociated partner, may waive the right to have the partnership business wound up and the partnership terminated. This section adds that if this occurs, the partnership resumes its business as if dissolution never occurred, and any liability incurred by the partnership or a partner after dissolution and before the waiver is determined as if the dissolution had never occurred and the rights of the third party accruing and arising out of conduct and

	<p>partnership.</p> <p>(c) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:</p> <p>(1) has the powers of a general partner under Section 804; and</p> <p>(2) shall promptly amend the certificate of limited partnership to state:</p> <p>(A) that the limited partnership does not have a general partner;</p> <p>(B) the name of the person that has been appointed to wind up the limited partnership; and</p> <p>(C) the street and mailing address of the person.</p> <p>(d) On the application of any partner, the [appropriate court] may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:</p> <p>(1) a limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (c); or</p> <p>(2) the applicant establishes other good cause.</p>	<p>dissolution, the limited partnership files a certificate of cancellation and until such time, there are a list of activities contained in this section that a person winding up the affairs of the partnership may do. Re-Rulpa states that the limited partnership may "preserve the limited partnership business or property as a going concern for a reasonable time." This is not included in this section. "Suits" is in place of "actions". "Convey" is in place of "transfer". This section does not have a statement regarding settling disputes by mediation or arbitration as Re-Rulpa does. Re-Rulpa refers to filing a Statement of Termination, and this section refers to filing a Certificate of Cancellation. Re-Rulpa has a statement about performing other necessary acts. This section does not. "Business" is in place of "activities". Re-Rulpa refers to "marshal and distribute the assets", and this section just refers to "distribute to the partners any remaining assets" "without affecting the liability of the limited partners." This section does not have a statement as Re-Rulpa does about if a dissolved limited partnership does not have a general partner, a person may be appointed by the consent of the limited partners owning a majority of the rights to receive distributions may appoint a person to wind up the dissolved limited partnership. This person has the power of a general partner, can promptly amend the Certificate of Limited Partnership to state the limited partnership does not have a general partner and state the name of the person appointed and the street and mailing</p>	<p>reliance on the dissolution before the third party knew or received notification of the waiver, may not be adversely affected. Section 620.8803 adds some more components about the winding up process. This section adds that a partner who is not wrongfully dissociated may participate in the winding up. This section also refers to judicial supervision of the winding up process, but this section adds that this process of judicial supervision is on application of any partner, partner's legal representative or transferee. This section also adds that the legal representative of the last surviving partner may wind up the partnership's business. This section does not discuss amending the Certificate of Partnership as Re-Rulpa does. This section does not discuss settling and closing the partnership's activities or martialing the assets. This section also does not discuss, as Re-Rulpa does, appointing a person to wind up the dissolved partnership if there is no general partner.</p>
--	---	--	--

		<p>address of the person. This section does not have the statement as Re-Rulpa does about an appropriate court ordering judicial supervision of the winding up including appointing a person to wind up the dissolved partnership's activities if the partnership does not have a general partner and within a reasonable time, no person has been appointed or the applicant establishes other good cause.</p>	
<p>Power of G.P. and Person Dissociated as a G.P. to Bind Partnership after Dissolution</p>	<p>SECTION 804. (a) A limited partnership is bound by a general partner's act after dissolution which:</p> <ul style="list-style-type: none"> (1) is appropriate for winding up the limited partnership's activities; or (2) would have bound the limited partnership under Section 402 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution. <p>(b) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:</p> <ul style="list-style-type: none"> (1) at the time the other party enters into the transaction: <ul style="list-style-type: none"> (A) less than two years has passed since the dissociation; and (B) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and (2) the act: <ul style="list-style-type: none"> (A) is appropriate for winding up the limited partnership's activities; or (B) would have bound the limited partnership under Section 402 before 	<p>No such section.</p>	<p>SECTION 620.8804. This section is essentially similar to Re-Rulpa. Re-Rulpa states that if at the time the other party enters into the transaction, the other party does not have notice of a dissolution, then a limited partnership is bound by the general partner's acct. This section refers to binding the partnership before dissolution if any other party to the transaction did not have notice of the dissolution. This section does not provide that a person dissociated as a general partner binds the partnership through an act occurring after dissolution or binds the limited partnership through an act occurring after dissolution if, at the time, the other party enters into the transaction, less than two years has passed since dissociation, and the other party does not have notice of dissociation and reasonably believes the person is a general partner and the act is appropriate for winding up the partnership's activities or would have bound the limited partnership under</p>

	dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.		Section 402 before dissolution and the other party did not have notice of dissolution.
Liability After Dissolution of GP and Person Dissociated as GP to Limited Partnership, Other GPs and Persons Dissociated as GP.	<p>SECTION 805. (a) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under Section 804(a) by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:</p> <p>(1) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and</p> <p>(2) if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.</p> <p>(b) If a person dissociated as a general partner causes a limited partnership to incur an obligation under Section 804(b), the person is liable:</p> <p>(1) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and</p> <p>(2) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.</p>	No such section.	<p>SECTION 620.8806. This section is different from Re-Rulpa. This section only deals with a partner's liability to other partners after dissolution. After dissolution, a partner is liable to the other partners for the partner's share of any partnership liability incurred under s. 620.8804, except as otherwise provided in subsection (2) and s. 620.8306.</p> <p>"Liability" is in place of "obligation". Re-Rulpa adds, and this section does not, that if a partner has knowledge of dissolution and they incur an obligation anyway, the general partner is liable if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to the other general partner or person arising from the liability. Re-Rulpa adds that if a person dissociated as GP causes a limited partnership to incur an obligation under Section 804(b), the person is liable to the limited partnership for any damage caused to the limited partnership arising from the obligation, and if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.</p>
Known Claims Against Dissolved	SECTION 806. (a) A dissolved limited partnership	No such section.	No such section.

<p>Against Dissolved Limited Partnership</p>	<p>may dispose of the known claims against it by following the procedure described in subsection (b).</p> <p>(b) A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:</p> <p>(1) specify the information required to be included in a claim;</p> <p>(2) provide a mailing address to which the claim is to be sent;</p> <p>(3) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant;</p> <p>(4) state that the claim will be barred if not received by the deadline; and</p> <p>(5) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 404.</p> <p>(c) A claim against a dissolved limited partnership is barred if the requirements of subsection (b) are met and:</p> <p>(1) the claim is not received by the specified deadline; or</p> <p>(2) in the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within 90 days after the receipt of the notice of the rejection.</p> <p>(d) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is</p>		
--	--	--	--

	contingent on that date.		
Other Claims Against Dissolved Limited Partnership	<p>SECTION 807. (a) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.</p> <p>(b) The notice must: (1) be published at least once in a newspaper of general circulation in the [county] in which the dissolved limited partnership's principal office is located or, if it has none in this State, in the [county] in which the limited partnership's designated office is or was last located; (2) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; (3) state that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within five years after publication of the notice; and (4) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 404.</p> <p>(c) If a dissolved limited partnership publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within five years after the publication date of</p>	No such section.	No such section.

	<p>the notice:</p> <p>(1) a claimant that did not receive notice in a record under Section 806;</p> <p>(2) a claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and</p> <p>(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.</p> <p>(d) A claim not barred under this section may be enforced:</p> <p>(1) against the dissolved limited partnership, to the extent of its undistributed assets;</p> <p>(2) if the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or</p> <p>(3) against any person liable on the claim under Section 404.</p>		
<p>Liability Of General Partner And Person Dissociated As General Partner When Claim Against Limited Partnership Barred</p>	<p>SECTION 808. If a claim against a dissolved limited partnership is barred under Section 806 or 807, any corresponding claim under Section 404 is also barred.</p>	<p>No such section.</p>	<p>No such section.</p>
<p>Administrative Dissolution</p>	<p>SECTION 809. (a) The [Secretary of State] may dissolve a limited partnership administratively if the limited partnership does not, within 60 days after the due date:</p> <p>(1) pay any fee, tax, or</p>	<p>SECTION 620.178. This section is essentially similar to Re-Rulpa. However, Re-Rulpa just deals with a limited partnership, and this section deals with a "domestic or foreign limited partnership." This section refers to failing</p>	<p>No such section.</p>

	<p>penalty due to the [Secretary of State] under this [Act] or other law; or</p> <p>(2) deliver its annual report to the [Secretary of State].</p> <p>(b) If the [Secretary of State] determines that a ground exists for administratively dissolving a limited partnership, the [Secretary of State] shall file a record of the determination and serve the limited partnership with a copy of the filed record.</p> <p>(c) If within 60 days after service of the copy the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the [Secretary of State] that each ground determined by the [Secretary of State] does not exist, the [Secretary of State] shall administratively dissolve the limited partnership by preparing, signing and filing a declaration of dissolution that states the grounds for dissolution. The [Secretary of State] shall serve the limited partnership with a copy of the filed declaration.</p> <p>(d) A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under Sections 803 and 812 and to notify claimants under Sections 806 and 807.</p> <p>(e) The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process.</p>	<p>to pay any fee prescribed by Section 620.182 when the fee has become due and payable where as Re -Rulpa states" pay any fee, tax, or penalty due to the [Secretary of State] under this [Act] or other law." This section adds that revocation of authority can occur if the partnership has failed to file any amendment to its Certificate of Limited Partnership or registration application required by this act. This section specifically includes a fraudulent misrepresentation or concealment that has been made of any material matter in the certificate application, affidavit, report or other document submitted by the partnership pursuant to this act whereas Re-Rulpa does not make reference to any of these things. This section also adds that revocation of authority will occur if "the partnership has failed for 30 days from the date of filing of a registered agent's resignation to appoint and maintain a registered agent in this state." This section also adds that if a new registered office or registered agent is selected by the partnership and they have failed to file with the Department of State a statement of such change, then revocation of authority can occur. This section also adds that revocation of authority can occur if the "partnership has failed or refuses to answer truthfully and fully," interrogatories propounded by the Department of State. This section also says that the authority of either a domestic or foreign limited partnership to transact business in the state may not be revoked unless the Department has given the partnership 60 days notice of the revocation by</p>	
--	--	--	--

		<p>mail and the partnership fails, up to the revocation date, to file such annual report or amendment, pay such fee or correct such misrepresentation whereas Re-Rulpa states that the Secretary of State may dissolve a limited partnership administratively if the limited partnership does not, within 60 days after the due date, pay any fee, tax or penalty due under this Act or other law or deliver its annual report to the Secretary of State. This section states that "upon revoking the authority of a domestic or foreign limited partnership to transact business in this State, the Department shall issue a certificate of revocation and mail a copy of the certificate to the partnership." Upon issuance of the certificate, the authority of the partnership to transact business ceases. Re-Rulpa states that if, within 60 days after service of the copy the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the [Secretary of State] that each ground does not exist, then the [Secretary of State] shall administratively dissolve the limited partnership by preparing and signing and filing the declaration of dissolution, and the [Secretary of State] shall serve the limited partnership with a copy of the filed declaration. This section adds that a domestic or foreign limited partnership whose authority has been revoked, is liable to this State, for each year or part of the year during which its authority was revoked and prior to reinstatement of the partnership's authority to transact business in the State, there shall be collected a fine in the amount of \$500 for each such year or part of a</p>	
--	--	---	--

		<p>year during which its authority was revoked. This section also adds that the domestic or foreign limited partnership whose certificate of limited partnership or registration has been revoked may have its certificate of limited partnership or registration reinstated at any time upon the approval or an annual report serving as an application for reinstatement and signed by one general partner. If such is approved, then the department shall file such application and reinstate such certificate if it is established to the satisfaction of the department that there was no cause for revocation or that the reasons for revocation have been corrected. This section also adds that the department shall require the domestic or foreign limited partnership to amend its certificate of limited partnership or registration application before accepting its application for reinstatement if another person has lawfully assumed the name or a name substantially similar to the name of the limited partnership. The name of a limited partnership whose certificate of limited partnership or registration has been revoked, will not be available for the assumption or use of the name by another person until one year after the date of the issuance of the certificate of revocation. This section also provides and adds that the provisions of subsection (1) dealing with the revocation of business of the partnership in this state if certain conditions are met does not include actions or special proceedings by the attorney general or any state agency or official for the annulment, dissolution or</p>	
--	--	---	--

		<p>cancellation of a certificate of limited partnership or registration or for any other causes provided by law. Re-Rulpa states that a limited partnership administratively dissolved continues its existence and may carry on only activities necessary to wind up its activities and liquidate its assets and to notify claimants. This is not included in this section. Re-Rulpa also states that administrative dissolution does not terminate the authority of its agent for service of process, and this section does not contain a similar statement. Section 620.179 under subsection (4) states that "a foreign limited partnership by transacting business in this state without registration appoints the Secretary of State as its agent for service of process with respect to claims for relief arising out of the transaction of business in this state". Section 620.179 also deals with a foreign limited partnership transacting business in the state when it has not registered in the state, as such it may not maintain any action, suit or proceeding in any court. This section also states a domestic or foreign limited partnership transacting business in this state after its authority has been revoked may not maintain any action, suit, or proceeding in any court until the partnership obtains authority to transact business in the state by reinstatement of its certificate of limited partnership or registration. An action, suit or proceeding may not be maintained by any successor or assignee of the partnership on any right, claim or demand arising out of the transaction of business by such partnership or any</p>	
--	--	--	--

		<p>person who has acquired all or substantially all of its assets. This section also states that the failure to register in this state or to continue in effect its authority to transact business in this state does not impair the validity of its contract, deed, mortgage, security interest, lien, or act of the partnership or prevent the partnership from defending any action, suit, or proceeding in any court of this state. This section also adds that "a limited partner of a foreign limited partnership is not liable as a general partner of a foreign limited partnership solely by reason of the partnership's having transacted business in this state without registration." There is no such section in Re-Rulpa that deals with transaction of business without registration or after revocation of authority as discussed above.</p>	
<p>Reinstatement Following Administrative Dissolution</p>	<p>SECTION 810. (a) A limited partnership that has been administratively dissolved may apply to the [Secretary of State] for reinstatement within two years after the effective date of dissolution. The application must be delivered to the [Secretary of State] for filing and state: (1) the name of the limited partnership and the effective date of its administrative dissolution; (2) that the grounds for dissolution either did not exist or have been eliminated; and (3) that the limited partnership's name satisfies the requirements of Section 108. (b) If the [Secretary of State] determines that an application contains the</p>	<p>SECTION 620.178. As discussed above, deals with reinstatement. Re-Rulpa states that a limited partnership who has been administratively dissolved may apply for reinstatement within "two years" after the effective date of dissolution. This section states that after revocation, a domestic or foreign limited partnership may "have its certificate of limited partnership or registration reinstated at any time upon the approval of an annual report, serving as an application for re instatement, signed by one general partner." Re-Rulpa's application for reinstatement must include the name and the effective date of administrative dissolution, that the grounds for dissolution, that either did not</p>	<p>No such section.</p>

	<p>information required by subsection (a) and that the information is correct, the [Secretary of State] shall prepare a declaration of reinstatement that states this determination, sign, and file the original of the declaration of reinstatement, and serve the limited partnership with a copy.</p> <p>(c) When reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume its activities as if the administrative dissolution had never occurred.</p>	<p>exist or have been eliminated, and that the limited partnership's name satisfies Section 108. Re-Rulpa states that if the Secretary of State determines that an application contains the information required and that the information is correct, then a declaration of reinstatement shall be prepared which states this determination and the [Secretary of State] shall sign and file the original declaration of reinstatement and serve the limited partnership with a copy where as this section says the department shall approve and file such application and reinstate such certificate if it is established to the satisfaction of the department that there is no cause for revocation or that the reasons for revocation have been corrected and when all fees and penalties imposed pursuant to this act have been paid. Re-Rulpa states that "when reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume its activities as if the administrative dissolution had never occurred" whereas this section does not refer to an effective date. This section, again, adds that it requires the domestic or foreign limited partnership to amend its certificate of limited partnership or registration application if another person has lawfully assumed the name or a name substantially similar to the name. The name of the limited partnership whose certificate of registration has been revoked will not be available for use until one year after the date of issuance of the certificate of revocation.</p>	
--	---	---	--

		Again, this section adds that "the provisions of subsection (1) do not exclude actions or special proceedings by the Attorney General or any state agency or official for the annulment, dissolution, or cancellation of a certificate of limited partnership or of registration for any other causes as provided by law."	
Appeal From Denial Of Reinstatement	<p>SECTION 811. (a) If the [Secretary of State] denies a limited partnership's application for reinstatement following administrative dissolution, the [Secretary of State] shall prepare, sign and file a notice that explains the reason or reasons for denial and serve the limited partnership with a copy of the notice.</p> <p>(b) Within 30 days after service of the notice of denial, the limited partnership may appeal from the denial of reinstatement by petitioning the [appropriate court] to set aside the dissolution. The petition must be served on the [Secretary of State] and contain a copy of the [Secretary of State's] declaration of dissolution, the limited partnership's application for reinstatement, and the [Secretary of State's] notice of denial.</p> <p>(c) The court may summarily order the [Secretary of State] to reinstate the dissolved limited partnership or may take other action the court considers appropriate.</p>	No such section.	No such section.
Disposition Of Assets; When Contributions Required	<p>SECTION 812. (a) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by</p>	<p>SECTION 620.162. This section is not as comprehensive as Re-Rulpa. This section provides "that upon the winding up of the limited partnership, the assets</p>	<p>SECTION 620.8807. This section is essentially similar to Re-Rulpa. Re-Rulpa states that "Any surplus remaining after the limited partnership complies with</p>

	<p>this section, must be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.</p> <p>(b) Any surplus remaining after the limited partnership complies with subsection (a) must be paid in cash as a distribution.</p> <p>(c) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (a), with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:</p> <p>(1) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under Section 607 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.</p> <p>(2) If a person does not contribute the full amount required under paragraph (1) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by paragraph (1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect</p>	<p>must be distributed as follows" whereas Re-Rulpa states "in winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section must be applied to satisfy the limited partnership's obligations to creditors including, to the extent permitted by law, partners that are creditors." In the list of assets that must be distributed, the first subsection deals with creditors." This section adds "to the extent permitted by law in satisfaction of liabilities of the limited partnership, whether by payment or by establishment of reserves, other than liabilities for distributions to partners under s. 620.139 or s. 620.144." This section does not state that "any surplus remaining after the limited partnership complies with subsection (a) must be paid in cash as a distribution" as Re-Rulpa does. Re-Rulpa specifically provides that if a limited partnership's assets are insufficient to satisfy all of its obligations with respect to each unsatisfied obligation incurred when a limited partnership was not a limited liability limited partnership, there is a list of rules that apply. The list provides that each person that was a general partner when the obligation was occurred and has not been released from the obligation shall contribute to the limited partnership to satisfy the obligation. The contribution due from each of the persons is in proportion to the right to receive distributions. If the person does not contribute the full amount required, then the other persons required to</p>	<p>subsection (a) must be paid in cash as a distribution". This section states that "Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with the right to distributions under subsection (2)". This section adds that "Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business." Upon settling the accounts, the liquidation of the partnership assets must be credited and charged to the partners' account. "The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under s. 620.8306. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account." All of this is not stated in Re-Rulpa. This section does not provide for when a limited partnership's assets are insufficient with respect to unsatisfied obligations when the limited partnership was not a limited liability limited partnership. Also, of course in this section, "limited partnership" is substituted for "partnership". If a person does not contribute the full amount required under Re-Rulpa, then the other persons required to contribute shall contribute the additional amount. This section states that "all of the other partners shall contribute, in the proportions in which those</p>
--	--	--	--

	<p>for each of those other persons when the obligation was incurred.</p> <p>(3) If a person does not make the additional contribution required by paragraph (2), further additional contributions are determined and due in the same manner as provided in that paragraph.</p> <p>(d) A person that makes an additional contribution under subsection (c)(2) or (3) may recover from any person whose failure to contribute under subsection (c)(1) or (2) necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.</p> <p>(e) The estate of a deceased individual is liable for the person's obligations under this section.</p> <p>(f) An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection (c).</p>	<p>contribute shall contribute the additional amount necessary to discharge the obligation, and that additional contribution is in proportion to the right to receive distributions. If the person does not make the additional contribution, further additional contributions are determined and due in the same manner as provided in paragraph (2). Re-Rulpa also states that the estate of the deceased individual is liable for the person's obligations under this section and an assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by the court to represent creditors may enforce the person's obligation to contribute under subsection (c). This section does not provide for any of the above. This section just states that after creditors are paid, other than liabilities for distributions to partners under s. 620.139 or s. 620.144 and, except as provided in the partnership agreement, debts are distributed to partners and former partners in satisfaction of liabilities for distributions under s. 620.139 or s. 620.144. Section 620.139 deals with interim distributions before the dissolution and winding up of the partnership, and Section 620.144 deals with distributions upon withdrawal. This section also adds "except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions."</p>	<p>partners share, partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under s. 620.8306." This section adds "A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations." This section also adds that after the "settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under s. 620.8306."</p>
--	--	--	---

MEMORANDUM

RE-RULPA ARTICLE 6 SUMMARY OF COMPARISON CHART

The following is a summary of the major differences between RE-RULPA Article 6 as compared to FRULPA and FRUPA. The headings refer to the appropriate sections of RE-RULPA.

Section 601 - Dissociation as Limited Partner.

This section is similar to s. 620.143 of FRULPA and s. 620.861 of FRUPA. However, neither of these sections state as RE-RULPA does that "a person does not have a right to dissociate as a limited partner before the termination of the limited partnership". Section 620.143 of FRULPA does not even have a list of events that upon the occurrence of the events, the person become dissociated from the partnership as RE-RULPA does. Instead, this section discusses when a limited partnership was formed and whether the agreement when the partnership was formed specified the time or events upon the happening of which a limited partner could withdraw or a definite time for dissolution and the winding up of the limited partnership. Section 620.8601 of FRUPA does not refer to a person as a limited liability company or a partnership as RE-RULPA does. Instead, it refers to a partnership that is a "partner". RE-RULPA specifically mentions the "obligation of good faith and fair dealing" whereas this section just states "a duty owed to the partnership". This section adds more events than RE-RULPA that cause a partner's withdrawal such as the following: partners becoming a debtor in bankruptcy; executing an assignment for the benefit of creditors; seeking, consenting to, or acquiescing in the appointment of a trustee, receiver or liquidator of such a partner or of all or substantially all of such a partner's property; or failing within ninety days after appointment to have vacated or have stayed the appointment of a trustee, receiver or liquidator of the partner or of the partner's property obtained without the partner's consent or acquiescence or failing within ninety days after the expiration of the stay to have an appointment vacated. This section also adds in the case of a partner who is an individual, the appointment of a guardian or general conservator for the partner; or a judicial determination if the partner has otherwise become incapable of performing the partner's duties under the partnership agreement. This section does not provide for the termination of a partner who is not a limited liability company. This section also does not refer to the partnership's participation in a conversion or merger.

Section 602 - Effective Dissociation as Limited Partner.

FRULPA does not have such a section, and s. 620.8603 of FRUPA is very similar to that of RE-RULPA. However, this section states that if a partner's dissociation results in dissolution or winding up of the partnership business, then s. 620.8801 through s. 620.8807 should apply. Otherwise, apply s. 620.8701 through s. 620.8705. Instead of referring to the "obligations of good faith and fair dealing" as RE-RULPA does, this section refers to the "duty of loyalty and the duty of care". This section adds that the duty of loyalty and care continue only with matters arising and events occurring before the partner's dissociation, and this section also adds "unless the partner participates in winding up the partnership's business". This section does say anything about a transferable interest owned by the person in that person's capacity as just being owned now as a mere transferee as RE-RULPA does. This section also does not state that the person's

dissociation does not of itself discharge the person from any obligation of the partnership or other partners which the person incurred while they were a partner as RE-RULPA does.

Section 603 - Dissociation as General Partner.

Section 620.8601 of FRUPA is essentially the same as RE-RULPA, except that this section does not deal with the person as a limited liability company or a partnership that has been dissolved and whose business is being wound up as RE-RULPA does. This section just refers to "a partnership that is a partner has been dissolved and its business is being wound up". This section does not provide for the termination of a limited liability company as causing dissociation of a general partner as RE-RULPA does. This section also does not provide for the limited partnership's participation in a conversion or merger as being a cause for dissociation as RE-RULPA does. Section 620.124 of FRULPA differs from that of RE-RULPA. This section adds that "except as approved by the specific written consent of all the general partners," a person ceases to be a general partner of a limited partnership upon the happening of any of the following events. RE-RULPA does not state this. This section adds that a general partner can withdraw as provided for in s. 620.142 which states that "a general partner may withdraw at any time by giving written notice to the other partners". RE-RULPA just refers to the limited partnership having notice of the person's express will to withdraw. It does not refer to written notice. In the laundry list of events that this section provides for a general partner's withdraw, this section adds "filing a petition or answer seeking for herself or himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation." This section also adds "files an answer or other pleading admitting or failing to contest the material allegations of the petition filed against him or her in any proceeding of this nature". This section also adds "unless otherwise provided in writing in the partnership agreement" within 120 days after the commencement of any proceeding against the general partner seeking any of the above such as reorganization, arrangement, etc., the proceeding has not been dismissed or within 90 days after the expiration of any such stay, the appointment has not be vacated then dissociation of a general partner can occur. This section provides for dissociation "in case of a general partner that is a separate partnership upon the dissolution and the commencement of winding up of the separate partnership". This section does not provide for the termination of a general partner that is not an "individual, partnership, limited liability company, corporation, trust, or a estate" as RE-RULPA does. Furthermore, this section does not discuss the partnership's participation in conversion or merger.

Section 604 - Person's Power to Dissociate as General Partner; Wrongful Dissociation

Section 620.142 of FRULPA is very different from that of RE-RULPA. RE-RULPA provides a laundry list of events causing wrongful dissociation of a general partner. This section just states that a general partner can withdraw at any time by giving written notice to the partners but if the withdrawal violates the partnership agreement, then damages will be offset. Section 620.8602 of FRUPA is essentially the same as RE-RULPA. However, RE-RULPA provides that wrongful termination can occur if "it occurs before the termination of the limited partnership". In place of this, this section states "in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking."

Section 605 - Effect of or Dissociation as General Partner.

FRULPA does not provide a section for this. Section 620.8603 of FRUPA is essentially the same as RE-RULPA. However, this section specifically states "if a partner's dissociation results in dissolution and winding up of the partnership's business, ss. 620.8801-620.8807 apply; otherwise, ss. 620.8701-620.8705 apply." This section provides that a partner's right to management and conduct of the partnership terminates as RE-RULPA states; however, this section adds "except as otherwise provided in s. 620.8803" which deals with the right to wind up partnership business. Again, this section is similar to RE-RULPA in that the duty of care and loyalty continue only with regard to events occurring before dissociation; however, this section adds "unless the partner participates in the winding up of the partnership's business pursuant to s. 620.8803." This section does not discuss a transferable interest now being owned by the person as a mere transferee as RE-RULPA does. This section also does not state a person's dissociation as a general partner does not of itself discharge the person from any other obligation of the partnership or to the partners incurred while the person was a general partner like RE-RULPA does.

Section 606 - Power to Bind and Liability to Limited Partnership Before Dissolution of Partnership a Person Dissociated as General Partner.

FRULPA does not provide for such a section. Under FRUPA, s. 620.8702 is very different from that of RE-RULPA. This section states that for one year after a partner dissociates without resulting in a dissolution and winding up of the partnership, the partnership is bound by the partner's acts if the other partner had no notice or knowledge that the partner was no longer a partner of the partnership and such person reasonably believed the partner to be a partner of the partnership. The dissociated partner is liable to the partnership for any damages arising from such obligation. RE-RULPA specifically refers to a person that is dissociated as a general partner before the limited partnership is dissolved, converted or merged out of existence. The limited partnership is bound by the act of the person only if the limited partnership would have been bound before the dissociation under s. 402, and at the time the other party enters into the transaction, less than two years has passed since the dissociation and the other party does not have notice of the dissociation and reasonably believes the person is a general partner. If, as a result of meeting the above test, the limited partnership is bound, the person dissociated as a general partner is liable to the limited partnership for any damage caused arising out of the obligation incurred because of falling under this category and if the general partner or another person dissociated as a general partner is liable for the obligation to the general partner or other person arising from the liability.

Section 607 - Liability to Other Persons of Person Dissociated as General Partner.

FRULPA does not provide for such a section. Section 620.8703 of FRUPA is essentially the same as RE-RULPA. This section adds that a person who dissociates without resulting in dissolution and winding up is liable as a partner to any other party to a transaction when the other person "is not deemed to have knowledge under s. 620.8303(4) or notice under s. 620.8704(4)". This section does not state that a person whose dissociation as general partner resulted in dissolution and winding up of the partnership's activities is liable to the same extent as a general partner under s. 404 on an obligation incurred by the limited partnership under s. 804 as RE-RULPA does. However, this section adds that a partner who dissociates without resulting in the dissolution and winding up is liable as a partner to any other partner to a transaction entered into by the partnership or a surviving partnership under s. 620.8901 through s. 620.8908 within one

year after the partner's dissociation only if the partner is liable for the obligation under 620.8306 and at the time of entering into the transaction, the other party reasonably believed that the dissociated partner was then a partner and did not have notice of the partner's dissociation and was not deemed to have knowledge or notice. Whereas, RE-RULPA states that a person dissociated as a general partner but whose dissociation did not result in dissolution and winding up is liable under the transaction after dissociation only if a general partner would be liable on the transaction and at the time the other party enters into the transaction less than two years has passed since the dissociation and the other party did not have notice of the dissociation and reasonably believes that the person is a general partner.

MEMORANDUM

RE-RULPA ARTICLE 7 SUMMARY OF COMPARISON CHART

The following is a summary of the major differences between RE-RULPA Article 7 as compared to FRULPA and FRUPA. The headings refer to the appropriate sections of RE-RULPA.

Section 701 - Partner's Transferable Interest.

Both FRULPA 620.149 AND FRUPA 620.8502 are essentially the same as RE-RULPA. However, under s. 620.149, this section does not discuss a transferable interest or state that "a transferable interest is personal property" as RE-RULPA does. Section 620.8502 states that the only interest of the partner that is transferable is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions.

Section 702 - Transfer of Partner's Transferable Interest.

Section 620.8503 of FRUPA is essentially the same as RE-RULPA. This section adds that they can seek a judicial determination that is as equitable to wind up the partnership business. This section does not state that a transferee that becomes a partner with respect to a transferable interest is liable for the transfer's obligations as RE-RULPA does which specifically references ss. 502 and 509 and furthermore that the transferee is not obligated for the liabilities unknown to the transferee at the time the transferee became a partner as RE-RULPA does. Section 620.152 of FRULPA is very different from that of RE-RULPA. Instead of dealing with the transfer of a partner's transferable interest, this section deals with the assignment of a partnership interest. Instead of stating, as RE-RULPA does, that it does not by itself cause the partner's dissociation, dissolution and winding up of the partnership's activities, this section states "an assignment of a partnership interest does dissolve limited partnership or entitle the assignee to become or to exercise any rights or powers of a partner". This section adds that "an assignment entitles the assignee to share in profits and losses, to receive such distribution and distributions, and to receive such allocations of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned." This section states that "a partner ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all of his or her partnership interests". This section also adds that "the partnership agreement may provide that a partner's interest in a limited partnership may be evidenced by a certificate of partnership interest issued by the limited partnership and may also provide for the assignment or transfer of the partnership interest". This section does not say anything about not entitling the transferee to participate in the management or conduct of the activity of the partnership or giving them access to information and to inspect and copy required information as RE-RULPA does. In addition, this section does not state upon dissolution and winding up that they will receive the net amount otherwise distributable to the transferor. This section also does not state that in dissolution and winding up, the transferee is entitled to an account of the transactions only from the date of dissolution. This section does not state that upon transfer, the transferee retains rights of the partner other than the interest and distributions transferred and retains all duties and obligations of a partner. This section does not state that a limited partnership may not give effect to a transferee's rights until notice has been given of the

transfer. This section also does not state that a transfer of the partnership interest in violation of the partnership is ineffective. In addition, this section does not state that a transferee that becomes a partner with respect to the transferred interest is liable for the transferor's obligation, however the transferee is not obligated for liabilities unknown at the time to the transferee at the time they became partner.

Section 703 - Rights of Creditor of Partner or Transferee.

FRUPA does not provide for such a section. However, s. 620.153 of FRULPA is essentially similar to RE-RULPA. This section, however, does not discuss a transferee at all. This section also does not say that "the court may appoint a receiver of the share of the distributions due or become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the changing order." In addition, this section does not state that "a charging order constitutes a lien" or that the "court may order a foreclosure upon the interest" or that "the purchaser at a foreclosure sale has the rights of a transferee." This section also does not state that "at any time before foreclosure, an interest charge may be redeemed." There is no list of who the interest may be redeemed by.

Section 704 - Power of Estate of Deceased Partner.

FRUPA does not provide for such a section. However, FRULPA, under s. 620.155 encompasses a lot more than RE-RULPA does. This section provides for an incompetent partner where RE-RULPA does not. This section adds "or a court of competent jurisdiction adjudges a partner who is an individual to be incompetent to manage his or her person or property may exercise the rights of such person". RE-RULPA refers to "personal representative or other legal representative", and this section refers to "the partner's executor, administrator, guardian, conservator, or other legal representative." However, this section does not provide for a transferee like RE-RULPA does. RE-RULPA simply states that the personal representative or other legal representative "may exercise the rights of a current limited partner." This section is more specific stating that they "may exercise all the partner's rights for the purpose of settling the partner's estate or administering his or her property, including any power the partner had to give an assignee the right to become a limited partner." In addition, this section adds "if a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor."

MEMORANDUM

RE-RULPA ARTICLE 8 SUMMARY OF COMPARISON CHART

The following is a summary of the major differences between RE-RULPA Article 8 as compared to FRULPA and FRUPA. The headings refer to the appropriate sections of RE-RULPA.

Section 801 - NonJudicial Dissolution

Section 620.157 has some similarities with RE-RULPA. Instead of "only upon the occurrence of any of the following" as RE-RULPA states, this section states "upon the happening of the first to occur of the following events". This section adds "at the time specified in the certificate of limited partnership". RE-RULPA states upon "the consent of all general partners and of limited partners owning a majority of rights to receive distributions as limited partners at the time the consent is to be effective". And this section specifically states "when all partners have given their written consent". Instead of "at least one person is admitted as a general partner in accordance with the consent", this section states "at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and the partner does so. . . ." The partners must agree in writing to dissolve and wind up the partnership whereas in RE-RULPA, there just needs to be consent from all partners to do this. RE-RULPA states a partnership is dissolved "after the dissociation of a person as general partner: (A) If the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given with 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". This section states that a partnership is dissolved by "the happening of an event of withdrawal of a general partner, unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so." This section states that the partnership does not have to be dissolved after withdrawal of a general partner if the parties agree in writing to continue the business of the limited partnership and to appoint one or more additional general partners if necessary or desired whereas RE-RULPA states that a partnership is not dissolved even if the limited partnership does not have a remaining general partner if consent to continue the activities of a limited partnership is given by limited partners owning a majority of the rights to receive distributions and they admit at least one general partner.

Section 620.8801 of FRUPA has some major differences from that of RE-RULPA. For example, this section discusses a partnership-at-will. It also discusses a partnership for a definite term or particular undertaking. This section adds that dissolution will occur "if an event which makes it unlawful for all or substantially all of the business of the partnership to be continued." Instead of just "signing and filing of a declaration of dissolution" as RE-RULPA states this section states "on application by a partner, a judicial determination that: (a) the economic purpose of the partnership is likely to be unreasonably frustrated; (b) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practical to carry on the business...." "(c) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement." This section specifically provides for

"on application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business: (a) After the expiration of the term or completion of the undertaking..." or "any time, if the partnership was a partnership at will."

Section 802 - Judicial Dissolution

FRUPA has no such section and FRULPA is essentially the same as RE-RULPA. However, instead of "on application by a partner", this section states "on application by or for a partner".

Section 803 - Winding Up

Section 620.159 of FRULPA has some similarities with RE-RULPA although this section is stated rather differently. RE-RULPA states "a limited partnership continues after dissolution only for the purpose of winding up its activities", this section states "unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership, or, if none, the limited partners, may wind up the limited partners' affairs." This section adds that "the circuit court, upon cause shown, may wind up the limited partnership's affairs upon application of any partner or her or his legal representative or assignee, and in connection therewith may appoint a liquidating trustee." RE-RULPA states that a limited partnership may amend its certificate of limited partnership to state that it's dissolved. This section discusses that upon dissolution, the limited partnership files a certificate of cancellation and until such time, there are a list of activities contained in this section that a person winding up the affairs of the partnership may do. RE-RULPA states that the limited partnership may "preserve the limited partnership business or property as a going concern for a reasonable time." This is not included in this section. This section does not have a statement regarding settling disputes by mediation or arbitration as RE-RULPA does. RE-RULPA has a statement about performing other necessary acts. This section does not. RE-RULPA refers to "marshal and distribute the assets", and this section just refers to "distribute to the partners any remaining assets" "without affecting the liability of the limited partners." This section does not have a statement as RE-RULPA does about if a dissolved limited partnership does not have a general partner, a person may be appointed by the consent of the limited partners owning a majority of the rights to receive distributions. This person has the power of a general partner, can promptly amend the Certificate of Limited Partnership to state the limited partnership does not have a general partner and state the name of the person appointed and the street and mailing address of the person. This section does not have the statement as RE-RULPA does about an appropriate court ordering judicial supervision of the winding up including appointing a person to wind up the dissolved partnership's activities if the partnership does not have a general partner and within a reasonable time, no person has been appointed or the applicant establishes other good cause.

Section 620.8802 is similar to that of RE-RULPA. This section says that a partnership is terminated when the winding up of its business is completed. This section adds that after dissolution of the partnership, before the winding up is completed, all the partners, including any dissociating partner other than a wrongfully dissociated partner, may waive the right to have the partnership business wound up and the partnership terminated. This section adds that if this occurs, the partnership resumes its business as if dissolution never occurred, and any liability incurred by the partnership or a partner after dissolution and before the waiver is determined as if the dissolution had never occurred and the rights of the third party accruing and arising out of

conduct and reliance on the dissolution before the third party knew or received notification of the waiver, may not be adversely affected.

Section 620.8803 adds some more components about the winding up process. This section adds that a partner who is not wrongfully dissociated may participate in the winding up. This section also refers to judicial supervision of the winding up process, but this section adds that this process of judicial supervision is on application of any partner, partner's legal representative or transferee. This section also adds that the legal representative of the last surviving partner may wind up the partnership's business. This section does not discuss amending the Certificate of Partnership as RE-RULPA does. This section does not discuss settling and closing the partnership's activities or marshaling the assets. This section also does not discuss, as RE-RULPA does, appointing a person to wind up the dissolved partnership if there is no general partner.

Section 804 - Power of General Partner and Person Dissociated as General Partner to Bind Partnership After Dissolution

Fulpa has no such section and 620.8804 is essentially similar to that of RE-RULPA. This section is essentially similar to RE-RULPA. This section unlike RE-RULPA does not provide that a person dissociated as a general partner binds the partnership through an act occurring after dissolution or binds the limited partnership through an act occurring after dissolution if, at the time, the other party enters into the transaction, less than two years has passed since dissociation, and the other party does not have notice of dissociation and reasonably believes the person is a general partner and the act is appropriate for winding up the partnership's activities or would have bound the limited partnership under Section 402 before dissolution and the other party did not have notice of dissolution.

Section 805 - Liability After Dissolution of General Partner and Person Dissociated as General Partner to Limited Partnership, Other General Partners, and Persons Dissociated as General Partner

FRULPA has no such section. Section 620.8806 of FRUPA is different from that of RE-RULPA. This section only deals with a partner's liability to other partners after dissolution. RE-RULPA adds, and this section does not, that if a partner has knowledge of dissolution and they incur an obligation anyway, the general partner is liable if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to the other general partner or person arising from the liability. RE-RULPA adds that if a person dissociated as General Partner causes a limited partnership to incur an obligation under Section 804(b), the person is liable to the limited partnership for any damage caused to the limited partnership arising from the obligation, and if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

Section 806 - Known Claims Against Dissolved Limited Partnership

There is no such section in FRULPA or in FRUPA. This section essentially deals with the procedures a dissolved limited partnership follows to dispose of known claims. This section also has requirements for when a claim against a dissolved limited partnership is barred if these

requirements are met. This section further states that it does not apply to a claim based on an event occurring after the effective date or dissolution or in a liability that is contingent on that date.

Section 807 - Other Claims Against Dissolved Limited Partnership

Again, there is no such section in FRULPA or in FRUPA. This section deals with a dissolved limited partnership publishing notice of its dissolution and requesting persons having claims to present them in accordance with the notice and it has certain requirements for the specific type of notice that is required. This section also states that if notice is published this way then the claims are barred unless the claimant commenced an action within five (5) years after the publication date of the notice. This section also provides when a claim not barred may be enforced.

Section 808 - Liability of General Partner and Person Dissociated as General Partner When Claim Against Limited Partnership Barred

Again, there is no such section in FRULPA or in FRUPA. This section merely states that the claim is barred under Section 806 or 807 when any corresponding claim under Section 404 is also barred.

Section 809 - Administrative Dissolution

FRUPA has no such section. Section 620.178 of FRULPA is essentially similar to that of RE-RULPA. RE-RULPA just deals with a limited partnership, and this section deals with a "domestic or foreign limited partnership." This section adds that revocation of authority can occur if the partnership has failed to file any amendment to its Certificate of Limited Partnership or registration application required by this act. This section specifically includes a fraudulent misrepresentation or concealment that has been made of any material matter in the certificate application, affidavit, report or other document submitted by the partnership whereas RE-RULPA does not make reference to any of these things. This section also adds that revocation of authority will occur if "the partnership has failed for 30 days from the date of filing of a registered agent's resignation to appoint and maintain a registered agent in this state." This section also adds that if a new registered office or registered agent is selected by the partnership and they have failed to file with the Department of State a statement of such change, then revocation of authority can occur. This section also adds that revocation of authority can occur if the "partnership has failed or refuses to answer truthfully and fully," interrogatories propounded by the Department of State. This section also says that the authority of either a domestic or foreign limited partnership to transact business in the state may not be revoked unless the Department has given the partnership 60 days notice of the revocation by mail and the partnership fails, up to the revocation date, to file such annual report or amendment, pay such fee or correct such misrepresentation whereas RE-RULPA states that the Secretary of State may dissolve a limited partnership administratively if the limited partnership does not, within 60 days after the due date, pay any fee, tax or penalty due or deliver its annual report to the Secretary of State. This section states that "upon revoking the authority of a domestic or foreign limited partnership to transact business in this State, the Department shall issue a certificate of revocation and mail a copy of the certificate to the partnership." Upon issuance of the certificate, the authority of the partnership to transact business ceases. RE-RULPA states that if, within 60

days after service of the copy the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the [Secretary of State] that each ground does not exist, then the [Secretary of State] shall administratively dissolve the limited partnership by preparing and signing and filing the declaration of dissolution, and the [Secretary of State] shall serve the limited partnership with a copy of the filed declaration. This section adds that a domestic or foreign limited partnership whose authority has been revoked, is liable to this State, for each year or part of the year during which its authority was revoked and prior to reinstatement of the partnership's authority to transact business in the State, there shall be collected a fine in the amount of \$500 for each such year or part of a year during which its authority was revoked. This section also adds that the domestic or foreign limited partnership whose certificate of limited partnership or registration has been revoked may have its certificate of limited partnership or registration reinstated at any time upon the approval or an annual report serving as an application for reinstatement and signed by one general partner. If such is approved, then the department shall file such application and reinstate such certificate if it is established to the satisfaction of the department that there was no cause for revocation or that the reasons for revocation have been corrected. This section also adds that the department shall require the domestic or foreign limited partnership to amend its certificate of limited partnership or registration application before accepting its application for reinstatement if another person has lawfully assumed the name or a name substantially similar to the name of the limited partnership. The name of a limited partnership whose certificate of limited partnership or registration has been revoked, will not be available for the assumption or use of the name by another person until one year after the date of the issuance of the certificate of revocation. This section also provides and adds that the provisions of subsection (1) dealing with the revocation of business of the partnership in this state if certain conditions are met does not include actions or special proceedings by the attorney general or any state agency or official for the annulment, dissolution or cancellation of a certificate of limited partnership or registration or for any other causes provided by law. RE-RULPA states that a limited partnership administratively dissolved continues its existence and may carry on only activities necessary to wind up its activities and liquidate its assets and to notify claimants. This is not included in this section. RE-RULPA also states that administrative dissolution does not terminate the authority of its agent for service of process, and this section does not contain a similar statement.

Section 620.179 under subsection (4) states that "a foreign limited partnership by transacting business in this state without registration appoints the Secretary of State as its agent for service of process with respect to claims for relief arising out of the transaction of business in this state". Section 620.179 also deals with a foreign limited partnership transacting business in the state when it has not registered in the state, as such it may not maintain any action, suit or proceeding in any court. This section also states a domestic or foreign limited partnership transacting business in this state after its authority has been revoked may not maintain any action, suit, or proceeding in any court until the partnership obtains authority to transact business in the state by reinstatement of its certificate of limited partnership or registration. An action, suit or proceeding may not be maintained by any successor or assignee of the partnership on any right, claim or demand arising out of the transaction of business by such partnership or any person who has acquired all or substantially all of its assets. This section also states that the failure to register in this state or to continue in effect its authority to transact business in this state does not impair the validity of its contract, deed, mortgage, security interest, lien, or act of the partnership or prevent the partnership from defending any action, suit, or proceeding in any court of this state. This section also adds that "a limited partner of a foreign limited partnership is not

liable as a general partner of a foreign limited partnership solely by reason of the partnership's having transacted business in this state without registration." There is no such section in RE-RULPA that deals with the transaction of business without registration or after revocation of authority as discussed above.

Section 810 - Reinstatement Following Administrative Dissolution

FRUPA has no such section. However, this topic is dealt with in FRULPA under Section 620.178. RE-RULPA states that a limited partnership who has been administratively dissolved may apply for reinstatement within "two years" after the effective date of dissolution. This section states that after revocation, a domestic or foreign limited partnership may "have its certificate of limited partnership or registration reinstated at any time upon the approval of an annual report, serving as an application for reinstatement, signed by one general partner." RE-RULPA's application for reinstatement must include the name and the effective date of administrative dissolution, the grounds for dissolution, that either did not exist or have been eliminated, and that the limited partnership's name satisfies Section 108. RE-RULPA states that if the Secretary of State determines that an application contains the information required and that the information is correct, then a declaration of reinstatement shall be prepared which states this determination and the [Secretary of State] shall sign and file the original declaration of reinstatement and serve the limited partnership with a copy where as this section says the department shall approve and file such application and reinstate such certificate if it is established to the satisfaction of the department that there is no cause for revocation or that the reasons for revocation have been corrected and when all fees and penalties imposed pursuant to this act have been paid. RE-RULPA states that "when reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume its activities as if the administrative dissolution had never occurred" whereas this section does not refer to an effective date. This section, again, adds that it requires the domestic or foreign limited partnership to amend its certificate of limited partnership or registration application if another person has lawfully assumed the name or a name substantially similar to the name. The name of the limited partnership whose certificate of registration has been revoked will not be available for use until one year after the date of issuance of the certificate of revocation. Again, this section adds that "the provisions of subsection (1) do not exclude actions or special proceedings by the Attorney General or any state agency or official for the annulment, dissolution, or cancellation of a certificate of limited partnership or of registration for any other causes as provided by law."

Section 811 - Appeal From Denial Of Reinstatement

FRULPA and FRUPA have no such section. This section discusses the appeal process when a limited partnership's application for reinstatement has been denied.

Section 812 - Disposition Of Assets; When Contributions Required

Section 620.8807 of FRUPA is essentially similar to that of RE-RULPA. RE-RULPA states that any surplus remaining must be paid in cash as a distribution. This section states that "Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with the right to distributions". This section adds that "Each partner is entitled to a

settlement of all partnership accounts upon winding up the partnership business." Upon settling the accounts, the liquidation of the partnership assets must be credited and charged to the partners' account. "The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under s. 620.8306. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account." All of this is not stated in RE-RULPA. This section does not provide for when a limited partnership's assets are insufficient with respect to unsatisfied obligations when the limited partnership was not a limited liability limited partnership. If a person does not contribute the full amount required under RE-RULPA, then the other persons required to contribute shall contribute the additional amount. This section states "shall contribute, in the proportions in which those partners share, partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable." This section adds "A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations." This section also adds that after the "settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable."

Section 620.162 of FRULPA is not as comprehensive as RE-RULPA. This section provides "that upon the winding up of the limited partnership, the assets must be distributed as follows" whereas RE-RULPA states "in winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section must be applied to satisfy the limited partnership's obligations to creditors including, to the extent permitted by law, partners that are creditors." In the list of assets that must be distributed, the first subsection deals with creditors." This section adds "to the extent permitted by law in satisfaction of liabilities of the limited partnership, whether by payment or by establishment of reserves, other than liabilities for distributions to partners." This section does not state that "any surplus remaining after the limited partnership complies with subsection (a) must be paid in cash as a distribution" as RE-RULPA does. RE-RULPA specifically provides that if a limited partnership's assets are insufficient to satisfy all of its obligations with respect to each unsatisfied obligation incurred when a limited partnership was not a limited liability limited partnership, there is a list of rules that apply. The list provides that each person that was a general partner when the obligation was occurred and has not been released from the obligation shall contribute to the limited partnership to satisfy the obligation. The contribution due from each of the persons is in proportion to the right to receive distributions. If the person does not contribute the full amount required, then the other persons required to contribute shall contribute the additional amount necessary to discharge the obligation, and that additional contribution is in proportion to the right to receive distributions. If the person does not make the additional contribution, further additional contributions are determined and due in the same manner as provided in paragraph (2). RE-RULPA also states that the estate of the deceased individual is liable for the person's obligations under this section and an assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by the court to represent creditors may enforce the person's obligation to contribute under subsection (c). This section does not provide for any of the above. This section just states that after creditors are paid, other than liabilities for distributions to partners under s. 620.139 or s. 620.144 and, except as provided in the partnership agreement, debts are distributed to partners and former partners in satisfaction of liabilities for distributions

under s. 620.139 or s. 620.144. Section 620.139 deals with interim distributions before the dissolution and winding up of the partnership, and Section 620.144 deals with distributions upon withdrawal. This section also adds "except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions."

SECTION 601: DISSOCIATION AS LIMITED PARTNER

- (a) **A limited partner does not have the right to dissociate before termination. [this is new]**

- (b) **A limited partner is dissociated upon any of the following events:**
 - 1) **notice of person's express will;**
 - 2) **event agreed to in agreement;**
 - 3) **expulsion per agreement;**
 - 4) **expulsion by unanimous consent of other partners if:**
 - A) **it is unlawful to continue partnership activities with the person as limited partner;**
 - B) **there has been a transfer of all of the person's transferable interest in partnership (other than for security purposes or by court order charging the person's interest) [620.8601(4)(b) includes "substantially all"];**
 - C) **person is a corporation and files a certificate of dissolution, its charter has been revoked or its right to conduct business by the jurisdiction has been suspended and such problem is not resolved within 90 days after notice by partnership; or**
 - D) **person is LLC or partnership that has been dissolved.**
 - 5) **Application of partnership by judicial order because [620.8601(5) allows another partner to apply]:**
 - A) **person engaged in wrongful conduct that materially affected partnership;**
 - B) **person willfully committed material breach of agreement or obligation of good faith and fair dealing; or**
 - C) **person engaged in conduct relating to partnership activities which makes it unreasonably practicable to carry on partnership activity with such person as a limited partner.**

- if an individual, death [620.8601(7) includes appointment of guardian or judicial determination that partner is incapable of performing duties];

- 7) if a trustee, a distribution of the trust's entire transferable interest in partnership;

- 8) if a personal representative, a distribution of the estate's entire transferable interest in partnership;
- 9) termination of limited partner that is not an individual, partnership, LLC, corporation, trust or estate;
- 10) partnership's participation in conversion or merger if partnership: (A) is not the converted or surviving entity; or (B) is the converted or surviving entity but, as a result of the conversion or merger, the person ceased to be a limited partner.

This corresponds to FS § 620.8601. The related section in FRULPA is 620.143 Withdrawal of Limited Partner, which provides that a limited partner may only withdraw from partnership at the time or upon the occurrence of an event in agreement or certificate. Therefore, this section gives limited partner power to dissociate which does not exist under current FRULPA. The power to dissociate as a limited partner can be overridden by the agreement.

SECTION 602: EFFECT OF DISSOCIATION AS LIMITED PARTNER

(a) Upon dissociation as limited partner:

Except for a PR of estate of deceased partner (704), the partner has no further rights;

The person's obligation of good faith and fair dealing continues only as to matters before dissociation; and

Except for a PR of an estate (704) and upon conversion or merger (Article 11), any transferable interest owned immediately before dissociation is owned by the person as a mere transferee.

(2) Dissociation does not discharge partner from obligation to other partners or partnership which was incurred while a partner.

This corresponds to F.S. § 620.8603 for general partnership. There is no corresponding provision in FRULPA.

SECTION 603: DISSOCIATION AS GENERAL PARTNER

A person is dissociated as a GP of a limited partnership upon the occurrence of any of the following:

- 1) notice of person's express will;
- 2) event agreed to in agreement;
- 3) expulsion per agreement; and
- 4) expulsion by unanimous consent of other partners if any one of the following apply:
 - A) it is unlawful to continue partnership activities with the person as limited partner;
 - B) there has been a transfer of all or substantially all of the person's transferable interest in partnership (other than for security purposes or by court order charging the person's interest);
 - C) person is a corporation and files a certificate of dissolution, its charter has been revoked or its right to conduct business by the jurisdiction has been suspended and such problem is not resolved within 90 days after notice by partnership; or
 - D) person is LLC or partnership that has been dissolved.
- 5) Application of partnership by judicial order because **[620.8601(5) allows another partner to apply]**:
 - A) person engaged in wrongful conduct that materially affected partnership;
 - B) person willfully committed material breach of agreement or of a duty owed to partnership or other partners per 408; or
 - C) person engaged in conduct relating to partnership activities which makes it unreasonably practicable to carry on partnership activity with such person as a limited partner.
- 6) the person becomes bankrupt, executes assignment for benefit of creditors, seeks, consents to or acquiesces to appointment of trustee, receiver or liquidator of the person or of all or substantially all of person's property; or failing vacate the same within 90 days after appointment;
- 7) if an individual, death, appointment of guardian or judicial determination that partner is incapable of performing duties;

- 8) if a trustee, a distribution of the trust's entire transferable interest in partnership;
- 9) if a personal representative, a distribution of the estate's entire transferable interest in partnership;
- 10) termination of general partner that is not an individual, partnership, LLC, corporation, trust or estate;
- 11) partnership's participation in conversion or merger if partnership: (A) is not the converted or surviving entity; or (B) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

Paragraph (1) may not be eliminated by partnership agreement but Paragraph (5) may be. This corresponds to F.S. § 620-8601 with no distinction except Section 603(11) applies to conversions and mergers.

Comparison to FRULPA § 620.124 Events of Withdrawal.

620.124(2) provides that a person ceases to be a general partner when he assigns his interest under 620.152. RE-RULPA 603(4)(b) requires that in addition to the transfer, the other partners need unanimous consent to expel.

RE-RULPA 603(4) authorizes other partners to unanimously consent to terminate general partner under certain circumstances.

RE-RULPA 603(11) addresses termination as a result of conversion or merger.

RE-RULPA 603(5) allows partnership to ask Court to be dissociated.

**SECTION 604: PERSON'S POWER TO DISSOCIATE AS A GENERAL PARTNER;
WRONGFUL DISSOCIATION**

- (a) General Partner can dissociate at any time(right or wrong) by express will.
- (b) Dissociation as a GP is wrong if:
 - (1) it is in breach of agreement; or
 - (2) it occurs before termination of the partnership, and
 - (A) the person withdraws as GP by express will;
 - (B) the person is expelled by judicial determination;
 - (C) the person is dissociated by becoming bankrupt; or
 - (D) the person is not an individual, trust or estate and is expelled because of dissolution or termination.
- (c) a GP that wrongfully dissociates is liable to the partnership and to other partners for damages caused.

This provision corresponds to FS § 620.8602 and is almost identical except in F.S. § 620.8602(2)(b)(1) is limited if withdrawal follows within 90 days after another partner's dissociation by death or otherwise under 620.8601(6)-(10) or wrongful dissociation (See 620.8602(2)(b)(1)).

FRULPA § 620.142 also provides that a general partner may withdraw at any time and a general partner that withdraws in violation of the agreement will be responsible to the partnership for damages.

SECTION 605: EFFECT OF DISSOCIATION AS GENERAL PARTNER

- (a) Upon dissociation:
 - (1) the person's right to in management terminates;
 - (2) the person's duty of loyalty terminates;
 - (3) the person's duty of loyalty and duty of care continue only with respect to matters arising before dissociation;
 - (4) the person may file statement of dissociation pertaining to the person and at the request of the partnership, shall sign an amendment to the certificate stating person has dissociated; and
 - (5) any transferable interest owned in capacity as GP is owned by person as mere transferee.
- (b) Dissociated person is not discharged from obligation to partnership or other partners which were incurred while general partner.

This corresponds to F.S. 620.8603(2) except this section has added (a)(4) (helpful because it provides constructive notice to 3rd parties), (a)(5) (helpful from creditor protection standpoint) and (b). In addition, F.S. 620.8603(2)(a) appears to allow general partner to continue with management rights through winging up.

No corresponding provision in FRULPA except F.S. 620.142 which holds general partner who wrongfully dissociates responsible for damages.

SECTION 606: POWER TO BIND AND LIABILITY TO LIMITED PARTNERSHIP BEFORE DISSOLUTION OF PARTNERSHIP OF PERSON DISSOCIATED AS GENERAL PARTNER

- (a) After person is dissociated as a GP and before limited partnership is dissolved, converted or merged out of existence, the limited partnership is bound by an act of the person only if:
 - (1) the act would have bound the limited partnership under Section 402 before dissociation(**i.e., GP has authority or is acting as agent to carry on business**); and
 - (2) at the time the other party enters the transaction:
 - (A) less than 2 years has passed since dissociation; and
 - (B) the other party does not have notice of the dissociation and reasonably believes the person is a GP.
- (b) If the limited partnership is bound under (a), the dissociated person is liable:
 - (1) to the limited partnership for damages caused; and
 - (2) to the general partner or other person for damages caused.

This follows F.S. § 620.8702. However, F.S. §620.8702 provides that a limited partnership may only be bound within 1 year after partner dissociates as opposed to 2 years. I like a shorter time period. 620.8702 also applies constructive notice to limited liability. I like the constructive notice provision since the limited partnership can just file with the Secretary of State and limit liability. Section 606(b) extends liability of a dissociated person to a general partner or other person for damage caused.

SECTION 607: LIABILITY TO OTHER PERSONS OF PERSON DISSOCIATED AS GENERAL PARTNER (Title is confusing at best)

- (a) Dissociation of a GP does not discharge such person from partnership obligation incurred before dissociation. Dissociated GP is not liable for partnership obligations incurred after dissociation EXCEPT as provided in (b) and (c):

- (b) if persons dissociation resulted in dissolution and winding up of partnership, he is liable under Section 404 (**jointly and severally on partnership obligations**) on obligations incurred by partnership under Section 804 (**GP is winding up partnership after dissolution**).

- (c) if person whose dissociation did not result in dissolution and winding up of partnership, he is liable on a transaction entered into after dissociation only if:
 - (1) a GP would be liable on the transaction; and

 - (2) at time of transaction, it has been less than 2 years since dissociation and other party does not have notice of dissociation and reasonably believes person is a GP.

- (d) GP may be released from partnership liability if agreement is entered into with creditor and partnership.

- (e) a dissociated GP is released from partnership obligation if partnership's creditor (with notice of person's dissociation and without person's consent) agrees to materially alter the nature or time of payment of the obligation.

This follows F.S. §620.8703:

- RE-RULPA 607(b)** **is not included in 620.8703. Added protection for partnership during winding up phase.**

- RE-RULPA 607(c)** **extends 620.8703 time period from 1 year to 2 years and 620.8703 relieves dissociated GP from liability if other party had constructive notice.**

- RE-RULPA 607 (d)** **620.8703 allows the dissociated partner to be released by agreement with creditor and the partners (as opposed to the partnership) continuing the partnership.**

- RE-RULPA 607(e)** **is identical to 620.8703(4).**

RE-RULPA Provision	Changes in Relation to Current Law	Current Law
<p>Section 601: Disassociation as Limited Partner</p>	<p>Summary: This section is taken almost verbatim from section 620.8601 of the general partnership law, so it completely replaces the current concept of “withdrawal” in section 620.143. Under current law, a limited partner has the power to withdraw only if provided by the partnership agreement. Under the proposed law, a limited partner does not have the right to disassociate but does have the power to disassociate, unless the agreement provides otherwise. Finally, current law does not address the involuntary withdrawal of limited partners, but the proposed law, following section 620.8601 (with some changes), allows for involuntary disassociation.</p> <p>Right to disassociate voluntarily. Under current law, a limited partner may withdraw from the partnership only if the partnership agreement so provides. Section 601(a) expressly provides that a limited partner has no right to disassociate, but because this section can be modified by the partnership agreement, the law is basically the same.</p> <p>Power to disassociate voluntarily. A limited partner has the power to disassociate under a "express will" provision; however, there is no provision preventing this from being changed by the partnership agreement (unlike for general partners, see section 110(b)(8)).</p> <p>Involuntary disassociation. Current limited partnership law does not address the involuntary withdrawal of a limited partner. The events causing a limited partner to disassociate involuntarily are taken from section 620.8601 with the following changes:</p> <ul style="list-style-type: none"> (1) Section 620.8601(4)(b) allows for the expulsion of a partner who transfers "all or substantially all" of its transferable interest, while section 601(b)(4)(B) is limited to the transfer of "all" of the interest, (2) Section 601(b)(4)(D) and (9) add "limited liability company" to the list of entity partners that are disassociated because of dissolution or termination, (3) there is no provision in section 601 for the disassociation of a limited partner because of bankruptcy, (4) there is no provision in section 601 for the disassociation of a limited partner because of the appointment of a guardian or because of a court 	<p>Section 620.8601: Events Causing Partner's Disassociation; 620.143: Withdrawal of Limited Partner</p>

	<p>order declaring the partner incapable of performing his duties,</p> <p>(5) Section 601(b)(10), disassociation because of the merger or conversion of the limited partnership in certain circumstances, has no current parallel, and</p> <p>(6) the partnership agreement can vary the judicial expulsion provisions of section 601(b)(5), unlike the section 620.8601(5) rules which cannot be varied.</p>	
<p>Section 602: Effect of Disassociation as Limited Partner</p>	<p>Summary: This section is substantially equivalent to the general partnership disassociation law, sections 620.8603 and 620.8703(1), and completely replaces the “withdrawal” concept embodied in current limited partnership law. The biggest change is in section 602(3), which displaces section 620.144. Under current law, withdrawing limited partners receive the fair value of their interests based on their right to receive distributions. Under the proposed law, disassociating limited partners would continue to hold their interest as “mere transferees,” and are not entitled to any payments.</p> <p>Effect of disassociation. The proposed law is substantially equivalent to current FL general partnership law in that the rights and duties of the disassociating limited partner terminates (special rules apply when the limited partner dies, see section 704). Section 602(3) constitutes a major change in the law. It states that upon disassociation, a limited partner continue to own its interests as a "mere transferee." Under current FL law, section 620.144, a withdrawing limited partner is entitled to receive the fair value of its interest as of the date of withdrawal plus any distributions to which it is entitled. Under RE-RULPA sections 505 and 602(3), however, a disassociated limited partner is not entitled to any distributions or the fair value of its interest; instead, it becomes a mere transferee of its own transferable interest under section 702. Lastly, section 602(b) is new, but it is similar to section 620.8703(1) in that both state that a disassociated partner's obligations that were incurred while it was a partner are not discharged solely because of disassociation. 602(b) also extends this rule to apply to obligations the partner owes to other partners.</p>	<p>Section 620.144: Distribution Upon Withdrawal; Section 620.8603: Effect of Partner's Disassociation; 620.8703(1): Disassociated Partner's Liability to Other Persons</p>
<p>Section 603: Disassociation as General Partner</p>	<p>Summary: Section 603 completely replaces current law on the involuntary withdrawal of general partners from a limited partnership, section 620.124. The proposed law is substantially equivalent to current FL law, section 620.8601, on the disassociation of general partners from general partnerships. While there are many similarities between sections 620.124 and 620.8601, there are also some differences. In addition, the proposed law changes section 620.8601. The only major addition</p>	<p>Section 620.124: Events of Withdrawal of General Partner; 620.8601: Events Causing Partner Disassociation</p>

	<p>is 603(b)(11). This section provides for disassociation when the partnership merges or converts under Article 11 and the partnership either (1) does not survive, or (2) survives, but the general partner ceases to be a partner (this is the same rule 601(b)(11), which applies to limited partners).</p> <p>Involuntary withdrawal versus involuntary disassociation. The events causing the withdrawal of a general partner under current law are laid out in section 620.124. While there are many similarities between this section, the general partnership disassociation section (620.8601), and the proposed law, there is one major difference. Under current law, the assignment of its partnership interest under section 620.152 causes a general partner to withdraw. Under the proposed law and general partnership law, however, a transfer of the partner's transferable interest does not result in disassociation.</p> <p>Other differences between section 620.8601 and section 603. Besides the addition of 603(b)(11), which is discussed in the summary, there are other minor differences. First, "limited liability company" is added to the list of entity partners that are disassociated because of termination or dissolution. Second, like section 601 and unlike current law, the judicial expulsion provisions may be varied by the partnership agreement. Finally, note also that unlike the limited partner disassociation section, the power to disassociate cannot be taken away from a general partner.</p>	
<p>Section 604: Person's Power to Disassociate as General Partner, Wrongful Disassociation</p>	<p>Summary: Section 604 completely replaces current law on the voluntary withdrawal of a general partner from a limited partnership, section 620.142. The proposed law is substantially equivalent to current FL general partnership law on the disassociation of general partners from general partnerships, section 620.8602. The basic rules do not change, but there are some differences between the proposed law and section 620.8602. Most importantly, the proposed law makes all voluntary disassociations, and some involuntary disassociations, wrongful.</p> <p>Voluntary withdrawal versus voluntary disassociation. Under current withdrawal law, a general partner has the power to withdraw at any time, and has the right to withdraw unless the partnership agreement provides otherwise. The proposed rule carries this same rule forward, giving a general partner the power to disassociate even if it is wrongful. This section is basically the same as current FL general partnership law, section 620.8602. Both also provide damages for wrongful withdrawals and disassociations.</p>	<p>Section 620.142: Withdrawal of General Partner; 620.8602: Partner's Power to Disassociate, Wrongful Disassociation</p>

	<p>Differences between section 620.8602 and section 604. First, section 604(b)(2) modifies section 620.8602(2)(b). Under current law, the disassociation of a general partner is wrongful if (1) the partnership is for a “definite term or particular undertaking,” and (2) the partner is disassociated under certain provisions. The proposed law modifies this rule by stating that disassociation under those same provisions (express will, bankruptcy, judicial expulsion, willful dissolution or termination of certain entity partners) is always wrongful.</p> <p>Second, section 604(b)(2)(A) modifies section 620.8602(2)(b)(1) by deleting the exceptions that make certain express will disassociations not wrongful. According to the Comment, it is expected that all general partners will remain with the partnership until the winding up. Finally, section 604(c) makes the wrongful disassociation liability provision expressly subject to the rules distinguishing direct and derivative actions.</p>	
<p>Section 605: Effect of Disassociation as General Partner</p>	<p>Summary: Like section 602, which deals with limited partners, this section is substantially equivalent to general partnership disassociation law, sections 620.8603 and 620.8703(1), and completely replaces the “withdrawal” concept embodied in current limited partnership law. Also like section 602, the biggest change is in what the disassociating general partner is entitled to upon disassociation. Under current law, section 620.144, withdrawing general partners receive the fair value of their interest based on their right to receive distributions. Under the proposed law, section 605(5), disassociating general partners continue to hold their interests as “mere transferees,” and are not entitled to any payments. In addition, the proposed law deletes the exceptions in the current statute that allows a general partner to participate in the winding up of the partnership even after disassociation (see sections 605(a)(1), (3)).</p> <p>Additions in the proposed law. Other sections the proposed law come from a variety of sources. Section 604(a)(4) is a notice provision that is in part similar to section 620.109(2)(a)(2). Like that section, section 604(a)(4) requires the partnership to amend its certificate to show that the general partner has disassociated. Also, like section 620.8704, it expressly permits the general partner to file a "certificate of disassociation" with the Secretary of State. Both these certificates serve as constructive notice, protecting the general partner from being held liable for certain obligations post disassociation (see section 607) and protecting the partnership from being bound by the former</p>	<p>Section 620.8601: Effect of Partner's Disassociation; 620.109: Amendment to, or Restated, Certificate of Limited Partnership, 620.8704: Statement of Disassociation; 620.8703: Disassociated Partner's Liability to Other Persons</p>

	<p>partner's acts (see section 606).</p> <p>Finally, like sections 602(b) and 620.8703(1), section 605(b) states that disassociation does not, by itself, relieve a general partner from its obligations to third parties. In addition, section 605(b) extends this rule to include obligations owed to other partners.</p>	
<p>Section 606: Power to Bind and Liability to Limited Partnership Before Dissolution of Partnership of Person Disassociated as General Partner</p>	<p>Summary: Section 606 is basically equivalent to current FL general partnership law, section 620.8702. The only major difference is that FL law gives a disassociated partner the power to bind the partnership for 1 year, while section 606 provides for 2 years. The current law provides that a disassociated partner is liable for any damages caused to the partnership because of the obligation it incurred. Section 606(b) extends this liability to include any damage caused to another partner or person as well.</p>	<p>Section 620.8702: Disassociated Partner's Power to Bind and Liability to Partnership</p>
<p>Section 607: Liability to Other Persons of Person Disassociated as General Partner</p>	<p>Summary: Section 607 is substantially equivalent to general partnership law, section 620.8703. Unlike that section, however, section 607 separates disassociations that result in dissolution from those that do not. For disassociations that do not result in dissolution, the law is similar to section 620.8703. The only major difference is that FL law imposes liability for obligations incurred "within 1 year" of disassociation, while section 606 provides for 2 years of liability.</p> <p>If the disassociation results in dissolution of the partnership, the disassociated partner has the same liability as the other general partners for the binding acts of partners post dissolution (see section 804)</p>	<p>Section 620.8703: Disassociated Partner's Liability to Other Persons</p>
<p>Section 701: Partner's Transferable Interest</p>	<p>Summary: This section provides that the only transferable interest is the partner's economic interest, which is the right to receive distributions (see section 102(22)). According to the Comment, this continues current law. However, current law defines the transferable interest to mean (1) the partner's share of the profits and losses of the partnership, and (2) the partner's right to receive distributions of partnership assets (see sections 620.102(10) and 620.8502). In all the sections, the transferable interest is designated personal property (see sections 701, 620.149, 620.8502).</p>	<p>Section 620.149: Nature of Partner's Interest in Limited Partnership; 620.8502: Partner's Transferable Interest in Partnership</p>
<p>Section 702: Transfer of Partner's Transferable Interest</p>	<p>Summary: Section 702 completely replaces the current law on assignment of limited partnership interests, section 620.152, with a statute that is modeled after general partnership law, section 620.8503. The new section changes the terminology, using "transfer" and "transferee" instead of "assignment" and "assignee." The Comment indicates, however, that the substance of the two laws is the same, and the RUPA section was</p>	<p>Section 620.152: Assignment of Partnership Interest; Section 620.154: Right of Assignee to Become Limited Partner; Section 620.8503: Transfer of Partner's Transferable Interest</p>

	<p>preferred because it is more clear and detailed as to the exact status of transferees. There are some differences, however.</p> <p>First, under 620.152(1)(d), the assignor "ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all" its interest. Under section 702(a) and (d), however, a transfer of a partner's entire interest does not, "by itself," disassociate the partner, and it retains all its rights as a partner other than its economic rights.</p> <p>Second, section 702 deletes a section 620.8503(2)(c) which allows a transferee to seek a judicial determination that the winding up of a partnership is equitable.</p> <p>Third, section 702(c) states that a transferee is entitled to an accounting "only from the date of dissolution," but section 620.8503 sets that date as "the latest account agreed to by all the partners."</p> <p>Finally, section 702(g) is taken from section 620.154(2), which details when an assignee becomes a limited partner. Most of section 620.154 is not a part of the new law, and section 620.154(2) is reworded. Under both laws, the new partner or transferee is liable both for the contributions of the transferor and for any improper distributions. Under the new law, however, the transferee is not obligated for liabilities that it did not know about, which deletes the portion of section 620.154(2) that obligates an unknowing new partner so long as the liability was ascertainable from the partnership agreement.</p>	
<p>Section 703: Rights of Creditor of Partner or Transferee</p>	<p>Summary: This section follows the same basic rule as the current law, section 620.154, but is modeled after the general partnership law, section 620.8504. Both laws allow for a charging order, but the proposed law is much more detailed than section 620.153. Unlike current law, the new section expressly provides that it applies to the creditors of both partners and transferees. Additional detailed provisions dealing with foreclosure, redemption, and other matters are taken directly from section 620.8504.</p>	<p>Section 620.153: Rights of Judgment Creditor of Partner; Section 620.8504: Partner's Transferable Interest Subject to a Charging Order</p>

<p>Section 704: Power of Estate of Deceased Partner</p>	<p>Summary: This section differs from current law, section 620.155, in a number of ways. First, the current law applies to both deceased and incompetent partners, while this section applies only to deceased partners. Second, the current law expressly gives rights to the representatives of business entities who are terminated, while the new section simply applies to representatives of partners who "die." Third, the current law gives the representative the right to exercise "all the partner's rights" (including any rights assigned so that the assignee could become a limited partner) for the purposes of settling the estate, while the new section only gives the representative the rights to act as a "current limited partner under section 304." Thus, the new section gives the representative only the informational rights of a limited partner, and in all other matters treats the representative as a transferee (see section 702).</p>	<p>Section 620.155: Power of Estate of Deceased or Incompetent Partner</p>
<p>Section 801: Nonjudicial Dissolution</p>	<p>Summary: This section, while in some ways similar to current law, section 620.157, has some major differences.</p> <p>First, current law mandates dissolution upon written consent of all the partners. The proposed law, on the other hand, allows for dissolution by consent (with no writing requirement) of (1) all general partners, and (2) limited partners that own a majority of the right to receive distributions as limited partners (thus, transferee rights are not relevant) at the time the consent is to be effective.</p> <p>Second, current law mandates dissolution upon the withdrawal of a general partner, unless there is another general partner and the partnership agreement permits the partnership to continue in such an event. The proposed law does not look to the partnership agreement. Instead, if there is another general partner, the partnership continues unless the partners owning a majority of the rights to receive distributions as partners (again, transferee rights are not relevant) consent to dissolution within 90 days of the disassociation.</p> <p>Under current law, even if there are no other general partners, or the partnership does not allow the remaining general partners to continue the business, dissolution would not occur if all the partners agree in writing, within 90 days of the withdrawal, to (1) continue the partnership, and (2) to appoint additional general partners if necessary or desired. The proposed law takes a similar approach. On the disassociation of all the general partners, the partnership will dissolve unless within 90 days (1) the limited partners owning a majority of the distribution rights as limited partners consent to admitting a general partner, and (2) at least one</p>	<p>Section 620.157: Nonjudicial Dissolution</p>

	<p>general partner is actually admitted (this makes admission of a general partner expressly required, unlike the current law).</p> <p>Finally, the proposed law adds two events to the list of events that cause dissolution. First, the partnership is dissolved 90 days after the disassociation of the last limited partner unless the partners admit another limited partner. Second, like section 820.8805, the partnership may file a statement of dissolution (see section 809).</p>	
Section 802: Judicial Dissolution	Summary: This section is almost identical to current law. However, the proposed law allows for an application "by a partner" while current law states "by or for a partner."	Section 620.158: Judicial Dissolution
Section 803: Winding Up	<p>Summary: This section is modeled after general partnership law, sections 602.8802 and 602.8803, but is nevertheless similar to current limited partnership law, section 602.159. However, there are some differences.</p> <p>First, Section 803(b), which details the winding up activities, separates the activities that "may" be done and the activities that "shall" be done. The permissive activities are taken almost verbatim from section 620.8803(3), but most have parallel provisions in section 620.159. The differences are as follows: (1) unlike current law, section 803(b)(1) expressly allows the partnership to amend its certificate to state that it is dissolved, (2) section 620.159 allows the partners to "gradually" wind up the business, while section 803 allows for a "reasonable time," (3) section 803 allows for "all other necessary acts," while section 620.159 does not, and (4) section 803 encourages settlement of disputes by mediation or arbitration, while section 620.159 does not.</p> <p>The mandatory activities in section 803 are all expressed as permissive activities in section 620.159. The only difference in substance, however, is that section 620.159 states that all winding up activities must not affect the liability of limited partners, while section 803 has no such statement.</p> <p>Second, section 620.159 makes clear that the</p>	Section 620.159: Winding Up Affairs of Limited Partnership

	<p>general partners wind up the business, and if there are none, then either the limited partners or a court appointed “liquidating trustee” does so. Section 803 is different. It expressly provide that the general partners wind up the business, and if there are no general partners, it provides two options that are unlike the options in section 620.159.</p> <p>Instead of allowing the limited partners to wind up the business, section 803(c) allows the limited partners to appoint a person to do so. This person has the powers of a general partner, but is not actually a general partner and therefore is not subject to their fiduciary duty. Appointment is by consent of the limited partners owning a majority of rights to receive distributions as limited partners (so transferee rights are irrelevant).</p> <p>Alternatively, section 803(d) allows a court, for good cause, to appoint a person to wind up the partnership, but only if a person is not appointed by the limited partners under 803(c) within a “reasonable time.” Moreover, current law allows a partner, a partner’s legal representative, or a transferee to request a court appointment. Under section 803(d), only a partner may make such a request.</p>	
<p>Section 804: Power of General Partner and Person Disassociated as General Partner to Bind Partnership After Dissolution</p>	<p>Summary: Unlike current law, section 620.8804, section 804 is divided between post-dissolution acts by partners and post-dissolutions acts by disassociated partners. The substance of the law, however, is the same. Section 804(a), dealing with the binding effects of acts done by partners after dissolutions, is the same as section 620.8804.</p> <p>There is no parallel to section 804(b), dealing with the binding effects of acts done by disassociated partners, in the FL dissolution provisions, though the section is similar to the “binding effect” law in the disassociation section. Section 804(b)(1) replicates section 606(a) (which is substantially equivalent to 620.8703(2)), which deals with the binding effects of acts done by a disassociated partner when there is no dissolution. The only difference is in that all similar sections, the FL laws limits the binding effect to 1 year while the proposed law limits it to 2 years.</p>	<p>Section 620.8804: Partner’s Power to Bind Partnership After Dissolution</p>
<p>Section 805: Liability After Dissolution of General Partner as General Partner to Limited Partnership, Other General Partners, and Persons Disassociated as General Partner</p>	<p>Summary: Like section 804, and unlike current law, section 805 also is divided between disassociated partners and partners. Section 805(a) & (a)(1), dealing with general partners’ liability to the partnership for acts not appropriate to winding up, is the same as section 620.8806(2). Section 805(b) & (b)(1), dealing with disassociated partners’ liability to the partnership for binding the partnership, is the same as section 606(b) (which is equivalent to 620.8702(2)).</p>	<p>Section 620.8806: Partner’s Liability to Other Partners After Dissolution</p>

	Like section 606(b), however, both 805(a) and (b) also extend liability to any damages caused to other general partners or to any other person, instead of merely to damages caused to the partnership.	
Section 806: Known Claims Against Dissolved Limited Partnership	Summary: This section is taken from the Uniform Limited Liability Company Act (ULLCA Section 807) and has no equivalent in current Florida partnership law. The section lays out a procedure by which the dissolved partnership may dispose of known claims. If the partnership follows the notice procedures laid out in 807(b), and the claimant either fails to return the claim or fails to commence an action to collect the claim within the specified time frames, then the claim is barred as against the partnership, the general partners, and any disassociated partners. Known claims do not include any claims that are contingent as of the date of dissolution or are based on an event that occurred after that date.	None
Section 807: Other Claims Against Dissolved Limited Partnerships	Summary: This section is taken from the Uniform Limited Liability Company Act (ULLCA Section 808) and has no equivalent in current Florida partnership law. Similar to section 806, it lays out a procedure by which the partnership can dispose of claims that are not “known.” If the partnership complies with the publication rules of 808(b), the claims are barred if the claimant either fails to claim or fails to commence an action to collect the claim within the specified timeframes.	None
Section 808: Liability of General Partner and Person Disassociated as General Partner When Claim Against Limited Partnership Barred	Summary: This section has no equivalent in FL law. It states that if a claim is barred under either section 806 or 807, any corresponding claim is also barred against general partners under their normal joint and several liability (see section 404).	None
Section 809: Administrative Dissolution	Summary: This section is taken from the Uniform Limited Liability Company Act (ULLCA Sections 809 and 810) and has no equivalent in current Florida partnership law. It provides that the Secretary of State may dissolve a limited partnership for failing to, within 60 days of their due date, (1) pay required fees to the “specified filing officer” or (2) deliver its annual report to the Secretary. After receiving a notice of determination that grounds exist to dissolve the partnership, the partnership has another 60 days to cure the problem. If the partnership is dissolved by the State, it must wind up its activities under section 803 and liquidate under section 812.	None

<p>Section 810: Reinstatement Following Administrative Dissolution</p>	<p>Summary: This section is taken from the Uniform Limited Liability Company Act (ULLCA Section 811) and has no equivalent in current Florida partnership law. It provides that an administratively dissolved partnership can be reinstated by the State if it follows the procedures in the statute. The partnership must (1) file a reinstatement application within 2 years of dissolution, (2) show that the grounds for dissolution have been cured or did not exist, and (3) show that its name meets the section 108 requirements. If the application is accepted, the reinstatement relates back to the date of dissolution and the partnership continues as if the dissolution had never occurred.</p>	<p>None</p>
<p>Section 811: Appeal From Denial of Reinstatement</p>	<p>Summary: This section is taken from the Uniform Limited Liability Company Act (ULLCA Section 812) and has no equivalent in current Florida partnership law. It provides that if the application for reinstatement under section 810 is denied, the Secretary of State must prepare a notice explaining why it was denied. Within 30 days of this notice, the partnership may appeal this decision to the courts. The court may then either summarily order the State to reinstate the partnership or take any “other action the court considers appropriate.”</p>	<p>None</p>
<p>Section 812: Disposition of Assets; When Contributions Required</p>	<p>Summary: The proposed distribution section adopts the same basic claim priority scheme as both the current limited partnership and general partnership laws. Section 812 is modeled after general partnership law, section 620.8807, though there are some procedural differences in determining the amount of contributions owed at dissolution.</p> <p>Claim priority. The claimants with the highest priority are the creditors of the partnership, including partners who are also creditors. The current law makes clear that liabilities for distribution to creditors are not part of this class, but the proposed law has no such language.</p> <p>Next, any remaining assets must be distributed in cash to the partners. This is different from section 620.162, which separates distributions into three classes: (1) liabilities for distributions, (2) return of contributions, and (3) any remaining assets. The Comment to the proposed law makes clear that contributions are only necessary to satisfy the liabilities for distributions, and not to settle any capital losses.</p> <p>Process of determining contributions. The main difference is determining the amount of contributions needed to satisfy the partnership’s obligations is procedural, and not substantive. Section 620.8807 uses a process by which partner accounts are first settled, and the partner contributes</p>	<p>Section 620.162: Distribution of Assets; Section 620.8807: Settlement of Accounts and Contributions Among Partners</p>

	<p>the amount by which the charges to his account exceed the credits. Following this, the partner must then contribute a proportional amount if it is necessary to satisfy obligations not known of at settlement.</p> <p>The process under section 812 is different. There is no settlement procedure; instead, the general partners must simply contribute their proportional amount for any obligation they are liable for that was not settled by the partnership assets. The recovery, enforcement and liability provisions are the same, however, in both laws.</p>	
Section 1201: Uniformity of Application and Construction	Summary: The section simply calls for the uniform application and construction of this law in all the states. Currently, Florida has included such a clause in its general partnership and limited partnership laws.	Section 620.184: Construction and Application of Act; Section 620.81001: Uniformity of Application and Construction
Section 1202: Severability Clause	Summary: This section is a standard severability clause. While the former uniform acts had such a clause, FL has not adopted them with respect to its partnership acts.	None
Section 1203: Relation to Electronic Signatures in Global and National Commerce Act	Summary: This section is not in current FL law. It provides that the Act partially modifies, limits, or supercedes the federal law. It also prohibits the electronic delivery of any required notices.	None
Section 1204: Effective date Section 1205: Repeals	Summary: Provides for the effective date of the Act and any previous laws that are repealed by the Act.	None
Section 1206: Application to Existing Relations	Summary: Unlike current law, section 1206 identifies a number of provisions that never automatically apply to a pre-existing partnership, even after the all-inclusive date; instead, the provisions would only apply via an election. This list can be found in section 1206(c), and includes (1) the perpetual duration provision (104(c)), (2) the provision requiring the partnership's certificate to state whether it is a limited liability limited partnership, (3) the limited partner disassociation sections (601 and 602); (4) the general partner expulsion by consent provision (603(4)); (5) the general partner expulsion by judicial order provision (603(5)); and (6) the dissolution when a general partner disassociates provision (801(3)). In these cases, the law as it exists currently would apply.	Section 620.184: Construction and Application of Act; Section 620.9901: Applicability

Section 1207: Savings Clause	Summary: none	Section 620.9902: Savings Clause
-------------------------------------	----------------------	----------------------------------

Sub-Committee IV

MERGERS AND CONVERSIONS
(Article 11 of RE-RULPA)

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
The following are contained in FRULPA:	
<p>620.201 - Merger of Domestic LP</p> <ul style="list-style-type: none"> ?? Florida LP may merge with or into one or more other business entities (including foreign and incorporated) ?? Requires Florida LLC and corporation parties to comply with 608 and 607 ?? Detailed mandatory/permissible plan of merger contents 	<p>Section 1106 - Merger [involving LP]</p> <ul style="list-style-type: none"> ?? LP may merge with or into one or more other organizations (including foreign and incorporated) ?? Requires authorization of merger by other organizations' governing statutes; not prohibited by law of jurisdiction of other organizations' governing statutes; and each organization complies with its governing statute ?? Detailed mandatory plan of merger contents
<p>620.202 - Action on Plan of Merger</p> <ul style="list-style-type: none"> ?? All GP's approve in writing (unless PA otherwise provides) ?? Majority of each class of LP's in writing (unless PA otherwise provides) ?? All GP's of surviving partnership must agree in writing to be GP ?? Detailed notice requirements for approval ?? "Fair Value" determination and offer ?? Detailed permissible notice requirements 	<p>Section 1107 - Action on Plan of Merger by Constituent LP</p> <ul style="list-style-type: none"> ?? All partners must consent to plan (subject to Sec. 1110) ?? Prior to filing articles of merger, the plan may be amended or abandoned after approved with same consent required to approve the plan (subject to Sec. 1110 and contractual rights) <p>Section 1110 – Restrictions on Approval of Conversions/Mergers and on Relinquishing LLLP Status</p> <ul style="list-style-type: none"> ?? If partner would have personal liability upon merger, must have consent of such partner unless PA provides for approval by less than all partners and partner consented to such provision in PA ?? All GPs must consent to amend certificate of LP deleting LLLP status unless PA provides for amendment by less than all GPs and GP not consenting to amendment has consented to such provision in PA

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
	<p>?? Consent to PA required by Section 1110 is not made by consenting to provision that allows PA to be amended by fewer than all partners</p>
<p>620.203 - Articles of Merger</p> <ul style="list-style-type: none"> ?? Detailed mandatory contents ?? Permissible real estate records filing ?? Serves as cancellation of disappearing Florida LP party 	<p>Section 1108 – Filings Required for Merger; Effective Date</p> <ul style="list-style-type: none"> ?? Articles of merger must be signed by all GPs listed in certificate of LP and authorized rep. of other organization and filed with State ?? Detailed mandatory contents ?? Effective upon filing of articles of merger or as otherwise specified in articles of merger
<p>620.204 - Effect of Merger</p> <ul style="list-style-type: none"> ?? Assets vest and liabilities/claims assumed by surviving entity ?? Title vests w/o reversion or impairment; mandatory filing of certified Articles in real property records ?? Terminating GP’s liable for only pre-merger debts and not for dissenters’ claims, except for debts of bona fide post merger creditors ?? Ownership interests converted as plan provides and owners’ rights limited as plan provides 	<p>Section 1109 – Effect of Merger</p> <ul style="list-style-type: none"> ?? New surviving organization comes into existence and merged organization ceases to exist ?? Assets vest and liabilities/claims assumed by surviving organization ?? Except as otherwise agreed, merger does not dissolve LP ?? If new surviving organization, certificate of LP or other organizational document becomes effective ?? If old surviving organization, amendments to organizational documents become effective ?? Foreign surviving organization consents to jurisdiction to enforce obligation if merged organization was subject to suit in state to enforce obligation and appoints Sec. of State as agent for service of process on such obligation <p>Section 1111 – Liability of GP After Conversion/Merger</p> <ul style="list-style-type: none"> ?? GPs of merged LP continue to be liable for pre-merger debts, subject to the provisions of the Act where surviving organization is deemed to be merged LP; surviving organization may seek contribution

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
	<p>from GPs of merged LP for any amount surviving organization is required to pay under Act</p> <p>?? GP of merged LP (that is not an LLLP) is personally liable for debts of post merger creditors who reasonably believe that the surviving organization is the merged LP</p> <p>?? Dissociated GPs of merged LP (that is not an LLLP) is personally liable for debts incurred less than 2 years from the dissociation to post merger creditors who do not have notice of dissociation or merger and who reasonably believe that the surviving organization is the merged LP, the merged LP was not an LLLP, and the GP was a GP in the merged LP</p>
<p>620.205 – Rights of Dissenting Partners</p> <p>?? Very detailed description of dissenters’ rights and procedure for asserting same</p>	None
The following are contained in FRUPA:	
620.8901 - Definitions	Section 1101 - Definitions
<p>620.8902 - Conversion of Pshp to LP</p> <p>?? Pshp may convert to LP</p> <p>?? Must be approved by all partners (unless PA otherwise provides)</p> <p>?? Effective upon filing (or later specified date) of certificate which includes:</p> <p>?? -statement that Pshp converted to LP;</p> <p>?? -former name; and</p> <p>?? -statement confirming conversion approved as required</p> <p>?? Requires notice of conversion and copy of 620.8902 to each P</p>	<p>Section 1102 – Conversion [involving LP]</p> <p>?? LP may convert to another organization or another organization may convert to an LP</p> <p>?? Requires authorization of conversion by other organizations’ governing statutes; not prohibited by law of jurisdiction of other organizations’ governing statutes; and each organization complies with its governing statute</p> <p>?? Detailed mandatory plan of conversion contents</p> <p>Section 1103 – Action on Plan of Conversion by Converting LP</p> <p>?? All partners must consent to plan (subject to Sec. 1110)</p> <p>?? Prior to filing articles of</p>

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
	<p>conversion, the plan may be amended or abandoned after approved with same consent required to approve the plan (subject to Sec. 1110 and contractual rights)</p> <p>Section 1110 – Restrictions on Approval of Conversions/Mergers and on Relinquishing LLLP Status</p> <ul style="list-style-type: none"> ?? If partner would have personal liability upon conversion, must have consent of such partner unless PA provides for approval by less than all partners and partner consented to such provision in PA ?? All GPs must consent to amend certificate of LP deleting LLLP status unless PA provides for amendment by less than all GPs and GP not consenting to amendment has consented to such provision in PA ?? Consent to PA required by Section 1110 is not made by consenting to provision that allows PA to be amended by fewer than all partners
<p>620.8903 - Conversion of LP to Pshp</p> <ul style="list-style-type: none"> ?? LP may convert to Pshp ?? Must be approved by all partners (regardless of PA) ?? Pshp must cancel certificate of LP ?? Effective when certificate cancelled 	<p>Section 1102 – Conversion [involving LP]</p> <ul style="list-style-type: none"> ?? LP may convert to another organization or another organization may convert to an LP ?? Requires authorization of conversion by other organizations' governing statutes; not prohibited by law of jurisdiction of other organizations' governing statutes; and each organization complies with its governing statute ?? Detailed mandatory plan of conversion contents
<p>620.8904 - Effect of Conversion</p> <ul style="list-style-type: none"> ?? Converted Pshp or LP is same entity as before conversion ?? Title to all property vested in converted 	<p>Section 1105 - Effect of Conversion</p> <ul style="list-style-type: none"> ?? Organization is same entity before and after conversion ?? Assets remain vested and

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
<p>entity</p> <p>?? Liabilities/obligations continue</p> <p>?? Certificate of LP (for LP converted from Pshp) or cancellation of certificate (for Pshp converted from LP) must be filed in each county where entity owns real property</p> <p>?? Claims/actions/proceedings pending or against converted entity continue unimpaired</p> <p>?? Creditor's rights and lien rights vs. converted entity continue unimpaired</p>	<p>liabilities/claims remain in converted organization</p> <p>?? Except as otherwise agreed, conversion does not dissolve converting LP</p> <p>?? Foreign converted organization consents to jurisdiction to enforce obligation if converting LP was subject to suit in state to enforce obligation and appoints Sec. of State as agent for service of process on such obligation</p> <p>Section 1111 – Liability of GP After Conversion/Merger</p> <p>?? GPs of converting LP continue to be liable for pre-merger debts, subject to the provisions of the Act where converted organization is deemed to be converting LP; converted organization may seek contribution from GPs of converting LP for any amount converted organization is required to pay under Act</p> <p>?? GP of converting LP (that is not an LLLP) is personally liable for debts of post merger creditors who reasonably believes that the converted organization is the converting LP</p> <p>?? Dissociated GPs of converting LP (that is not an LLLP) is personally liable for debts incurred less than 2 years from the dissociation to post conversion creditors who do not have notice of dissociation or conversion and who reasonably believe that the converted organization is the converting LP, the converting LP was not an LLLP, and the GP was a GP in the converting LP</p>
<p>620.8905 - Merger of Partnerships</p> <p>?? Pshp may merge with one or more Pshps or LPs</p>	<p>Section 1106 – Merger [involving LP]</p>

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
<ul style="list-style-type: none"> ?? Detailed requirements for Plan of Merger ?? All Ps of Pshp must approve plan (unless PA otherwise provides) ?? All Ps of LP must approve plan in accordance with laws of state of organization and, if none, by all Ps (regardless of PA) ?? Merger effective upon later of: <ul style="list-style-type: none"> ?? -approval by all parties ?? -filing of required documents ?? -effective date of plan ?? Plan may be abandoned prior to effective date as provided in plan 	
<p>620.8906 - Effect of Merger</p> <ul style="list-style-type: none"> ?? Separate existence of all but surviving Pshp or LP ceases ?? Title to all property previously owned by domestic Pshp or LP vested in surviving entity ?? Liabilities/obligations of merging entities continue for surviving entity ?? Notice of merger must be filed in each county where a merging entity owns real property ?? Claims/actions/proceedings pending or against merging entity continue as if no merger or surviving entity may be substituted ?? Creditor's rights and lien rights vs. merging entity continue unimpaired ?? Each P of surviving entity entitled only to rights provided in plan 	<p>Section 1109 - Effect of Merger</p>
<p>620.8907 - Statement of Merger</p> <ul style="list-style-type: none"> ?? Permissive filing ?? Detailed contents 	<p>Section 1104 – Required Filings; Effective Date</p> <ul style="list-style-type: none"> ?? If converting LP, articles of conversion must be filed with State ?? If converted LP, a certificate of LP must be filed with State ?? Detailed mandatory contents for articles of conversion and certificate of LP ?? If converting LP, as provided in governing statute of converted

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
	<p>organization</p> <p>?? If converted LP, effective upon effective date of certificate of LP</p>
620.8908 - Nonexclusive	Section 1113 - Article [11] Not Exclusive
(No express corresponding -- but see 620.202 and 620.8902)	<p>Section 1110 – Restrictions on Approval of Conversions/Mergers and on Relinquishing LLLP Status</p> <p>?? If partner would have personal liability upon conversion or merger, must have consent of such partner unless PA provides for approval by less than all partners and partner consented to such provision in PA</p> <p>?? All GPs must consent to amend certificate of LP deleting LLLP status unless PA provides for amendment by less than all GPs and GP not consenting to amendment has consented to such provision in PA</p> <p>?? Consent to PA required by Section 1110 is not made by consenting to provision that allows PA to be amended by fewer than all partners</p>
(No express corresponding -- but see 620.8702 and 620.8804)	<p>Section 1112 – Power of GP and Dissociated GPs to Bind Organization after Conversion or Merger</p> <p>?? Actions of GP with respect to a third party transaction in merged/ converting LP binds surviving/converted organization if action would have bound merged/ converting LP before merger/conversion, and third party at the time of the transaction did not have notice of the merger/conversion and reasonably believes that the surviving/converted organization is the merged/ converting LP and that the GP was a GP of the merged/ converting LP</p> <p>?? Actions of dissociated GP with respect to a third party transaction</p>

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
	<p>in merged/ converting LP binds surviving/converted organization if action would have bound merged/ converting LP before merger/conversion if the person were a GP, and at the time of the transaction, less than 2 years had passed from the dissociation, the third party did not have notice of the dissolution or the merger/conversion and reasonably believes that the surviving/converted organization is the merged/ converting LP and that the GP was a GP in the converting LP</p> <p>?? If any person having knowledge of the merger/conversion creates an obligation under Section 1112, such person is liable for damages</p>

ACTIONS BY PARTNERS
(Article 10 of RE-RULPA)

FLORIDA STATUTES	RE-RULPA
CHAPTER 620	Corresponding Sections
The following are contained in FRULPA:	
620.163 - Right of LP to Bring Derivative Action	Section 1002 - Derivative Action ?? Any partner may maintain a derivative action if first demand GP to do so and GP doesn't or such demand would be futile
620.164 - Derivative Action; Proper Plaintiff	Section 1003 - Proper Plaintiff ?? Derivative action may only by maintained by partner at time action commenced who was also a partner at time of conduct giving rise to action or who became a partner by transfer of Pshp interest by partner who was a partner at time of conduct giving rise to action
620.165 - Derivative Action; Pleading	Section 1004 - Pleading ?? Must state with particularity GP's refusal to take action or why request was futile
620.166 - Derivative Action; Expenses	Section 1005 - Proceeds and Expenses ?? Proceeds belong to LP ?? Plaintiff may be awarded to recover expenses from LP's proceeds
The following are contained in FRUPA:	
620.8307 - Actions by and Against Pshp and Partners	Section 1001 - Direct Action by Partner ?? Any partner may take direct action against LP or another partner for legal or equitable relief to enforce rights arising out of Act, PA, or independent of LP relationship ?? Partner must please and prove actual or threatened injury that is not solely the result of LP injury ?? Statute of limitations determined under other law; right to an accounting does not extend statute

**RE-RULPA TASK FORCE
MERGERS AND CONVERSIONS GROUP (ARTICLE 11)
ISSUES**

1. Merger/Conversion involving Not-For-Profit Entities.

There should be a statutory limitation on the ability of a not-for-profit entity to convert or merge into a for-profit limited partnership for public policy reasons. One of the solutions considered regarding this issue is to require that any merger or conversion of a not-for-profit entity into a for-profit limited partnership would require the limited partnership to comply with the same kinds of organization, operation and dissolution limitations under Chapter 617 that govern not for profit corporations. These rules are generally intended to assure that the assets and profits of the not for profit corporation do benefit its officers, directors and members. Note that Sections 617.1805 et seq --- relating to the conversion of corporation for profit to a corporation not for profit --- also requires a circuit court proceeding. Administering these requirements would be difficult in actual practice to say the least, and as a practical matter there would probably be no real need for a non-profit limited partnership given the definitional rules under IRC Section 501 et seq. (requiring a corporate entity in most situations where tax exempt status will be recognized). **Accordingly, the better approach at this time may be to simply exclude not for profit entities from the list of those types of entities that can be converted or merged into a limited partnership.** However, the Committee may want to consider whether limited partnerships should be permitted to merge or convert into a not for profit corporation under the same procedures that apply to for profit corporations that convert or merge into not for profit corporations (under Sections 627.1805 et seq).

2. Appraisal and Dissenters' Rights.

FRULPA § 620.205 currently provides detailed dissenters' and appraisal rights upon a merger of a limited partnership that do not exist in Re-RULPA. The issue being put to the entire Task Force is whether these rights should be eliminated in the revised FRULPA. If the rights are eliminated for mergers (and conversions) in the revised FRULPA, clarification should be made that the conversion of a corporation into a limited partnership may not skirt the dissenters' rights set forth in corporate statutes containing dissenter rights (such as those that apply to Florida corporations under Chapter 607). Such a limitation would also be

needed in the case of mergers involving certain limited liability companies (such as a Florida limited liability company subject to the dissenter rights rules of Section 608.438). Other approaches we considered were to have the current dissenters' rights provisions be a default rule that may be overridden in the partnership agreement (with the same vote required to amend the agreement) or "elective" if the partnership agreement provides, or perhaps if a supermajority of the partners elects to have them apply at the time of the transaction. If either approach is taken, then we need to discuss whether the default or election should apply equally to conversions.

Another policy issue that we will need to address is whether the management of an organization converting itself (as opposed to merging) into another form of entity should be able to so easily avoid compliance with the dissenter rights rules. Note that this disparity "conceptually" exists with respect to conversions of an unincorporated entity under 608.439 (but since this section does not apply to a corporation and only works in a "forward" manner --- that is, it does not enable an LLC to convert into another form of entity --- the drafters of the 1999 changes to the LLC Act attained some consistency among corporations, limited partnerships and LLCs. But if we adopt the broad cross-species merger/conversion rules under RE-RULPA and make the necessary conforming changes in other Florida entity organizational statutes (see item 7 below), it will be necessary to debate whether dissenter rights should apply to any Florida entity and whether these rights should apply to conversions as well as to mergers.

When considering the above policy issues keep in mind that NCCUSL indicated that in the case of a converting or disappearing limited partnership the non-waivable obligations of general partners would act as a check on unfair treatment of minorities. The reliance on a "unanimity" voting requirement also probably had something to do with the absence of a device to protect minorities (see next item).

3. Vote Required to Merge/Convert LP.

FRULPA § 620.202 currently requires all of the general partners and a majority in interest of the limited partners to approve a merger, unless otherwise provided in the partnership agreement. Re-RULPA default rule requires approval by all partners (see Sections 1103(a)

and 1107(a)). There is some merit to maintaining the FRULPA “majority” standard should be continued as the default rule in the revised FRULPA, and that the same “majority” standard should be extended to conversions of limited partnerships as well (FRUPA currently requires consent of all partners or, in the case of conversions of a general partnership into a limited partnership, such other percentage required by the partnership agreement, see 620.8902(2) and 620.8903(2)). The exception that currently applies to gaining the consent of those persons becoming general partners (see Section 620.202(2)) should continue to apply as well. However, there is also a good argument that the default rule should be all partners unless the partnership agreement provides otherwise, for the purposes of allowing partners to rely on their contract, and protect, to some extent, the poorly represented by providing a default rule which errs on the side of protectionism, since most limited partnership agreements are drafted by the general partner. The unanimous partner vote default rule also allows for our stated preference for consistency with the uniform act unless there is a compelling reason to take a contrary position.

4. Single Filing Requirement; Other Department of State Matters

FRULPA § 620.203 currently provides that the filing of Articles of Merger serve as cancellation of the certificate of limited partnership that is not the surviving entity. RE-RULPA requires separate filing of the certificate of cancellation. The FRULPA single filing requirement should be continued in the revised FRULPA, and should be extended to apply to conversions of limited partnerships. Generally speaking, the Department of State believes that the existing filing, certification and other record-keeping requirements currently in place should be maintained and brought forward into the new law. For example, RE-RULPA Sections 1104 and 1108 would not apply and instead we would use the existing filing procedures. See also the Department of State’s separate report attached hereto.

Conforming changes should be made to the constructive or deemed notice rules under RE-RULPA Section 103(d) that pertain to filed instruments, so that the 90 day “lingering liability” rules would apply to the instruments acceptable to the Department of State. Note that the 90 day period specified in Section 103(d) commences on the “effective” date and not the “filing” date of the instruments in question. The Committee may want to consider

whether the filing date may be used for this purpose in the case of delayed effective date instruments (subject to a minimum period --- 30 days, for example).

5. Power of General Partners to Bind Partnership Following Merger/Conversion

- ?? The rules governing the liability of general partners before and after the merger or conversion event should be clarified. RE-RULPA Section 404 contains the general rule governing liability of general partners. An exception or cross-reference is needed there for the liability rules that apply to converting or merging limited partnerships under Section 1111. The use of two different terms under Section 1111 to describe the scope of liabilities for which a partner will have personal liability is confusing (if not inconsistent from a policy and legal standpoint). A NCCUSL comment indicates that the “incurrence” standard should be developed by decisional law, and the Committee may want to consider whether certain parameters or minimum standards should be supplied by statute. At a minimum it would seem that statutory guidance is desirable for the question of whether a liability arising from the conversion or merger transaction itself is deemed “incurred” before or after the event.
- ?? Re-RULPA § 1112 outlines the ability of a general partner to bind the partnership following a merger or conversion. Re-RULPA § 804 outlines the ability of a general partner to bind the partnership following a dissociation of a general partner from the partnership. Either (a) both of these sections should be adopted to replace FRUPA § 620.8702, which describes the ability of a dissociated (following merger or otherwise) general partner to bind the partnership, or (b) FRUPA § 620.8702 should be left intact in the revised FRULPA with additional conversion language.
- ?? Re-RULPA § 1112(b) contains a 2-year time period with respect to the ability of a general partner to bind the partnership following a dissociation of a general partner from the partnership, if the party did not have notice of the dissociation, and did not have notice of the conversion/merger. However, Re-RULPA § 103 defines notice and states that a party has notice of a conversion/merger 90 days after the effective date of the articles of conversion/merger. These time periods should be reconciled and clearly defined in the ultimate revised FRULPA provision dealing with this issue. A policy issue arises in the exculpation of all liability by deemed notice through a filing that should be discussed.

6. Real Estate Filings; Affirmative Notice Rule.

Those provisions currently found in FRULPA §§ 620.204(1)(b) and 620.8904 (2)(c) specific to recording a copy of certificate of merger/conversion in counties where entity holds real estate need to be carried forward into the new statute (specifically, into Sections 1105 and 1109).

The Committee needs to decide whether the rationale underlying the “prompt notice” requirement of Section 620.8902(6) has any application in the new law. This only seems to apply when a partnership converts to a general partnership. This may be one of the items involved in making conforming changes (see next item).

7. Conforming Changes to Other Florida Business Laws.

A number of conforming changes will be required in FRUPA as well as under Chapters 607 and 608. For example, enabling language needs to be added to the corporate and LLC statutory regimes to validate conversions and mergers of those types of entities into limited partnerships (i.e., “forward” transactions). RE-RULPA Sections 1102(a)(1) and (3), 1104(b)(2), and 1106(a)(1) and (3), for instance, all assume that the law governing the transforming entity specifically enable it to merge or convert into a [Florida] limited partnership.

A significant number of deletions and other changes to FRUPA will be required to account for the bifurcation of partnership law between two stand-alone statutes. Part of this process requires some modification of the existing enabling provisions (in Sections 620.8901 et seq) governing the conversion or merger of a general partnership (or LLP) into a limited partnership (or LLLP). It would also seem logical at the same time the new limited partnership law is adopted to include in other Florida organizational statutes the requisite enabling provisions that would allow “backward” transactions involving not only limited partnerships, but all other business entities as well. These provisions could mirror the broad “cross-species” enabling language used in Article 11 of RE-RULPA (and in NCCUSL’s Uniform Merger and Conversions Act). The existing FRUPA provisions dealing with mergers of partnerships and limited partnerships should also be expanded to include all other

business entities at the same time. We should discuss whether that the registration requirements for general partnerships should be a condition to those kinds of entities engaging in a statutory conversion or merger.

8. Governing Statutes.

The reference in the definition of an “organization” that can be a party to a merger or conversion (RE-RULPA Section 1101(8)) should be expanded to clarify that a “governing statute” also means any comparable code or law in a foreign country. We should also discuss whether the standard of “having a governing statute” is appropriate for this purpose (not only for foreign entities, but for certain trusts as well).

9. Foreign Limited Partnerships.

The domestication procedures for non-U.S. entities available under the limited partnership laws of some states (see e.g., Delaware, Title 6, sections 17-215 and 17-216) should be evaluated and considered by the Committee as well. This shortened “conversion-like” procedure especially makes sense for a state with as many international ties and as geographically situated as Florida.

A section regarding what it means to transact business should be added that is consistent with 607.1501, along with a section regarding the consequences of transacting business without authority that is consistent with 607.1502.

**EFFECTS OF THE ULPA'S PROPOSED
ADOPTION: A LITIGATOR'S PERSPECTIVE**

From a litigator's perspective, adoption of the ULPA ('01) will bring about a number of noteworthy changes. Among them:

- ?? Beginning with the trivial, the ULPA conveniently codifies into one chapter the entire law on limited partnerships and, therefore, dispenses with our current need to constantly cross-check the two statutory schemes we now have in place for limited partnerships, Florida's Revised Uniform Limited Partnership Act (1996) and Florida's Revised Uniform Partnership Act of 1995.
- ?? The statute of limitations for certain claims will change. Section 509 creates a two-year statute of limitations for claims by the limited partnership: (1) against a general partner for consenting to an improper distribution; and (2) against a partner or transferee that received a distribution knowing that it was improper. Arguably, under our current scheme, at least some such claims are subject to a six-year statute of limitations. See Fla. Stat. § 620.148(1)(b) (six year statute of limitations for claims brought against partner for wrongfully returned contribution).
- ?? ULPA establishes strict deadlines for making claims against dissolved limited partnerships: (1) With respect to known claims against a dissolved LP, the LP must provide claimants with a notice setting forth certain specific information called for in the Act. (See Section 806.) Duly notified claimants who do not send in their claims within 120 days of the notice will be barred from making their claims. If a timely claim is rejected by the dissolved LP, the claimant has 90 days to commence an action to enforce the claim. (2) With respect to most "other claims" (presumably, unknown claims) against dissolved limited partnerships, the LP must publish a notice, again setting forth certain specific information called for in the Act. (See Section 807.) An action to enforce such a claim must be brought within five years after publication of the notice.
- ?? Also worth noting for litigators, if you blow one of the deadlines set forth in Sections 806 and 807 for suing a dissolved LP, you will also lose the ability to make a corresponding claim against the dissolved LP's general partner. (See Section 808.)
- ?? With respect to direct actions by partners, the ULPA makes clear that one partner's violation of the partnership agreement does not give another partner the right to bring a direct action against the breaching partner. (See Section 1001.) The plaintiff/partner must show harm that is independent of harm caused to LP in order to bring a direct action against another partner for breach of the partnership agreement. Absent such independent harm, the proper vehicle for a claim by a partner against another partner for breach of the partnership agreement is a derivative claim brought on behalf of the LP. Of course, in order to bring such a claim, plaintiff must first jump through certain procedural hoops, as explained below.
- ?? The ULPA specifies what exactly must be pleaded in order to satisfy the "demand" and "futility" requirements for a derivative claim. (See Section 1004.) Whereas the present

statute only requires plaintiff to plead the efforts to secure initiation of the action by a general partner or the reason for not making the effort, the ULPA specifically requires plaintiff to plead: (1) the date and content of his demand and the general partners' response to the demand; or (2) why demand should be excused as futile.

The ULPA also changes the law with respect to prevailing party attorney's fees in a derivative action. Under our current scheme, the Court is expressly authorized to order the LP to reimburse the prevailing plaintiff for any legal fees and expenses not covered by the proceeds of the award. The ULPA contains no such express authorization and therefore, at least arguably, limits a prevailing derivative plaintiff's recovery of his fees and costs to the amount actually obtained from the defendant. (See Section 1005.)

[Note the foregoing is a preliminary report only. The following email accompanied the same:

"Greg, I did, in fact, review all the provisions you highlighted. The reason I did not address all of them in this preliminary report is because, unless I missed something, they by and large duplicated the existing statutory scheme. The short answer to your first question regarding elaboration is that the proposed act is preferable because it consolidates the law and more clearly articulates certain litigation-related matters highlighted in the memo such as pleading requirements and statutes of limitations. A more in depth comparison will require more time on my part (which I don't have right now)."

Note that the litigation attorney in question has volunteered to provide a supplementary and more detailed report at a later date.]

Delaware Comparison

**ANALYSIS OF THE UNIFORM LIMITED PARTNERSHIP ACT (2001) IN
COMPARISON WITH THE DELAWARE LIMITED PARTNERSHIPS LAW AND
DELAWARE REVISED UNIFORM PARTNERSHIP ACT**

Abbreviations:

RE-RULPA – Uniform Limited Partnership Act (2001)

DLP – Delaware Limited Partnerships Law (Title 6, Subtitle II, Chapter 17)

DRUPA – Delaware Revised Uniform Partnership Act (Title 6, Subtitle II, Ch. 15)

Characteristic	RE-RULPA	DLP or DRUPA
Notice	<p>Sec. 103 (c) certificate of an LP on file is notice that partnership is an LP and the persons designated as general partners are general partners, but not of any other fact.</p> <p>Sec. 103 (d) constructive notice of a limited partnership’s dissolution, termination, conversion or merger, effective 90 days after appropriate filing</p>	<p>DLP § 17-208 certificate of an LP on file is a notice that partnership is an LP and notice of all other facts set forth in the certificate which are required or permitted by DLP to be set forth therein.</p> <p>DRUPA § 15-102 similar to RE-RULPA Sec. 103, but does not contain a constructive notice provision of dissolution, termination, etc.</p>
Knowledge of partners	<p>Sec. 103 (h) A general partner’s knowledge, notice or receipt of notification equals knowledge, notice to or receipt of a notification by the limited partnership. Knowledge, etc. of a limited partner is not attributable to the limited partnership</p>	No provision on general or limited partners’ knowledge
Purpose/ nature of business	<p>Sec. 104 (b) any lawful purpose</p>	<p>DLP § 17-106 (a) Any lawful business, purpose or activity, except for granting policies of insurance, or assuming insurance risks or banking.</p>
Duration	<p>Sec. 104(c) perpetual duration (can be changed in partnership agreement)</p>	<i>Not specified</i>
Powers	<p>Sec. 105 all things necessary or convenient to carry on its activities, including the power to sue, be sued and defend in its own name (nonwaivable under Sec. 110(b)(1)).</p>	<i>Not mentioned</i>

Name	Sec. 108 name of an LP may contain the name of any partner (including limited partner) Must contain the phrase “limited partnership” or “limited liability limited partnership” respectively, or their abbreviations.	DLP § 17-102 may contain name of a partner Shall contain “limited partnership” or LP May contain the words Company, Association, Club, Foundation, Fund, Institute, Society, Union, Syndicate, Limited, or Trust (or abbreviations)
Effect of partnership agreement; nonwaivable provisions	Sec. 110(a) partnership agreement governs relations among the partners and between the partners and the partnership. Sec. 110(b) nonwaivable provisions different from DRUPA: an LP agreement may not vary an LP’s power under Sec. 105 to sue, be sued and defend in its own name; eliminate the duty of loyalty, unreasonably reduce the duty of care; vary the power of a court to decree dissolution under Sec. 802; unreasonably restrict a partner’s right to maintain an action against the LP under Art. 10; restrict the right of a partner under Sec. 1110(a) to approve a conversion or merger or the right of a general partner under Sec. 1110(b) to consent to an amendment to the certificate which deletes a statement that LP is an LLLP; and restrict rights of a person other than a partner or a transferee.	DRUPA § 15-103(a) partnership agreement governs relations among the partners and between the partners and the partnership. § 15-103(b) nonwaivable provisions – similar to Sec. 110(b) of RE-RULPA, except for those listed in the left column.
Dual Capacity	Sec. 113 A person may be both a general partner and a limited partner, with all rights and duties in each of those capacities.	<i>Not mentioned</i>
Resignation of an agent for service of process	Sec. 116 One way to resign – by filing a statement with the Secretary of State; such resignation is effective only on the 31 st day after the filing.	DLP § 17-104(c), (d) Two ways to resign: 1) an agent resigns and appoints a successor (resignation is effective immediately); 2) an agent resigns without appointing a successor, by merely filing a certificate of resignation (resignation is effective 30 days after the filing).
Certificate	Sec. 201(a)(4) must state whether the	DLP § 17-202 similar to Sec. 201,

	LP is an LLLP	but does not specifically require information on whether the LP is an LLLP.
Differences between certificate and partnership agreement	Sec. 201(d) in case of discrepancies between a certificate and partnership agreement, 1) partnership agreement prevails as to partners and transferees; 2) certificate prevails as to 3 rd persons	<i>Not mentioned</i>
Annual report	Sec. 210 , required	DLP – <i>not mentioned</i> DRUPA § 15-1003 required for LLPs
Power to bind LP	Sec. 302 : a limited partner does not have power to act for or bind the LP	<i>Not mentioned</i>
Limited partner liability for entity debts	Sec. 303 full status-based liability shield for limited partners, regardless of whether the LP is an LLLP or not, “even if the limited partner participates in the management and control of the limited partnership”.	DLP § 17-303 no liability unless limited partner is also a general partner or “participates in the control of the business”. If he participates in the control of the business, he is liable only to persons who transact business with the LP reasonably believing that the limited partner is a general partner.
Limited partners’ access to information	Sec. 304 (a) : on a 10 days demand, a limited partner may inspect and copy required information. Does not need any particular purpose. However, a partnership agreement may impose reasonable restrictions on the availability and use of information (110(b)(4)), and LP may impose reasonable restrictions on the use of information (304(g)).	DLP § 17-305(a), (f) : limited partner’s right to information is subject to “reasonable standards” and limitations set forth in the partnership agreement or established by the general partners § 17-305(b) : general partners may keep confidential from limited partners trade secrets or other information the disclosure of which the gen. partner in good faith believes is not in the best interests of LP.
Rights and duties of limited partners	Sec. 305 : no fiduciary duty to the LP or any other partner solely by reason of being a limited partner; A limited partner shall discharge the duties consistently with the obligation of good faith and fair dealing. Does not mention different classes of limited partners with different duties	DLP : a partnership agreement may establish different series or classes of limited partners with different rights (including voting rights) and duties (§ 17-218; 17-302).

	or rights.	
General partners' liability for partnership's obligations	Sec. 404(a): LP – gen. partners are liable jointly and severally for all obligations; 404(c): LLLP shields gen. partners from liability; only LLLP itself is liable for its obligations. LLLP status available through a mere statement in the certificate, 102(9) & 201(a)(4))	DLP § 17-403 refers to DRUPA § 15-306 : gen. partners are liable jointly and severally for all obligations of the partnership; DLP § 17-214 LLLP limits the liability of general partners of an LP. LLLP is available through filing a statement.
Right of gen. partners to information	Sec. 407: may seek information without having any particular purpose. A partnership agreement may impose reasonable restrictions on the availability and use of information (110(b)(4)), and LP may impose reasonable restrictions on the use of information (407(f)).	DRUPA § 15-403: any demand for information shall be in writing and shall state the purpose (d); A partnership agreement may provide that the partnership may keep confidential from partners for reasonable time any trade secret or other information which the partnership believes could damage the partnership's business (b)
Duties and rights of general partners	Sec. 408: the only fiduciary duties are duty of loyalty and care (similar to DRUPA 15-404)	DLP § 17-405 a partnership agreement may provide for classes of gen. partners with different rights (including voting rights) and duties. DRUPA § 15-404: duty of loyalty and care.
Sharing of distributions and profits/ losses	Sec. 503: provides only for sharing of distributions (on the basis of the value of the contributions); has not provision allocating profits and losses	DLP provides separately for sharing of profits and losses (§ 17-503) and allocation of distributions (17-504).:
Interim distributions	Sec. 504: a partner does not have a right to any distribution before the dissolution and winding up, unless the LP decides to make an interim distribution	DLP 17-601: a partner is entitled to receive from an LP distributions before withdrawing from the LP or dissolution and winding up (with exceptions specified in the partnership agreement).
Distribution upon dissociation	Sec. 505: no right to receive a distribution on account of dissociation	DLP 17-604: any withdrawing partner is entitled, upon withdrawal, to receive any distribution to which he is entitled under a partnership agreement.
Right to distribution	Sec. 507: a partner's distribution is subject to offset for any amount owed to the LP by the partner	DLP 17-606: no offset requirement

Dissociation as a limited partner	Sec. 601(b) : a detailed list of causes for involuntary dissociation of a limited partner	DLP 17-603 involuntary dissociation is not addressed
Effect of dissociation as limited partner	Sec. 602 : after dissociation no further rights as a limited partner; obligations of good faith and fair dealing continues only as to matters arising before dissociation; person becomes transferee of his own transferable interest; a person is not discharged from any obligation to LP or other partners.	Not addressed
Power to dissociate as general partner	Sec. 604 : gen. partner has the power to dissociate at any time, rightfully or wrongfully. Wrongful dissociation: if it is in breach of the partnership agreement or occurs before the termination of LP (b)	DLP 17-602 : Gen. partner's right to withdrawal depends on a partnership agreement; DRUPA 15-602 similar to RE-RULPA 604.
Effect of dissociation as general partner	Sec. 605 : person becomes transferee of his own transferable interest (a)(5); a person is not discharged from any obligation to LP or other partners (b).	DRUPA 15-603 : similar to RE-RULPA 605, except for the provisions listed in the left column.
Dissociated partner's power to bind and liability to LP	Sec. 606 : power to bind exists for 2 years after dissociation (a)(2)(A)	DRUPA 15-702 : power to bind exists for 1 year (a).
Dissociated partner's liability to other persons	Sec. 607 : a person whose dissociation as a gen. partner resulted in dissolution and winding up is liable as any other gen. partner in case of dissolution (b). A person whose dissociation did not result in a dissolution is liable for 2 years (c)(2)(A)	DRUPA 15-703 : dissociation resulting in dissolution is not mentioned. A person whose dissociation did not result in dissolution is liable for 1 year after dissociation (b).
Transfer of partner's interest	Sec. 701 : only transferable partner's interest may be transferred. Sec. 702 : transfer of partner's interest does not entitle the transferee to participate in the management of LP or to require access to information (a)(3); Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner (d). Does not mention the right of an LP to	DLP 17-702 : does not differentiate between transferable and non-transferable interest; A partner ceases to be a partner and to have the power to exercise any rights upon assignment of all partnership interests (a)(4). LP may purchase or redeem any partnership interest of a partner in the LP; any such acquired interest is deemed canceled (d).

	acquire partner's interest.	

PROVISIONS OF RE-RULPA, DLP AND DRUPA MATCHED

RE-RULPA	DLP	DRUPA
101	17-1102	
102	17-101	
103	17-208	15-102
104	17-106	
105	17-106	
106		15-106
107		15-104
108	17-102	
109	17-103	
110		15-103
111		
112	17-107	
113		
114	17-104(a)	
115	17-104(b)	
116	17-104(c-d)	
117	17-105	
118		
201	17-201	
202	17-202	
203	17-203	
204	17-204	
205	17-205	
206	17-206	
207	17-213	
208	17-207	
209		
210		15-1003
301	17-301	
302		
303	17-303	
304	17-305	
305	17-218; 17-302	
306	17-304	
401	17-401	

402		15-301
403		15-305
404	17-403(b); 17-214	15-306
405		15-307
406		15-401
407		15-403
408		15-404
501	17-501	
502	17-502	
503	17-503 & 17-504	
504	17-601	
505	17-604	
506	17-605	15-402
507	17-606	
508	17-607	
509	17-607(b)	
601	17-603	
602		15-603(b)
603	17-602	15-601
604		15-602
605		15-603(b)
606		15-702
607		15-703
701	17-701	
702	17-702	
703	17-703	
704	17-705	
801	17-801	
802	17-802	
803	17-803	
804		15-804
805		15-806
806		
807		
808		
809		
810		
811		
812		15-807
901	17-901	
902	17-902; 17-903	
903		15-1104
904	17-903	
905	17-905	
906		
907	17-906	

908	17-908	
1001		15-405
1002	17-1001	
1003	17-1002	
1004	17-1003	
1005	17-1004	
1101	17-211(a); 17-217(a)	
1102	17-217	15-901
1103		
1104	17-217	
1105		
1106	17-211	15-902
1107		
1108	17-211(c)	
1109		
1110		
1111		
1112		
1113		
1201	17-1101	
1202	17-1103	
1203		
1204	17-1104	
1205	17-1106	
1206	17-1104(b-c)	15-1206
1207		

End of Report Appendices *****

\\MIA-SRV01\MARKSG\1485478v07\6/26/03