

9-1-1988

CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS Limited Partnerships: Revise Georgia Uniform Limited Partnership Act

A. Jones

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

A. Jones, *CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS Limited Partnerships: Revise Georgia Uniform Limited Partnership Act*, 5 GA. ST. U. L. REV. (1988).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol5/iss1/7>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

Limited Partnerships: Revise Georgia Uniform Limited Partnership Act

CODE SECTIONS:	O.C.G.A. §§ 14-9-100 to -1204 (new), 14-9A-1 to -130 (redesignated)
BILL NUMBER:	HB 924
ACT NUMBER:	1314
SUMMARY:	The Act extensively revises Georgia law relating to limited partnerships. The Act provides for definitions and sets forth procedures relating to the execution, amendment, and cancellation of certificates of authority of both domestic and foreign limited partnerships. The Act provides for powers and potential liabilities of general and limited partners. The Act provides for registration of foreign limited partnerships and specifies choice of law rules.
EFFECTIVE DATE:	July 1, 1988

History

A limited partnership allows an individual to invest in business ventures without incurring personal liability for debts of the enterprise beyond the amount of the initial investment.¹ Certain restrictions and requirements are imposed upon parties entering into a limited partnership. First, the limited partnership must file a certificate indicating the membership and terms of the partnership.² The purpose of the certificate is to provide creditors with facts about the enterprise which help them make informed credit decisions. The certificate also delineates the rights and position of the partners in relation to one another within the limited partnership.³ Also, in exchange for limited financial liability, the limited partner may exercise only limited control in the management of the business.⁴

In 1952, Georgia adopted the Uniform Limited Partnership Act (ULPA).⁵ The ULPA is patterned after the Uniform Partnership

1. H. REUSCHLEIN & W. GREGORY, AGENCY AND PARTNERSHIP 264 (1979).

2. *Id.* at 434.

3. *Id.*

4. *Id.* at 436.

5. 1952 Ga. Laws 375. The ULPA is a standard system of legislation designed to

Act⁶ which, although initially approved by the National Conference of Commissioners on Uniform State Laws in 1914, was not adopted in Georgia until 1984.⁷ In 1976, the National Conference of Commissioners on Uniform State Laws adopted the Revised Uniform Limited Partnership Act (RULPA)⁸ which is far more detailed and broader in scope than its predecessor.⁹

HB 924

For several years, the General Assembly considered updating the ULPA by adopting the RULPA but did not do so because of uncertainties regarding the tax treatment of limited partnership distributions under the RULPA. The favorable resolution of these issues made limited partnerships "more attractive business vehicles" and encouraged passage of the Act.¹⁰ The legislation was introduced in the House at the end of the 1987 session to allow legislators to scrutinize the bill before the 1988 session.¹¹ HB 924 passed the House with a committee substitute that made only minor revisions to the original bill.¹² The Senate committee changed the effective date of various provisions from 1988 to the year in which the chapter becomes effective and added a section providing for an alternative effective date in case the General Assembly does not appropriate the funds to implement the provisions of the Act in 1988—89.¹³ The House made minor changes to the Senate amendment and passed the bill.¹⁴

There are certain differences between the Act and the RULPA. The

govern limited partnerships which was promulgated by the National Conference of Commissioners on Uniform State Laws in 1916. UNIF. LTD. PARTNERSHIP ACT, 6 U.L.A. 1985.

6. UNIF. PARTNERSHIP ACT, 6 U.L.A. 1985. See Ribstein, Smith & Carsow, *The Uniform Partnership Act as Adopted in Georgia*, 21 GA. ST. B.J. 56 (1984).

7. 1984 Ga. Laws 1439.

8. REVISED UNIF. LTD. PARTNERSHIP ACT, 6 U.L.A. 2116 (1985).

9. Telephone interview with William A. Gregory, Professor of Law, Georgia State University College of Law, co-author of H. REUSCHLEIN & W. GREGORY, AGENCY AND PARTNERSHIP (1979) (Apr. 14, 1988) [hereinafter Gregory Interview].

10. Telephone interview with Representative Tommy Chambliss, House District No. 133 (Apr. 8, 1988) [hereinafter Chambliss Interview]. The General Assembly was concerned that the adoption of RULPA provisions allowing limited partners to participate in the management or control of the partnership would make the partnership taxable as a corporation and not as a partnership for federal tax purposes. Such a classification could result in increased tax liability for the general and limited partners.

11. *Id.*

12. Compare HB 924, as introduced, 1987 Ga. Gen. Assem. with HB 924 (HCS), 1988 Ga. Gen. Assem. The committee was chaired by Representative Tommy Chambliss. He met with Professor Larry E. Ribstein of George Mason University School of Law and with a committee from the Georgia State Bar.

13. HB 924 (SCA), 1988 Ga. Gen. Assem. The chapter became effective July 1, 1988.

14. HB 924 (HCS), 1988 Ga. Gen. Assem.

Act permits indemnification of partners by the limited partnership,¹⁵ but the RULPA does not provide for such indemnification. The Act also permits filing of a certificate of cancellation at the end of winding up.¹⁶ The RULPA allows the filing of a certificate of cancellation upon "dissolution and the commencement of winding up."¹⁷ The RULPA does not provide for merger of limited partnerships; the Act not only provides for merger of limited partnerships, but sets forth procedures for such mergers.¹⁸

The Act eliminates the "control test"¹⁹ and "safe harbor"²⁰ provisions set forth in the RULPA. The Act does not address the events of withdrawal of a general partner.²¹ Georgia's abandonment of the control test is unique among the states and promises to be a real advantage for Georgia limited partnerships.²² The Act provides that capital contributions by a partner to a limited partnership may be in any form,²³ while the RULPA limits contributions to cash, property, services rendered, or a promise to contribute the same.²⁴ The Act eliminates the obligation imposed by the RULPA for a partner to contribute cash of equal value if property or services cannot be contributed.²⁵

Article One — General Provisions

Code section 14-9-101 is the definitional section of the Limited Partnership Act.²⁶ The previous law did not provide a general section defining terms. A general partner must be a person²⁷ named in the limited partnership certificate,²⁸ or added, either as provided in writing by the partnership agreement or by the written consent of all partners,²⁹ unless the

15. O.C.G.A. § 14-9-108 (Supp. 1988).

16. O.C.G.A. § 14-9-203 (Supp. 1988). Winding up is the period in which a dissolved partnership discharges debts of the partnership and redistributes the assets. *Id.*

17. REVISED UNIF. LTD. PARTNERSHIP ACT § 203, 6 U.L.A. 271 (1985). RULPA requires that a certificate of cancellation be filed; however, it does not provide sanctions for noncompliance. *Id.*

18. O.C.G.A. § 14-9-206.1 (Supp. 1988).

19. REVISED UNIF. LTD. PARTNERSHIP ACT § 303(a), 6 U.L.A. 288 (1985). Under the control test, a limited partner who exercises control of the business is liable to persons who reasonably believe that the limited partner, by his conduct, is a general partner.

20. *Id.* § 303(b), 6 U.L.A. 288 (1985). The safe harbor provisions list the types of activities a partner can perform for the partnership without being deemed a general partner.

21. *See id.* § 402, 6 U.L.A. 303 (1985).

22. Gregory Interview, *supra* note 9.

23. O.C.G.A. § 14-9-501 (Supp. 1988).

24. REVISED UNIF. LTD. PARTNERSHIP ACT § 501, 6 U.L.A. 311 (1985).

25. *See id.* § 502(b), 6 U.L.A. 311 (1985).

26. O.C.G.A. § 14-9-101 (1985 & Supp. 1988).

27. A "person" is defined as an individual or an entity "acting in a representative capacity." O.C.G.A. § 14-9-101(12) (Supp. 1988).

28. O.C.G.A. § 14-9-101(5)(a) (Supp. 1988).

29. O.C.G.A. § 14-9-401 (Supp. 1988).

person is determined to be a partner by estoppel.³⁰ The Act narrows the meaning of "partnership interest" to the financial rights of a partner in a limited partnership.³¹

The Act requires that the name of the limited partnership set forth in its certificate be distinguished from the name of an active limited partnership and from any corporation on file with the Secretary of State.³² The Secretary of State will add a distinguishing character such as "L.P." or a numerical designation to the name of the partnership if necessary.³³ A limited partnership can reserve exclusive right to the public use of a name by applying to the Secretary of State.³⁴ Unlike the ULPA, the Act permits a limited partner's name to appear in the name of the limited partnership under certain circumstances: if the limited partner's name is also the name of the general partner; if the limited partner's name is the corporate name of a corporate general partner; or if the business of the limited partnership has been carried on under the name of the limited partner before his admission.³⁵

The Act requires that a limited partnership maintain a registered office and registered agent in this state. Failure to comply with this provision results in the Secretary of State becoming an agent for service of process.³⁶

The Act requires a limited partnership to keep and make available upon reasonable request: the names and addresses of each partner; a copy of the certificate of limited partnership; copies of the tax returns of the limited partnership for the last four years; and copies of any written agreements concerning the limited partnership.³⁷ The ULPA required that the certificate of limited partnership contain this information.³⁸ The change from employing the certificate to record detailed partnership information to merely requiring that the information be made available reflects a recognition by the legislature that the proper function of the certificate is to provide notice to creditors rather than to duplicate the partnership agreement.³⁹

30. O.C.G.A. § 14-8-16 (Supp. 1988). *See also* O.C.G.A. § 14-9-1204 (providing that "the Uniform Partnership Act shall govern in any case not provided for in this chapter").

31. O.C.G.A. § 14-9-101(11) (Supp. 1988).

32. O.C.G.A. § 14-9-102(a) (Supp. 1988).

33. O.C.G.A. § 14-9-102(b) (Supp. 1988).

34. O.C.G.A. § 14-9-103(a) (Supp. 1988).

35. O.C.G.A. § 14-9-102(a)(2)(A), (B) (Supp. 1988).

36. O.C.G.A. § 14-9-104(h) (Supp. 1988).

37. O.C.G.A. § 14-9-105 (Supp. 1988). *See also* O.C.G.A. § 14-9-305 (Supp. 1988) (requiring that the same records be made available to the limited partners upon reasonable request).

38. 1952 Ga. Laws 375 (formerly found at O.C.G.A. § 14-9-20 (1982)). *See also* O.C.G.A. § 14-9-201 (Supp. 1988) (required content of certificate of limited partnership).

39. Chambless Interview, *supra* note 10. *See* REVISED UNIF. LTD. PARTNERSHIP ACT, *Prefatory Note*, 6 U.L.A. 212 (1985).

The ULPA prohibited limited partnerships from engaging in the banking, insurance, railroad, trust, canal, navigation, express, or telegraph businesses.⁴⁰ The Act allows limited partnerships to engage in any business that is not prohibited by law or by the partnership agreement itself.⁴¹ The Act reflects the presumption that if third parties who have relied on representations made by the limited partnership are protected, specific restrictions on the activities of limited partnerships are unnecessary.⁴²

The Act confirms the right of limited partnerships, domestic or foreign, to acquire and hold real property and creates a presumption of the validity of instruments conveying the real property unless limits on that authority have been set forth in the limited partnership agreement.⁴³ The purpose of the presumption of validity is to assist title examiners.⁴⁴

The Act allows a limited partner to make secured loans to the limited partnership and gives that limited partner the same rights and obligations as a lender who is not a limited partner.⁴⁵ The ULPA allowed a limited partner to loan money and transact business with the limited partnership, but did not allow the limited partner a secured interest against the limited partnership.⁴⁶

The Act allows the limited partnership to provide for indemnification, in the limited partnership agreement, of any partner or any other persons against claims.⁴⁷ The Act excepts from indemnification intentional or knowing illegal misconduct when the person received a personal benefit from a breach of the partnership agreement.⁴⁸

HB 924, as introduced in the House, contained a detailed indemnification section which indemnified a partner who successfully defended a derivative action brought by the partnership.⁴⁹ The House Committee on Judiciary removed the indemnification section from the article dealing

40. 1952 Ga. Laws 375 (formerly found at O.C.G.A. § 14-9-21 (1982)).

41. O.C.G.A. § 14-9-106(a) (Supp. 1988).

42. Chambless Interview, *supra* note 10.

43. O.C.G.A. § 14-9-106(a)—(c) (Supp. 1988).

44. J. Smith, Outline of the Georgia Revised Uniform Limited Partnership Act 3 (Apr. 1, 1988). James L. Smith, III served as Co-Chairman of the Joint Committee on Partnership Law of the Corporate & Banking Law Section and the Real Property Law Section of the State Bar of Georgia. Other members were Tim Carsow, Co-Chairman, Robert P. Bryant, Bernard L. Greer, Jr., Russell S. Grove, Jr., and John C. Sawyer, and the Reporter for the Committee was Professor Larry E. Ribstein of George Mason University School of Law. Portions of this outline are derived from summaries of the new Act prepared by other members of the Committee [hereinafter GRULPA Outline].

45. O.C.G.A. § 14-9-107 (Supp. 1988).

46. 1952 Ga. Laws 375 (formerly found at O.C.G.A. § 14-9-44 (1982)).

47. O.C.G.A. § 14-9-108 (Supp. 1988).

48. *Id.*

49. HB 924, as introduced, 1988 Ga. Gen. Assem.

with derivative actions and limited the provision to its present form.⁵⁰ The legislators feared that the broader coverage of the original version of the bill would conflict with legislation being considered in connection with Tort Reform.⁵¹

Article Two — Formation: Certificate of Partnership

Article Two contains provisions concerning execution and filing of certificate of limited partnership and certificates of amendment, cancellation, and merger. Article Two provides for annual registration of the limited partnership and bars access to the courts for failure to register.⁵² The Act recognizes that the certificate of limited partnership is intended only to put creditors on notice of matters relevant to the limited partnership. The partnership agreement properly contains other information, such as the allocation of profits or the amount of contribution by the partners.⁵³

The limited partnership certificate must contain only "the name of the limited partnership . . . the address of the registered office and the name and address of the initial agent for service of process . . . the name and business address of each general partner" and the expiration date of the limited partnership.⁵⁴ The Act designates the Office of the Secretary of State as the place of filing of the certificate.⁵⁵ The limited partnership exists from the time of filing the certificate in the Office of the Secretary of State to the time of cancellation of the certificate, unless otherwise stated in the certificate of limited partnership.⁵⁶

Under the ULPA, a change in name, location, composition, or structure of the limited partnership required amendment of the certificate.⁵⁷ The Act permits the amendment of the certificate at the discretion of the general partners.⁵⁸ Amendment to the certificate may be necessary at the admission of a new general partner.⁵⁹

A certificate of cancellation may be filed when all the debts and obligations of the limited partnership have been discharged and the assets have been distributed to the partners, or when there are no limited partners.⁶⁰

50. HB 924 (HCS), 1988 Ga. Gen. Assem.

51. Telephone interview with Representative Charles Thomas, House District No. 69 (Apr. 19, 1988) [hereinafter Thomas Interview].

52. O.C.G.A. § 14-9-206.5 to -.6 (Supp. 1988).

53. See Lamb, *Symposium: Limited Partnership Act 1976*, 9 ST. MARY'S L.J. 441, 442 (1978).

54. O.C.G.A. § 14-9-201(a) (Supp. 1988).

55. *Id.*

56. O.C.G.A. § 14-9-201(b) (Supp. 1988).

57. 1952 Ga. Laws 375 (formerly found at O.C.G.A. § 14-9-26 (1982)).

58. O.C.G.A. § 14-9-202(b) (Supp. 1988).

59. See O.C.G.A. § 14-9-101(5) (Supp. 1988) (requiring that a general partner be named in the limited partnership agreement); see also O.C.G.A. § 14-9-101(8) (defining a limited partnership as having one or more limited partners).

60. O.C.G.A. § 14-9-203 (Supp. 1988).

Filing is not required at the time of dissolution.⁶¹ The new provision reflects the legislators' reliance on the theory that creditors are protected by estoppel, making notice at the beginning of dissolution unnecessary.⁶²

The Act requires that original certificates of limited partnership and certificates of cancellation must be executed by all general partners.⁶³ Certificates of amendment must be executed by one general partner and each new general partner designated in the certificate.⁶⁴ All general partners must sign a certificate of cancellation,⁶⁵ and at least one general partner of each of the constituent partnerships must sign a certificate of merger.⁶⁶ The execution provisions of the Act were drafted in order to correct problems caused by the requirement that limited partnership certificates and amendments be signed and sworn to by all members of the partnership as provided by the ULPA.⁶⁷

The Act allows domestic limited partnerships or domestic and foreign limited partnerships to merge.⁶⁸ Provisions for voters' rights relating to merger are regulated by the partnership agreement.⁶⁹

Article Three — Limited Partners

A person may become a limited partner if the partnership agreement so provides or if all the members consent in writing.⁷⁰ An individual does not become a member of a limited partnership unless that individual's name is reflected in the records of the partnership agreement.⁷¹ This provision ensures that all partners give unanimous consent to the admission of new limited partners unless the agreement provides otherwise.⁷² The

61. *Id.* The Georgia provision differs from the RULPA which requires filing at dissolution. In addition, RULPA does not provide sanctions for failure to file a certificate of cancellation. REVISED UNIF. LTD. PARTNERSHIP ACT § 203, 6 U.L.A. 271 (1985).

62. GRULPA Outline, *supra* note 44, at 5.

63. O.C.G.A. § 14-9-209(a)(1) (Supp. 1988).

64. O.C.G.A. § 14-9-204(a)(2) (Supp. 1988).

65. O.C.G.A. § 14-9-204(a)(3) (Supp. 1988).

66. O.C.G.A. § 14-9-204(a)(4) (Supp. 1988).

67. GRULPA Outline, *supra* note 44, at 5. The requirements of the ULPA were unnecessarily burdensome to limited partnerships which had many limited partners residing in various jurisdictions nationwide. Because O.C.G.A. § 14-4-403(a) imposes joint and several liability on general partners in a limited partnership, individual signing and swearing by limited partners is unnecessary for the protection of the limited partners or creditors of the limited partnership.

68. O.C.G.A. § 14-9-206.1 (Supp. 1988). Neither RULPA nor prior Georgia law provides for mergers of limited partnerships with other limited partnerships. This section is based on a similar provision of the Delaware Revised Uniform Limited Partnership Act, DEL. CODE ANN. tit. 6, § 17-211 (Supp. 1986). Many states emulate Delaware corporate law because of Delaware's favorable treatment of business. Chambless Interview, *supra* note 10.

69. GRULPA Outline, *supra* note 44, at 6.

70. O.C.G.A. § 14-9-301 (Supp. 1988).

71. O.C.G.A. § 14-9-301(b)(2) (Supp. 1988).

72. Sell, *Symposium: Limited Partnership Act 1976*, 9 ST. MARY'S L.J. 441, 459

ULPA requires an amendment of the certificate to admit a person as a limited partner.⁷³

Under the ULPA, a limited partner who takes part in the control of the business becomes liable as a general partner.⁷⁴ Under the ULPA, it was difficult to determine the amount of advice or participation a limited partner could exercise without taking "part in the control of the business."⁷⁵ The Act eliminates the "control test"⁷⁶ and also allows the limited partners voting and other rights and obligations if such rights are provided for in the partnership agreement without incurring general partner liability. However, despite the rejection of the control test and the inclusion of safe harbor provisions, general partner liability can be imposed on a limited partner through "estoppel, fraud or general equitable grounds."⁷⁷

A person who erroneously believes himself to be a limited partner will not incur the liability of a general partner if, upon learning of his mistake, he files an amended certificate correcting the erroneous information and files a writing with the Secretary of State renouncing "future equity participation" in the partnership.⁷⁸ The Act permits an erroneous limited partner to retain partnership profits held or accrued prior to knowledge of his mistake.⁷⁹ In comparison, the ULPA required that the mistaken limited partner "renounce his interest in the profits of the business, or other compensation by way of income."⁸⁰ However, if the erroneous limited partner knows of the error and a creditor reasonably believes that an erroneous limited partner is a general partner and extends credit to the partnership in reliance on that belief, the erroneous partner will be liable to that creditor as a general partner.⁸¹

Article Four — General Partners

Additional general partners can be admitted with the written consent of all the partners if the partnership agreement provides for their admission.⁸² A general partner has the same rights, powers, restrictions, and

(1978).

73. 1952 Ga. Laws 375 (formerly found at O.C.G.A. § 14-9-26 (1982)).

74. 1952 Ga. Laws 375 (formerly found at O.C.G.A. § 14-9-41 (1982)). *See also supra* note 19 and accompanying text.

75. Chambless Interview, *supra* note 10.

76. O.C.G.A. § 14-9-303 (Supp. 1988).

77. GRULPA Outline, *supra* note 44, at 8.

78. O.C.G.A. § 14-9-304(a)(1) to -(3) (Supp. 1988).

79. *Id.*

80. O.C.G.A. § 14-9-304(a)(3)(A) (Supp. 1988). *See Sell, Symposium: Limited Partnership Act 1976*, 9 ST. MARY'S L.J. 441, 481-82 (1978) (discussing the alternative course of action for the person who discovers he is an erroneous limited partner).

81. O.C.G.A. § 14-9-304(b)(1)-(2) (Supp. 1988).

82. O.C.G.A. § 14-9-401 (Supp. 1988).

liabilities as a partner in a partnership without limited partners.⁸³ A person may be both a general and a limited partner in the same partnership as long as the "interests are separately designated in the partnership agreement."⁸⁴ The Act eliminates a section of the RULPA which sets forth the events which would cause a person to cease to be a general partner.⁸⁵ The Georgia legislators felt that the RULPA provisions were either stated elsewhere in the Act or were implicit in the principles of limited partnership.⁸⁶

Article Five — Finance

Under the Act, the forms of contributions which may be made to a limited partnership are broader than both the RULPA and the ULPA. The Act allows capital contributions, including promissory notes for cash, property, or services, to the limited partnership by a partner to be in any form provided for in the partnership agreement.⁸⁷ The RULPA restricts contributions to cash, property, or services rendered, or a promise to contribute cash, property, or services rendered.⁸⁸ The ULPA permits cash and property contributions only, and excludes services.⁸⁹ Georgia legislators felt that the types of permanent capital contribution to a limited partnership should not be limited and that a contribution such as "good will" has value and should qualify as a contribution.⁹⁰

A question remains as to whether fees for past services payable by an insolvent person or for services performed without expectation of payment are "sufficient consideration to support a limited partnership."⁹¹ In addition, the allowance of promissory notes and future services as a contribution "leaves open the possibility that an obligation to contribute property in twenty years in the future" could be a permissible capital contribution.⁹² The Act provides for the enforceability of a promise to contribute even if the partner is unable to perform.⁹³ If the contribution were a promise for services, and the contributor died before performance, the estate would be liable to the partnership for the cost of the promised services.⁹⁴

83. O.C.G.A. § 14-9-403 (Supp. 1988).

84. O.C.G.A. § 14-9-404 (Supp. 1988).

85. REVISED UNIF. LTD. PARTNERSHIP ACT § 402, 6 U.L.A. 303 (1985).

86. Thomas Interview, *supra* note 51. See, e.g., O.C.G.A. § 14-9-602 (Supp. 1988) (providing for withdrawal of both general and limited partners).

87. O.C.G.A. § 14-9-501 (Supp. 1988).

88. REVISED UNIF. LTD. PARTNERSHIP ACT § 501, 6 U.L.A. 311 (1985).

89. 1952 Ga. Laws 375 (formerly found at O.C.G.A. § 14-9-40 (1982)).

90. Thomas Interview, *supra* note 51.

91. Gregory, *Symposium: Limited Partnership Act 1976*, 9 ST. MARY'S L.J. 441, 480 (1978).

92. *Id.* at 481.

93. O.C.G.A. § 14-9-502(b)(2) (Supp. 1988).

94. See Gregory, *Symposium: Limited Partnership Act 1976*, 9 ST. MARY'S L.J. 441,

Profits and losses are to be allocated among the partners as provided in the partnership agreement; if the partnership agreement is silent, allocations are to be made in proportion to the amount of the contributions.⁹⁵ The Act eliminates the ULPA imposition of liability for returned contributions.⁹⁶

Article Six — Distributions and Withdrawal

The Act provides that the partnership agreement governs distributions prior to a partner's withdrawal from the limited partnership before dissolution and winding up.⁹⁷ General partners may withdraw voluntarily by giving proper notice, but if the withdrawal violates the partnership agreement, or is the result of "otherwise wrongful conduct of the general partner," the partnership may obtain damages.⁹⁸ Involuntary withdrawal occurs if the general partner is removed, files bankruptcy, consents to receivership of the partnership, dies, or becomes incompetent. A general partner who is a corporation or a separate partnership withdraws involuntarily from the limited partnership when that entity is dissolved, or as provided in the partnership agreement.⁹⁹ A general partner who has withdrawn voluntarily or involuntarily retains personal liability for debts incurred prior to withdrawal.¹⁰⁰ However, a general partner has no liability for debts incurred after cessation of his general partnership unless the creditor had a "reasonable basis for believing that the partner remained a general partner."¹⁰¹

Limited partners may withdraw according to the partnership agreement, with distributions made according to the partnership agreement.¹⁰² Unless the partnership agreement states otherwise, distributions to partners must be made in cash, and a partner cannot be compelled to accept distributions in kind.¹⁰³ This provision protects both the partner and the partnership from being compelled to accept an unfair distribution of the assets of the partnership.¹⁰⁴ The partner entitled to a distribution has the status of a creditor with all the remedies which would be available to a creditor at law or under the partnership agreement.¹⁰⁵

481—82 (1978) (discussion of the ramifications of RULPA § 502(b)(2)).

95. O.C.G.A. § 14-9-503 (Supp. 1988).

96. 1952 Ga. Laws 375 (formerly found at O.C.G.A. § 14-9-48 (1982)).

97. O.C.G.A. § 14-9-601 (Supp. 1988).

98. O.C.G.A. § 14-9-602(b) (Supp. 1988).

99. O.C.G.A. § 14-9-602(a) (Supp. 1988).

100. O.C.G.A. § 14-9-602(d) (Supp. 1988).

101. O.C.G.A. § 14-9-602(e) (Supp. 1988).

102. O.C.G.A. § 14-9-604 (Supp. 1988).

103. O.C.G.A. § 14-9-605 (Supp. 1988).

104. Gregory, *Symposium: Limited Partnership Act 1976*, 9 ST. MARY'S L.J. 441, 486 (1978).

105. O.C.G.A. § 14-9-606 (Supp. 1988).

Article Seven — Assignment of Partnership Interests

The Act states that the “partnership interest” is personal property and that a partner has no interest in “specific partnership property.”¹⁰⁶ The Act permits full transferability of a limited partnership interest without permitting the assignee to be entitled automatically to the rights of a partner. The assignor is not released from liability and the assignee does not assume liability solely as a result of the assignment.¹⁰⁷ An assignee’s partnership interest may be assigned or transferred by certificate.¹⁰⁸ A court may order garnishment or attachment of the assignee’s interest for the benefit of judgment creditors.¹⁰⁹ If the partnership agreement allows, or if all of the partners consent, an assignee may become a limited partner. Upon doing so, the assignee assumes the responsibilities of a limited partner to the extent that he has reasonable knowledge of the liabilities of the partnership.¹¹⁰ The assignor remains liable for contributions to the limited partnership.¹¹¹

Article Eight — Dissolution

The Act provides that dissolution is accomplished by meeting terms in the partnership agreement, by written consent of all partners, by the withdrawal of the general partner, or by court decree.¹¹² HB 924 provided that the withdrawal of all of the general partners would not result in dissolution if the partnership agreement provided for the appointment of a new general partner.¹¹³ The House Committee on Judiciary omitted this provision and one which would allow interim management by the limited partners.¹¹⁴ A major concern of the General Assembly in enacting the RULPA was whether the proposed provision dealing with removal of a general partner by the limited partners and for limitation of the liability of a general partner to partnership creditors created unfavorable tax consequences to the partnership.¹¹⁵ The Treasury Decision regarding tax classification of Limited Partnerships resolved this issue by declaring that

106. O.C.G.A. § 14-9-701 (Supp. 1988). This view is consistent with the partnership principles regarding partnership ownership of property. See O.C.G.A. § 14-8-8 (Supp. 1988) (determination of ownership of property for partnership).

107. O.C.G.A. § 14-9-702 (Supp. 1988).

108. O.C.G.A. § 14-9-702(b) (Supp. 1988).

109. O.C.G.A. § 14-9-703 (Supp. 1988).

110. O.C.G.A. § 14-9-704(a) (Supp. 1988).

111. O.C.G.A. § 14-9-502 (Supp. 1988).

112. O.C.G.A. § 14-9-801 (Supp. 1988).

113. HB 924, as introduced, 1988 Ga. Gen. Assem.

114. HB 924 (HCS), 1988 Ga. Gen. Assem.

115. Chambless Interview, *supra* note 10 and accompanying text. See Gregory, *Symposium: Limited Partnership Act 1976*, 9 ST. MARY’S L.J. 441, 489 (1978). The intent of the drafters of the dissolution provision was to provide a “tax neutral” document which “would produce the same [tax] classification result” under both the ULPA (1916) and the RULPA (1976). *Id.* at 490—91.

for tax purposes the ULPA “shall be deemed to refer to that Act [ULPA] both as originally promulgated and as revised in 1976 [RULPA].”¹¹⁶

The Act provides for winding up after dissolution by empowering the person winding up to perform such tasks as prosecuting and defending suits, settling business, discharging liability, and distributing assets.¹¹⁷

Article Nine — Foreign Limited Partnerships

This Code section addresses the status of the partnership organized in a state other than Georgia. The Act provides for registration of foreign limited partnerships and specifies choice-of-law rules. “Subject to the Constitution of this state . . . the laws of the state under which a foreign limited partnership is organized govern . . . [and] a foreign limited partnership may not be denied a certificate of authority by reason of any difference between those laws and the laws of this state.”¹¹⁸ The Act requires the procurement of a certificate of authority from the Secretary of State,¹¹⁹ provides for substituted service on the Secretary of State if the registered agent cannot be served,¹²⁰ and specifies which activities the foreign partnership can carry on in this state without constituting “transacting business” for jurisdictional purposes.¹²¹ The House Committee on Judiciary amended the original HB 924 to require a foreign limited partnership to obtain a certificate of authority to do business in this state and to maintain an agent for service of process in this state.¹²² The committee also added the procedure by which the Secretary of State could be served in the event of a plaintiff’s inability to effect service of process on the registered agent of the foreign limited partnership.¹²³ The Act provides penalties for failure of a foreign limited partnership to obtain a certificate of authority.¹²⁴

Article Ten — Derivative Actions

The Act allows a limited partner to institute an action on behalf of the partnership if the general partners have refused to do so or do not appear likely to do so.¹²⁵ The plaintiff must be a partner at the time of the action and at the time of the event complained of or have derived status from one who was a partner.¹²⁶ The plaintiff must plead with particularity the

116. 48 Fed. Reg. 18,804 (1983).

117. O.C.G.A. § 14-9-803 (Supp. 1988).

118. O.C.G.A. § 14-9-901 (Supp. 1988).

119. O.C.G.A. § 14-9-902(a) (Supp. 1988).

120. O.C.G.A. § 14-9-902(a)(4) (Supp. 1988).

121. O.C.G.A. § 14-9-902(b)(1)–(13) (Supp. 1988).

122. HB 924 (HCS), 1988 Ga. Gen. Assem.

123. O.C.G.A. § 14-9-902.1(i) (Supp. 1988).

124. O.C.G.A. §§ 14-9-907 to -908 (Supp. 1988).

125. O.C.G.A. § 14-9-1001 (Supp. 1988).

126. O.C.G.A. § 14-9-1002 (Supp. 1988).

facts which establish his right to institute the action.¹²⁷ The plaintiff may recover costs, including attorneys' fees, if successful.¹²⁸ The ULPA did not provide for derivative actions to be brought by limited partners.

Article Eleven — Miscellaneous

Code sections 14-9-1101 to -1104 deal with housekeeping duties and powers of the Secretary of State in matters concerning the Act.

Article Twelve — Transition Rules

The Act applies to limited partnerships formed on or after July 1, 1988. Existing partnerships may elect to become subject to the Act.¹²⁹ Election is made by amending the limited partnership agreement to provide that the new law shall govern the partnership and by filing with the Secretary of State an amendment to the Certificate of Limited Partnership or a new Certificate of Limited Partnership.¹³⁰ The Act states that the Uniform Partnership Act governs in any case not provided for in the new Act.¹³¹

More than thirty-seven states have adopted the RULPA since it was first introduced in 1976.¹³² The 1976 RULPA clarifies many of the ambiguities of the 1916 ULPA, which was adopted in Georgia in 1952, and addresses current business issues. The Georgia General Assembly's enactment of its version of the RULPA is an important achievement and brings the state into parity with the majority of states in the nation.

A. Jones

127. O.C.G.A. § 14-9-1003 (Supp. 1988).

128. O.C.G.A. § 14-9-1004 (Supp. 1988).

129. O.C.G.A. § 14-9-1201 (Supp. 1988). If formed after 1952, partnerships that do not elect to come under the new Act are subject to 1952 Ga. Laws 375 formerly found at O.C.G.A. §§ 14-9-1 to -130 (1982) and redesignated as O.C.G.A. §§ 14-9A-1 to -130 (Supp. 1988).

130. O.C.G.A. § 14-9-1201 (Supp. 1988).

131. O.C.G.A. § 14-9-1204 (Supp. 1988).

132. REVISED UNIF. LTD. PARTNERSHIP ACT, 6 U.L.A. 210, 211 (1985).