

# Chapter 54

## Partnerships

### Article 1

#### Uniform Partnerships

#### § 54-1-1. Name of act.

This act [54-1-1 to 54-1-43 NMSA 1978] may be cited as [the] Uniform Partnership Act.

History: 1941 Comp., § 70-116, enacted by Laws 1947, ch. 37, § 1; 1953 Comp., § 66-1-1.

Cross-references. - As to disposition of unclaimed property, see 7-8-1 to 7-8-34 NMSA 1978.

Compiler's notes. - Laws 1947, ch. 37, enacted New Mexico's version of the Uniform Partnership Act. Those sections of the uniform act not adopted by New Mexico are §§ 44 ("When act takes effect") and 45 ("Legislation repealed").

Compiler's notes following each section of the New Mexico act indicate the similar uniform act provision and its differences, if any, with the New Mexico provision.

Section 54-1-1 NMSA 1978 is substantially similar to § 1 of the uniform act.

Obligations joint and general. - Even though the Uniform Partnership Act (54-1-1 NMSA 1978 et seq.) makes all partnership debts joint, except for two classes of debts not involved in this discussion, the New Mexico law makes all partnership obligations joint and general. 1953-54 Op. Att'y Gen. No. 5625.

Law reviews. - For comment on *Loucks v. Albuquerque Nat'l Bank*, 76 N.M. 735, 418 P.2d 191 (1966), see 8 Nat. Resources J. 169 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 2 et seq. Construction and application of expulsion provision in medical partnership agreement, 87 A.L.R.3d 328.

Partnership or joint venture exclusion in contractor's or other similar comprehensive general liability insurance policy, 57 A.L.R.4th 1155.

Determination of citizenship of partnership, for purposes of diversity jurisdiction under 28 USCS § 1332(a), 83 A.L.R. Fed. 136.

68 C.J.S. Partnership § 449.

## **§ 54-1-2. Definition of terms.**

In this act [54-1-1 to 54-1-43 NMSA 1978], "court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation or profession.

"Person" includes individuals, partnerships, corporations and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act.

"Conveyance" includes every assignment, lease, mortgage or encumbrance.

"Real property" includes land and any interest or estate in land.

History: 1941 Comp., § 70-117, enacted by Laws 1947, ch. 37, § 2; 1953 Comp., § 66-1-2.

Compiler's notes. - Section 54-1-2 NMSA 1978 is substantially similar to § 2 of the uniform act.

Federal Bankruptcy Act. - The Federal Bankruptcy Act is compiled in 11 U.S.C. § 1 et seq. and elsewhere throughout the code.

Partnership as entity. - The Uniform Partnership Act (54-1-1 NMSA 1978 et seq.) has adopted the theory that a partnership is not a legal entity separate and distinct from its membership except for such purposes as keeping partnership accounts, marshalling assets and conveyancing. 1957-58 Op. Att'y Gen. No. 58-199.

Law reviews. - For note, "Employment Discrimination - Partnership Employment Decisions and a Forecast of Impact: Hishon v. King & Spalding," see 16 N.M.L. Rev. 101 (1986).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 3 et seq. 68 C.J.S. Partnership § 1.

## **§ 54-1-3. Interpretation of knowledge and notice.**

A. A person has "knowledge" of a fact within the meaning of this act [54-1-1 to 54-1-43 NMSA 1978] not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

B. A person has "notice" of a fact within the meaning of this act when the person who

claims the benefit of the notice:

(1) states the fact to such person; or

(2) delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

History: 1941 Comp., § 70-118, enacted by Laws 1947, ch. 37, § 3; 1953 Comp., § 66-1-3.

Compiler's notes. - Section 54-1-3 NMSA 1978 is substantially similar to § 3 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 252 et seq. 66 C.J.S. Notice §§ 1, 2, 8.

### **§ 54-1-4. Rules of construction.**

A. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act [54-1-1 to 54-1-43 NMSA 1978].

B. The law of estoppel shall apply under this act.

C. The law of agency shall apply under this act.

D. This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

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

History: 1941 Comp., § 70-119, enacted by Laws 1947, ch. 37, § 4; 1953 Comp., § 66-1-4.

Compiler's notes. - Section 54-1-4 NMSA 1978 is substantially similar to § 4 of the uniform act.

Partnership as entity. - The Uniform Partnership Act (54-1-1 NMSA 1978 et seq.) seemingly denies that in law a partnership is a legal entity apart from its members. 1953-54 Op. Att'y Gen. No. 5625.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 29 et seq. 68 C.J.S. Partnership §§ 1, 136, 139.

## **§ 54-1-5. Rules for cases not provided for in this act.**

In any case not provided for in this act [54-1-1 to 54-1-43 NMSA 1978] the rules of law and equity, including the law merchant, shall govern.

History: 1941 Comp., § 70-120, enacted by Laws 1947, ch. 37, § 5; 1953 Comp., § 66-1-5.

Compiler's notes. - Section 54-1-5 NMSA 1978 is substantially similar to § 5 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 22 et seq. 68 C.J.S. Partnership § 1.

## **§ 54-1-6. "Partnership" defined.**

A. A partnership is an association of two or more persons to carry on as co-owners a business for profit.

B. But any association formed under any other statute of this state, or any statute, adopted by authority, other than the authority of this state, is not a partnership under this act [54-1-1 to 54-1-43 NMSA 1978], unless such association would have been a partnership in this state prior to the adoption of this act; but this act shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith.

History: 1941 Comp., § 70-121, enacted by Laws 1947, ch. 37, § 6; 1953 Comp., § 66-1-6.

Compiler's notes. - Section 54-1-6 NMSA 1978 is substantially similar to § 6 of the uniform act.

Partnership by estoppel. - Before a man can be held a partner by estoppel and thus subject to the unique liabilities of the partnership relationship, the sum total of the acts must be that there was a relationship of some sort between the men which shows a representation of the essential elements of a partnership relationship. Isolated acts and statements may be treated as such representations. *Gilbert v. Howard*, 64 N.M. 200, 326 P.2d 1085 (1958).

Actions in and of themselves or when considered cumulatively as establishing a pattern of conduct must show a representation of an association of two or more persons to carry on as co-owners a business for profit, as that is the statutory definition of a partnership. *Gilbert v. Howard*, 64 N.M. 200, 326 P.2d 1085 (1958).

Partnership as entity, modern tendency. - While a copartnership at common law was not considered a distinct entity from the partners composing it, the modern tendency is the other way, i.e., to treat a partnership as an entity distinct from and independent of the individuals composing it. *Loucks v. Albuquerque Nat'l Bank*, 76 N.M. 735, 418 P.2d 191 (1966).

Right to sue and be sued. - A partnership is a distinct legal entity to the extent that it may sue or be sued in the partnership name. *Salswedel v. Enerpharm, Ltd*, 107 N.M. 728, 764 P.2d 499 (Ct. App. 1988).

Partnership treated as customer. - Pursuant to 55-1-201 NMSA 1978, a partnership may be a customer to whom the bank is required to respond in damages for any wrongful dishonor. *Loucks v. Albuquerque Nat'l Bank*, 76 N.M. 735, 418 P.2d 191 (1966).

Residence requirements for partners. - Under New Mexico law, a partnership may not have a residence separate and distinct from that of its partners. If all the partners of a partnership organized under New Mexico law and doing business within this state reside without the state, such partnership cannot qualify for an agent's license to conduct an insurance business in New Mexico. If, however, one or more of the partners reside within the state then such a partnership meets all the residence requirements found in 59-5-20 NMSA 1978 (now see 59A-12-12 NMSA 1978). 1957-58 Op. Att'y Gen. No. 58-199.

Law reviews. - For note, "Employment Discrimination - Partnership Employment Decisions and a Forecast of Impact: *Hishon v. King & Spalding*," see 16 N.M.L. Rev. 101 (1986).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 2 et seq. Validity of partnership agreement between husband and wife, 20 A.L.R. 1364; 157 A.L.R. 652.

Partnership as permissible basis of classification for purposes of license or privilege tax, 106 A.L.R. 662.

Lease or tenancy agreement as creating partnership relationship between lessor and lessee, 131 A.L.R. 508.

Partnership as distinguished from employment, 137 A.L.R. 6.

What creates partnership relation between cotenants of property, 150 A.L.R. 1003.

Residence of partnership for purposes of statutes authorizing attachment or garnishment on ground of nonresidence, 9 A.L.R.2d 171.

Delay as defense in action for accounting between joint adventurers, 13 A.L.R.2d 765.

Corporation's power to enter into partnership or joint venture, 60 A.L.R.2d 917.

Mining grubstake agreements as distinguished from partnerships, 70 A.L.R.2d 907.  
68 C.J.S. Partnership § 1.

## **§ 54-1-7. Rules for determining the existence of a partnership.**

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

A. except as provided by Section 16 [54-1-16 NMSA 1978] persons who are not partners as to each other are not partners as to third persons;

B. joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property;

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

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

(1) as a debt by installments or otherwise;

(2) as wages of an employee or rent to a landlord;

(3) as an annuity to a widow or representative of a deceased partner;

(4) as interest on a loan, though the amount of payment vary with the profits of the business;

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

History: 1941 Comp., § 70-122, enacted by Laws 1947, ch. 37, § 7; 1953 Comp., § 66-1-7.

Compiler's notes. - Section 54-1-7 NMSA 1978 is substantially similar to § 7 of the uniform act.

Articles of partnership necessary. - Under former law, where a truck operator and a service station operator applied to gasoline company for credit to be given the latter, and were told such credit could be given only if they were partners, to which they agreed, they were not general partners without any written articles of partnership. *Texas Co. v. Dickson*, 39 N.M. 371, 47 P.2d 899 (1935).

Lease as partnership agreement. - A contract, whereby one leased to another a mill on agreement of other to conduct business, hire and pay employees, keep mill in repair, furnish accounts of receipts and expenditures and pay to lessor one-half of the net receipts, the stock on hand at the termination of the lease to be the property of the

lessor, who was to pay the lessee one-half of its value, was a partnership agreement. *Willey v. Renner*, 8 N.M. 641, 45 P. 1132 (1896).

Name of one of the partners may be used as a firm name, and parol evidence may be admitted to show that the name of a party, mentioned as grantee in a deed, is a partnership name. *de Cordova v. Korte*, 7 N.M. 678, 41 P. 526 (1895), *aff'd sum nom.* *Naeglin v. De Cordoba*, 171 U.S. 638, 19 S. Ct. 35, 43 L. Ed. 315 (1898).

Pattern of conduct sufficient to show partnership. - A pattern of conduct, such as the sharing of profits and expenses of the business, filing of partnership tax forms, previous execution of contracts on behalf of the partnership and control of a partnership bank account will suffice to show the creation of a partnership relationship even in the absence of a written agreement. *Dotson v. Grice*, 98 N.M. 207, 647 P.2d 409 (1982).

Pattern of conduct indicating that partnership relationship never existed. - See *Armstrong v. Reynolds*, 102 N.M. 261, 694 P.2d 517 (1985).

Acts, circumstances indicating partnership. - Had the parties to the contract not treated it as constituting a partnership agreement, it might have been at most a brokerage agreement, but all of the acts of the parties, and circumstances in evidence, from the time of making the contract until the conclusion of the sale, plainly showed that the parties all recognized that a partnership existed between them, by virtue of the contract, and treated each other accordingly. *Fraser v. State Sav. Bank*, 18 N.M. 340, 137 P. 592 (1913).

Receipt by a person of a share of profits in a business is prima facie evidence of the existence of a partnership. *Vaughan v. Wolfe*, 80 N.M. 141, 452 P.2d 475 (1969).

Evidence was sufficient to establish existence of partnership where party denying relationship had knowledge of filing of partnership income tax returns, claimed loss attributable to partnership on personal income tax return, signed documents executed on behalf of partnership and exercised some control over company bank account. *Goodpasture Grain & Milling Co. v. Buck*, 77 N.M. 609, 426 P.2d 586 (1967).

Subsection D applicable to joint ventures. - Although Subsection D relates to partnerships, it is equally applicable to a joint venture, since the latter is generally considered to be a partnership for a single transaction. *Hansler v. Bass*, 106 N.M. 382, 743 P.2d 1031 (Ct. App. 1987).

Law reviews. - For annual survey of New Mexico law relating to commercial law, see 13 N.M.L. Rev. 293 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 15A Am. Jur. 2d Community Property § 4; 59A Am. Jur. 2d Partnership § 142 et seq.

Lease or tenancy agreement as creating partnership relationship between lessor and lessee, 131 A.L.R. 508.

Partnership as distinguished from employment (where rights of parties inter se or their privies are concerned), 137 A.L.R. 6.

Married Women's Act as abolishing estates by entireties, 141 A.L.R. 179.

What creates partnership relation between cotenants of property, 150 A.L.R. 1003.

Salaries of partners, contract as to, 66 A.L.R.2d 1023.

68 C.J.S. Partnership § 1.

### **§ 54-1-8. Partnership property.**

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

B. Unless the contrary intention appears, property acquired with partnership funds is partnership property.

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

D. A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

History: 1941 Comp., § 70-123, enacted by Laws 1947, ch. 37, § 8; 1953 Comp., § 66-1-8.

Compiler's notes. - Section 54-1-8 NMSA 1978 is substantially similar to § 8 of the uniform act.

Oral partnership agreement involving land is enforceable. *Citizens Bank v. Williams*, 96 N.M. 373, 630 P.2d 1228 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 329 et seq.

Partition of partnership real property, 77 A.L.R. 300.

Powers and duties and accounting responsibilities of managing partner of mining partnership, 24 A.L.R.2d 1359.

Lessee interest of individual as becoming partnership asset of firm subsequently formed, 37 A.L.R.2d 1076.

When real estate owned by partner before formation of partnership will be deemed to have become assets of the firm, 45 A.L.R.2d 1009.

Meaning and coverage of "book value" in partnership agreement in determining value of partner's interest, 47 A.L.R.2d 1425.

Civil liability of one partner to another or to the partnership based on partner's personal purchase of partnership property during existence of partnership, 37 A.L.R.4th 494.

68 C.J.S. Partnership §§ 69 to 71.

### **§ 54-1-9. Partner agent of partnership as to partnership business.**



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

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

C. Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

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

(2) dispose of the good will of the business;

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

(4) confess a judgment;

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

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

History: 1941 Comp., § 70-124, enacted by Laws 1947, ch. 37, § 9; 1953 Comp., § 66-1-9.

Compiler's notes. - Section 54-1-9 NMSA 1978 is substantially similar to § 9 of the uniform act.

Partner not to bring partnership suit alone. - Although a partner is a general agent of the partnership, a partner may not sue alone on a cause of action belonging to a partnership; instead, the action must be brought in the names of all the partners. Daniels Ins., Inc. v. Daon Corp., 106 N.M. 328, 742 P.2d 540 (Ct. App. 1987).

Partnership as customer of bank. - The relationship between a bank and its depositor is a contractual relationship of debtor and creditor and a partnership can enter into the contractual relationship of debtor and creditor, as a customer of the bank, in accordance with the express provisions of the Uniform Commercial Code. Loucks v. Albuquerque Nat'l Bank, 76 N.M. 735, 418 P.2d 191 (1966).

No note liability. - The partnership is not liable on a note executed by one partner in his own name, even though such be for partnership purposes. *Loucks v. Albuquerque Nat'l Bank*, 76 N.M. 735, 418 P.2d 191 (1966).

Partnership bound by land purchase agreement. - Where a partner, authorized to act for the partnership, enters into a purchase agreement for land, and he acted on the partnership's account in the usual way, even though his actions in this particular transaction were without the consent of one of the other partners, the partnership is bound by the agreement. *Dotson v. Grice*, 98 N.M. 207, 647 P.2d 409 (1982).

Partner's claim, seeking individual damages, for conversion of partnership property dismissed with prejudice. - Where a partner sought possession of certain disputed property, purchased by the partnership, without the consent of his partners and for other than partnership purposes, his conversion claim against the seller, seeking individual damages, was properly dismissed with prejudice. *Stephen v. Phillips*, 101 N.M. 790, 689 P.2d 939 (Ct. App. 1984).

Law reviews. - For symposium, "The Effects of an Equal Rights Amendment on the New Mexico System of Community Property: Problems of Characterization, Management and Control," see 3 N.M. L. Rev. 11 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 6 Am. Jur. 2d Assignment for Benefit of Creditors § 13; 59A Am. Jur. 2d Partnership § 247 et seq.

Personal liability to other party to contract of member of firm who, without authority, attempts to bind a firm, 4 A.L.R. 258.

Power of partner to dispose of good will of business, 5 A.L.R. 1182.

Authority of member of farming partnership to execute negotiable paper, 9 A.L.R. 372.

Power of partner to bind firm by bonus agreement, 49 A.L.R. 1315.

Right of one who accepts firm assets or obligation upon account of an individual indebtedness of, or transaction with, a partner, 50 A.L.R. 432.

Admission of partner as to past transactions or events as evidence against firm or other partner, 73 A.L.R. 447.

Discharge or settlement by, or payment to, one partner as affecting rights of others, 142 A.L.R. 371.

Agency conferred upon partner as affected by dissolution of partnership, 170 A.L.R. 512.

Powers and duties of managing partner of mining partnership, 24 A.L.R.2d 1359.

Duty of former partner, acquiring property occupied by partnership business, to renew lease, 40 A.L.R.2d 102.

Automobile driven by partner during working hours, deviation from employment, 51 A.L.R.2d 33.

Loans, agent of partnership, authority to borrow money, 55 A.L.R.2d 1218.

68 C.J.S. Partnership §§ 136, 139.

## **§ 54-1-10. Conveyance of real property of the partnership.**

A. Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of Paragraph (1) of Section 9 [54-1-9 A NMSA 1978], or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

B. Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of Paragraph (1) of Section 9.

C. Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of Paragraph (1) of Section 9, unless the purchaser or his assignee is a holder for value, without knowledge.

D. Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of Paragraph (1) of Section 9.

E. Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

History: 1941 Comp., § 70-125, enacted by Laws 1947, ch. 37, § 10; 1953 Comp., § 66-1-10.

Compiler's notes. - Section 54-1-10 NMSA 1978 is substantially similar to § 10 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 304 et seq. Personal liability to other party on contract of partner who, without authority, attempts to convey land in firm name, 4 A.L.R. 261.

Who must sign and form of signature in case of partnership, in order to comply with statute of frauds, 114 A.L.R. 1005.

Attorneys: vicarious liability of attorney for tort of partner in law firm, 70 A.L.R.3d 1298. 68 C.J.S. Partnership §§ 152, 154.

### **§ 54-1-11. Partnership bound by admission of partner.**

An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this act [54-1-1 to 54-1-43 NMSA 1978] is evidence against the partnership.

History: 1941 Comp., § 70-126, enacted by Laws 1947, ch. 37, § 11; 1953 Comp., § 66-1-11.

Compiler's notes. - Section 54-1-11 NMSA 1978 is substantially similar to § 11 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 247 et seq. Admissions of partner as to past transactions or events as evidence against firm or other partner, 73 A.L.R. 447.

Right of partners to assert personal privilege against self-incrimination with respect to production of partnership books or records, 17 A.L.R.4th 1039.  
68 C.J.S. Partnership § 167.

### **§ 54-1-12. Partnership charged with knowledge of or notice to partner.**

Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed [committed] by or with the consent of that partner.

History: 1941 Comp., § 70-127, enacted by Laws 1947, ch. 37, § 12; 1953 Comp., § 66-1-12.

Compiler's notes. - Section 54-1-12 NMSA 1978 is substantially similar to § 12 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 247 et seq. 68 C.J.S. Partnership § 175.

### **§ 54-1-13. Partnership bound by partner's wrongful act.**

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

History: 1941 Comp., § 70-128, enacted by Laws 1947, ch. 37, § 13; 1953 Comp., § 66-1-13.

Compiler's notes. - Section 54-1-13 NMSA 1978 is substantially similar to § 13 of the uniform act.

Release of partnership destroys vicarious liability. - Where tort liability of partners is vicarious, that is, imputed from the partnership, where the partnership is released, the means by which liability is imputed to the partners is destroyed. *Kinetics, Inc. v. El Paso Prods. Co.*, 99 N.M. 22, 653 P.2d 522 (Ct. App. 1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 247 et seq. Automobile owned by partnership, liability for injury while being used by partner for his own pleasure or business, 22 A.L.R. 1397; 45 A.L.R. 481; 68 A.L.R. 1054; 80 A.L.R. 727; 122 A.L.R. 862; 51 A.L.R.2d 8; 51 A.L.R.2d 120; 52 A.L.R.2d 350.

Intoxicated partner, liability for negligence, 55 A.L.R. 1225.

Marital or parental relationship between plaintiff and member of partnership as affecting right to maintain action in tort against partnership, 101 A.L.R. 1231.

Personal services, liability of partner for failure to perform, 165 A.L.R. 981.

Tort: liability of partners in tort as joint and several, 175 A.L.R. 1310.

Client's money or personal property in the possession of or entrusted to the attorney, liability for loss caused by act of attorney's associate as to, 26 A.L.R.2d 1343.

Assault by partner or joint adventurer, liability for, 30 A.L.R.2d 859.

Libel, liability of partners or partnership for, 88 A.L.R.2d 474.

Derivative liability of partner for punitive damages for wrongful act of copartner, 14 A.L.R.4th 1335.

68 C.J.S. Partnership §§ 168, 171.

## **§ 54-1-14. Partnership bound by partner's breach of trust.**

The partnership is bound to make good the loss:

A. where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

B. where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

History: 1941 Comp., § 70-129, enacted by Laws 1947, ch. 37, § 14; 1953 Comp., § 66-1-14.

Compiler's notes. - Section 54-1-14 NMSA 1978 is substantially similar to § 14 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 247 et seq. 68 C.J.S. Partnership §§ 168, 171, 184.

## **§ 54-1-15. Nature of partner's liability.**

All partners are liable:

A. jointly and severally for everything chargeable to the partnership under Sections 13 [54-1-13 NMSA 1978] and 14 [54-1-14 NMSA 1978];

B. jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

History: 1941 Comp., § 70-130, enacted by Laws 1947, ch. 37, § 15; 1953 Comp., § 66-1-15.

Cross-references. - As to suit against one or more partners on joint obligations, see 38-4-3 NMSA 1978. As to suits against partners, see 38-4-5 NMSA 1978.

Compiler's notes. - Section 54-1-15 NMSA 1978 is substantially similar to § 15 of the uniform act.

No liability on note. - The partnership is not liable on a note executed by one partner in his own name, even though such be for partnership purposes. *Loucks v. Albuquerque Nat'l Bank*, 76 N.M. 735, 418 P.2d 191 (1966).

Release of partnership destroys vicarious liability. - Where tort liability of partners is vicarious, that is, imputed from the partnership, where the partnership is released, the means by which liability is imputed to the partners is destroyed. *Kinetics, Inc. v. El Paso Prods. Co.*, 99 N.M. 22, 653 P.2d 522 (Ct. App. 1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 247 et seq. Personal liability to other party to contract of member of firm who, without authority, attempts to bind the firm, 4 A.L.R. 258.

Right to set off claim of individual partner against claim against partnership, 5 A.L.R. 1541; 55 A.L.R. 566.

Right to set off claim of firm against indebtedness of individual partner, 60 A.L.R. 584.

Right of partnership creditor to proceed against estate of deceased partner, 61 A.L.R. 1410.

What amounts to joint adventure, 138 A.L.R. 968.

Liability of partner for failure to perform personal services, 165 A.L.R. 981.

Liability of partners in tort as joint and several, 175 A.L.R. 1310.

Tort action for personal injury or property damage by partner against another partner or the partnership, 39 A.L.R.4th 139.

68 C.J.S. Partnership § 180.

## **§ 54-1-16. Partner by estoppel.**

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

(1) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(2) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

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

History: 1941 Comp., § 70-131, enacted by Laws 1947, ch. 37, § 16; 1953 Comp., § 66-1-16.

Compiler's notes. - Section 54-1-16 NMSA 1978 is substantially similar to § 16 of the uniform act.

Partnership by estoppel. - This section extends liability beyond the common-law test of reliance so that when one has by his acts or his consent to the acts of others allowed or caused the general community to believe that he is a partner, then he is such by estoppel even though this particular creditor may not have heard the representation. This relieves the creditor of the task of proving that he actually knew of such representation and makes the representation itself an offense without the added factor of reliance. However, this test demands that the representations have been made in a "public manner" at the time that credit was extended so that at that time it was general community knowledge even though the representations might not have been communicated to this particular creditor. *Gilbert v. Howard*, 64 N.M. 200, 326 P.2d 1085 (1958).

The statutory tests for partnership by estoppel require (1) that credit must have been

extended on the basis of partnership representations; or (2) that the alleged partner must have made or consented to representations being made in a public manner, whether or not such representations were actually communicated to the person extending credit. *Anderson Hay & Grain Co. v. Dunn*, 81 N.M. 339, 467 P.2d 5 (1970); *Gilbert v. Howard*, 64 N.M. 200, 326 P.2d 1085 (1958).

As defendant conducted himself so as to induce appellant to deal with him in the belief that he was a partner, by so doing he created a partnership by estoppel. *Anderson Hay & Grain Co. v. Dunn*, 81 N.M. 339, 467 P.2d 5 (1970).

Partnership intent implied. - It is immaterial that the parties do not designate the relationship as a partnership, or realize that they are partners, for the intent may be implied from their acts. *Anderson Hay & Grain Co. v. Dunn*, 81 N.M. 339, 467 P.2d 5 (1970).

Consent can be implied by conduct, therefore, holding out as a partner may be construed from acts and conduct and it is sufficient if the course of conduct is such as to induce a reasonable and prudent man to believe that which the conduct would imply. *Anderson Hay & Grain Co. v. Dunn*, 81 N.M. 339, 467 P.2d 5 (1970).

Evidence of partnership. - Codefendant by his conduct, actions and words, furnished substantial evidence that he and the other codefendant were partners. *Anderson Hay & Grain Co. v. Dunn*, 81 N.M. 339, 467 P.2d 5 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 142 et seq. 68 C.J.S. Partnership §§ 21, 31.

### **§ 54-1-17. Liability of incoming partner.**

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

History: 1941 Comp., § 70-132, enacted by Laws 1947, ch. 37, § 17; 1953 Comp., § 66-1-17.

Compiler's notes. - Section 54-1-17 NMSA 1978 is substantially similar to § 17 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 504 et seq. Liability of incoming partner for existing debts, 45 A.L.R. 1240.

Right of one who accepts firm assets or obligations upon account of an individual indebtedness of, or transaction with, a partner, 50 A.L.R. 432.

Duty of one who joins with others as partners or members of a joint adventure in the



purchase of property from a third person to share with them the benefit of an existing option or executory contract for the property, 152 A.L.R. 1001.

Corporation: validity and construction of state statute making successor corporation liable for taxes of predecessor, 65 A.L.R.3d 1181.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.

68 C.J.S. Partnership § 256.

## **§ 54-1-18. Rules determining rights and duties of partners.**

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

A. each partner shall be repaid his contributions, whether by way of capital or advances, to the partnership property and share equally in the profits and surplus remaining after all liabilities including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits,

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

C. a partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance;

D. a partner shall receive interest on the capital contributed by him only from the date when repayment should be made;

E. all partners have equal rights in the management and conduct of the partnership business;

F. no partner is entitled to remuneration [remuneration] for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs;

G. no person can become a member of a partnership without the consent of all the partners;

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

History: 1941 Comp., § 70-133, enacted by Laws 1947, ch. 37, § 18; 1953 Comp., § 66-1-18.

Compiler's notes. - Section 54-1-18 NMSA 1978 is substantially similar to § 18 of the uniform act.

This section is merely declaratory of common law. *Dale v. Dale*, 57 N.M. 593, 261 P.2d 438 (1953).

Agreement to divide assets of partnership upon dissolution need not be formally expressed in writing, but may be inferred or established, in whole or in part, from the acts of the parties. *Citizens Bank v. Williams*, 96 N.M. 373, 630 P.2d 1228 (1981).

Neither partner may impose his will upon the other. - Under Subsection E, when a partnership consists of two partners, neither partner has the right to impose his will concerning the operation of the partnership upon the other. *Covalt v. High*, 100 N.M. 700, 675 P.2d 999 (Ct. App. 1983).

Partner entitled to personal judgment. - The court, acting under equitable principles, properly disregarded a corporation's corporate form and entered a personal judgment in favor of the liquidating partner who, through the corporation of which he was the majority stockholder, had paid the partnership's obligations and incurred costs for the preservation of partnership property. *Levy v. Disharoon*, 106 N.M. 699, 749 P.2d 84 (1988).

Proof of partnership agreements. - The fiduciary duties between partners do not necessarily raise the level of proof of partnership agreements from ordinary proof to one of clear and convincing proof. *Citizens Bank v. Williams*, 96 N.M. 373, 630 P.2d 1228 (1981).

Partner may not recover damages for copartner's failure to negotiate and execute transaction. - Where a partnership consists of two partners, in the absence of a mutual agreement, one partner may not recover damages for the failure of a copartner to negotiate and execute a transaction, the remedy for such an impasse being dissolution of the partnership. *Covalt v. High*, 100 N.M. 700, 675 P.2d 999 (Ct. App. 1983).

A managing partner is not entitled to compensation for services rendered by him in the absence of an agreement therefor. *Dale v. Dale*, 57 N.M. 593, 261 P.2d 438 (1953).

A managing partner, whose wife's earnings were community property, was not receiving compensation in absence of an agreement where his wife had been employed by agreement of the partners. *Dale v. Dale*, 57 N.M. 593, 261 P.2d 438 (1953).

Law reviews. - For symposium, "The Effects of an Equal Rights Amendment on the New Mexico System of Community Property: Problems of Characterization, Management and Control," see 3 N.M. L. Rev. 11 (1973).

For article, "The Community Property Act of 1973: A Commentary and Quasi-Legislative History," see 5 N.M. L. Rev. 1 (1974).

For annual survey of New Mexico law relating to commercial law, see 13 N.M.L. Rev. 293 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 409 et seq. Actions at law between partners and partnerships, 58 A.L.R. 621; 168 A.L.R. 1088. Right of partners inter se in respect of interest, 66 A.L.R. 3.

Accountability of partners for profits earned subsequent to death or dissolution, 80 A.L.R. 12; 55 A.L.R.2d 1391.

Right of partner or member of joint adventure to share in misappropriated money or property or secret profits for which he is required to account, 118 A.L.R. 640.

Duty of one who joins with others as partners or members of a joint adventure in the purchase of property from a third person to share with them the benefit of an existing option or executory contract for the property, 152 A.L.R. 1001.

Provision of partnership agreement giving one partner option to buy out the other, 160 A.L.R. 523.

Powers, duties and accounting responsibilities of managing partner of mining partnership, 24 A.L.R.2d 1359.

Right of partner to account where firm business or transactions are illegal, 32 A.L.R.2d 1345.

Lessee interest of individual as becoming partnership asset of firm subsequently formed, 37 A.L.R.2d 1076.

Duty of former partner, acquiring property occupied by partnership business, to renew lease, 40 A.L.R.2d 102.

Meaning and coverage of "book value" in partnership agreement in determining value of partner's interest, 47 A.L.R.2d 1425.

Gambling contracts, advances by partner for, 53 A.L.R.2d 360.

Unemployment compensation for partner, 65 A.L.R.2d 1185.

Salaries of partners, contract as to, 66 A.L.R.2d 1023.

Winding up: construction and application of section 18(f) of Uniform Partnership Act as to surviving partner's right to compensation for services in winding up partnership, 81 A.L.R.2d 445.

Relative rights of surviving partner and the estate of the deceased partner in proceeds of life insurance acquired pursuant to partnership agreement, 83 A.L.R.2d 1347.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.

Civil liability of one partner to another or to the partnership based on partner's personal purchase of partnership property during existence of partnership, 37 A.L.R.4th 494.

Joint venturers' comparative liability for losses, in absence of express agreement, 51 A.L.R.4th 371.

68 C.J.S. Partnership § 76.

## **§ 54-1-19. Partnership books.**

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

History: 1941 Comp., § 70-134, enacted by Laws 1947, ch. 37, § 19; 1953 Comp., § 66-1-19.

Compiler's notes. - Section 54-1-19 NMSA 1978 is substantially similar to § 19 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 962 et seq. 68 C.J.S. Partnership § 91.

### **§ 54-1-20. Duty of partners to render information.**

Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

History: 1941 Comp., § 70-135, enacted by Laws 1947, ch. 37, § 20; 1953 Comp., § 66-1-20.

Compiler's notes. - Section 54-1-20 NMSA 1978 is substantially similar to § 20 of the uniform act.

Duty imposed by law. - There is an underlying duty imposed by law upon all partners because of their confidential relationship to be completely honest, open and fair. *Rogers v. Stacy*, 63 N.M. 317, 318 P.2d 1116 (1957).

Partners bear fiduciary relationship to each other. - This section does not limit a partner's duty of affirmative disclosure in transactions between partners. Implicit in the resolution of disputes between partners must be the special responsibilities partners bear to each other. In connection with their partnership affairs, they bear a fiduciary relationship to each other. *C.B. & T. Co. v. Hefner*, 98 N.M. 594, 651 P.2d 1029 (Ct. App. 1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership §§ 409, 968 et seq.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.  
68 C.J.S. Partnership § 76.

### **§ 54-1-21. Partner accountable as a fiduciary.**

A. Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property.

B. This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

History: 1941 Comp., § 70-136, enacted by Laws 1947, ch. 37, § 21; 1953 Comp., § 66-1-21.

Compiler's notes. - Section 54-1-21 NMSA 1978 is substantially similar to § 21 of the uniform act.

General partner as fiduciary. - The general partner has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners and, hence, is accountable to the other partners as a fiduciary. *Homestake Mining Co. v. Mid-Continent Exploration Co.* 282 F.2d 787 (10th Cir. 1960).

Good faith requirement. - It follows from the general requirement of good faith in partnership dealings that a partner is not allowed to gain any advantage over a co-partner by fraud, misrepresentation or concealment, and for any advantage so obtained he must account to the co-partner. *Levy v. Disharoon*, 106 N.M. 699, 749 P.2d 84 (1988).

Constructive trust for limited partners inequitable. - Where general partner, without notice to its limited partners, utilized assets and facilities of the partnership for a new venture obvious to all, and the limited partners did nothing to claim the right of participation in the venture, because of the mining hazard, and waited until the enterprise was successful and then swarmed in to recover the windfall which their associate made possible by its skill, ingenuity and daring, the imposition of a constructive trust on the profits would not be equity, but injustice, and the doctrine of laches would be enforced. *Homestake Mining Co. v. Mid-Continent Exploration Co.* 282 F.2d 787 (10th Cir. 1960).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 420 et seq. Right of partner or member of joint adventure to share in misappropriated money or property or secret profits, for which he is required to account, 118 A.L.R. 640.

Duty of one who with others as partners or members of a joint adventure in the purchase of property from a third person to share with them the benefit of an existing option or executory contract for the property, 152 A.L.R. 1001.

Duty of former partner, acquiring property occupied by partnership business, to renew lease, 4 A.L.R.2d 102.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another

partner, 4 A.L.R.4th 1122.

Civil liability of one partner to another or to the partnership based on partner's personal purchase of partnership property during existence of partnership, 37 A.L.R.4th 494.  
68 C.J.S. Partnership §§ 76, 99.

## **§ 54-1-22. Right to an account.**

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

A. if he is wrongfully excluded from the partnership business or possession of its property by his copartners;

B. if the right exists under the terms of any agreement;

C. as provided by Section 21 [54-1-21 NMSA 1978];

D. whenever other circumstances render it just and reasonable.

History: 1941 Comp., § 70-137, enacted by Laws 1947, ch. 37, § 22; 1953 Comp., § 66-1-22.

Compiler's notes. - Section 54-1-22 NMSA 1978 is substantially similar to § 22 of the uniform act.

Lack of partnership salary funds. - Where, under an oral partnership agreement, a salary was to be paid after operating expenses and equipment payments had been made, but there were not sufficient funds remaining to make machinery payments, neither could there have been any funds remaining from which plaintiff could have been paid a salary. *Watson v. Lunt*, 75 N.M. 734, 410 P.2d 954 (1966).

Between partners, an accounting should be based on the market value of the equipment at the time of the dissolution of the partnership. *Watson v. Lunt*, 75 N.M. 734, 410 P.2d 954 (1966).

Law reviews. - For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership §§ 409, 968 et seq.

Bankrupt or insolvent partner, or his assignee or trustee, as entitled to accounting from solvent partner, 29 A.L.R. 46.

Actions at law between partners and partnerships, 58 A.L.R. 621; 168 A.L.R. 1088.

Lack of partnership accounting as tolling statute of limitations against actions at law between partners, 77 A.L.R. 426.

Accountability of partners for profits earned subsequent to death or dissolution, 80

A.L.R. 12; 55 A.L.R.2d 1391.

Right of one partner in action at law against him by another partner on a personal claim to set up by a counterclaim or otherwise claim arising out of partnership transactions, 93 A.L.R. 293.

Right of partner to accounting where firm business or transactions are illegal, 32 A.L.R.2d 1345.

Accounting as remedy with respect to rights in profits earned by partnership after death or dissolution, 55 A.L.R.2d 1426.

Good will, accounting for, on dissolution, 65 A.L.R.2d 521.

When statute of limitations commences to run on right of partnership accounting, 44 A.L.R.4th 678.

68 C.J.S. Partnership §§ 92, 378, 384.

### **§ 54-1-23. Continuation of partnership beyond fixed term.**

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

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

History: 1941 Comp., § 70-138, enacted by Laws 1947, ch. 37, § 23; 1953 Comp., § 66-1-23.

Compiler's notes. - Section 54-1-23 NMSA 1978 is substantially similar to § 23 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 1100 et seq. 68 C.J.S. Partnership § 64.

### **§ 54-1-24. Extent of property rights of a partner.**

The property rights of a partner are:

A. his rights in specific partnership property;

B. his interest in the partnership; and

C. his right to participate in the management.

History: 1941 Comp., § 70-139, enacted by Laws 1947, ch. 37, § 24; 1953 Comp., § 66-1-24.

Compiler's notes. - Section 54-1-24 NMSA 1978 is substantially similar to § 24 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 329 et seq. Right of other partners or partnership creditors in respect of insurance on interest of one of the partners, 61 A.L.R. 1201.

Meaning and coverage of "book value" in partnership agreement in determining value of partner's interest, 47 A.L.R.2d 1425.

68 C.J.S. Partnership § 76.

### **§ 54-1-25. Nature of a partner's right in specific partnership property.**

A. A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

B. The incidents of this tenancy are such that:

(1) a partner, subject to the provisions of this act [54-1-1 to 54-1-43 NMSA 1978] and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners;

(2) a partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property;

(3) a partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws;

(4) on the death of a partner his rights in specific partnership property vests [vest] in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose;

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

History: 1941 Comp., § 70-140, enacted by Laws 1947, ch. 37, § 25; 1953 Comp., § 66-1-25.



Compiler's notes. - Section 54-1-25 NMSA 1978 is similar to § 25 of the uniform act, with the following main exception: "and is not community property" is added to the end of Subsection B(5) of the state act.

Property rights remain during termination. - The fact that a limited partnership had been dissolved and was in the process of being terminated did not ameliorate the requirements of Subsection B(2). *Daniels Ins., Inc. v. Daon Corp.*, 106 N.M. 328, 742 P.2d 540 (Ct. App. 1987).

There is no ownership of individual interest in partnership property prior to dissolution. 1963-64 Op. Att'y Gen. No. 63-148.

No exemption for property tax. - Partnership property, not being either joint or community property, and not being individually owned, and no portion thereof being individually owned under this section, does not come with any exemption for property tax granted by statute or authorized by the constitution. 1963-64 Op. Att'y Gen. No. 63-148.

Assignment necessary for substitution of parties. - Under Rule 1-025C, as a matter of law, substitution of parties cannot be predicated upon the written assignment by one limited partner in the cause of action (the rights in the cause of action) owned by the partnership without joinder or consent of the remaining partner in the same partnership property, but an invalid or ineffective assignment may be validated by ratification. *Daniels Ins., Inc. v. Daon Corp.*, 106 N.M. 328, 742 P.2d 540 (Ct. App. 1987).

Partner's claim, seeking individual damages, for conversion of partnership property dismissed with prejudice. - Where a partner sought possession of certain disputed property, purchased by the partnership, without the consent of his partners and for other than partnership purposes, his conversion claim against the seller, seeking individual damages, was properly dismissed with prejudice. *Stephen v. Phillips*, 101 N.M. 790, 689 P.2d 939 (Ct. App. 1984).

Law reviews. - For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

For symposium, "The Effects of an Equal Rights Amendment on the New Mexico System of Community Property: Problems of Characterization, Management and Control," see 3 N.M. L. Rev. 11 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 6 Am. Jur. 2d Attachment and Garnishment § 187; 25 Am. Jur. 2d Dower and Curtesy § 58; 40 Am. Jur. 2d Homestead § 61; 59A Am. Jur. 2d Partnership § 329 et seq.

Right of individual partner to exemption in partnership property, 4 A.L.R. 300.

Right of partner to preference over creditors of copartner, 6 A.L.R. 160.

Community character of interest of a partner in partnership real property, 20 A.L.R. 374.

Partnership land as real or personal property for purposes of descent and distribution,

25 A.L.R. 389.

Validity and effect of chattel mortgage on partner's interest in firm, 54 A.L.R. 534.

Right of other partners or partnership creditors in respect of insurance on interest of one of the partners, 61 A.L.R. 1201.

Indebtedness to partnership as subject of attachment or garnishment by creditor of individual partner, 71 A.L.R. 7; 105 A.L.R. 326.

Relative rank of judgment, attachment or execution based on partnership liability and judgment, attachment or execution based on liability of individual partner, 75 A.L.R. 997.

Partition of partnership real property, 77 A.L.R. 300.

Power of surviving partner or member of joint adventure to grant or sell oil and gas lease for other mineral rights covering land belonging to partnership or joint adventure, 89 A.L.R. 588.

Death of one or two or more judgment creditors under a joint or partnership judgment as affecting judgment, 122 A.L.R. 752.

Waiver or estoppel predicated upon surviving partner's surrender of possession of partnership property to personal representative of deceased partner, 137 A.L.R. 1024.

Ex parte appointment of receiver for partnership, 169 A.L.R. 127.

Lessee interest of individual as becoming partnership asset of firm subsequently formed, 37 A.L.R.2d 1076.

Nonassignability of partner's right in specific partnership property, construction, application and effect of Uniform Partnership Act § 25 (2) (b) (54-1-1 NMSA 1978 et seq.) relating to, 39 A.L.R.2d 1365.

Real estate owned by partner before formation of partnership, when deemed to have become asset of firm, 45 A.L.R.2d 1009.

Partnership matters as affecting estate by entireties in personal property, 64 A.L.R.2d 8; 22 A.L.R.4th 459.

Relative rights of surviving partner and the estate of the deceased partner in proceeds of life insurance acquired pursuant to partnership agreement, 83 A.L.R.2d 1347.

68 C.J.S. Partnership §§ 85, 86.

## **§ 54-1-26. Nature of partner's interest in the partnership.**

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

History: 1941 Comp., § 70-141, enacted by Laws 1947, ch. 37, § 26; 1953 Comp., § 66-1-26.

Compiler's notes. - Section 54-1-26 NMSA 1978 is substantially similar to § 26 of the uniform act.

Interest in partnership realty is personal property. - An interest of a partner in a partnership is personal property and not real property, even if land is one of the assets. *Citizens Bank v. Williams*, 96 N.M. 373, 630 P.2d 1228 (1981).

Law reviews. - For annual survey of New Mexico law relating to commercial law, see 13 N.M.L. Rev. 293 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 25 Am. Jur. 2d Dower and Curtesy § 58; 59A Am. Jur. 2d Partnership § 409 et seq.

Right to set off claim of firm against indebtedness of individual partner, 60 A.L.R. 584. Profits after death or dissolution, 55 A.L.R.2d 1391.

Effect of Uniform Partnership Act, § 26 (54-1-1 NMSA 1978 et seq.), as converting realty into personalty, 80 A.L.R.2d 1107.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.

68 C.J.S. Partnership §§ 85, 86.

### **§ 54-1-27. Assignment of partner's interest.**

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

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

History: 1941 Comp., § 70-142, enacted by Laws 1947, ch. 37, § 27; 1953 Comp., § 66-1-27.

Compiler's notes. - Section 54-1-27 NMSA 1978 is substantially similar to § 27 of the uniform act.

Law reviews. - For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 833 et seq. Rights of creditors where partnership is continued without liquidation upon retirement or death of partners, under provision of Uniform Partnership Act, 111 A.L.R. 1093.

Provision of partnership agreement giving one partner option to buy out the other, 160 A.L.R. 523.

Construction, application and effect of Uniform Partnership Act, § 25 (2) (b) (54-1-1 NMSA 1978 et seq.), relating to nonassignability of partner's right in specific partnership property. 39 A.L.R.2d 1365.

Sale or transfer of interest by partner as dissolving partnership, 75 A.L.R.2d 1036.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.  
68 C.J.S. Partnership §§ 103, 245.

### **§ 54-1-28. Partner's interest subject to charging order.**

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

B. The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

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

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

C. Nothing in this act [54-1-1 to 54-1-43 NMSA 1978] shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

History: 1941 Comp., § 70-143, enacted by Laws 1947, ch. 37, § 28; 1953 Comp., § 66-1-28.

Compiler's notes. - Section 54-1-28 NMSA 1978 is substantially similar to § 28 of the uniform act.

Limits of partnership insurance coverage. - The obligation of a liability insurer is contractual and is to be determined by the terms of the policy. Where neither the partners nor the insurance company intended to protect the partners individually from their own tortious acts which were outside the scope of the partnership business, nor did they intend to create a new liability in the partnership when none previously existed, but intended protection only from liability because of accidents arising out of partnership operation, there is no coverage for claim for unlawful and malicious assault committed by one partner personally. *Jones v. Harper*, 75 N.M. 557, 408 P.2d 56 (1965).

Law reviews. - For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 790 et seq.  
Right of individual partner to exemption in partnership property, 4 A.L.R. 300.  
Right of partner to preference over creditors of copartner, 6 A.L.R. 160.  
Chattel mortgage on partner's interest in firm, 54 A.L.R. 534.  
Relative rank of judgment, attachment or execution based on partnership liability, and judgment, attachment or execution based on liability of individual partner, 75 A.L.R. 997.  
Appointment of receiver of property of individual debtor or partnership on application of simple contract creditor without lien, 109 A.L.R. 279.  
Ex parte appointment of receiver for partnership, 169 A.L.R. 1127.  
68 C.J.S. Partnership §§ 194, 218.

### **§ 54-1-29. "Dissolution" defined.**

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

History: 1941 Comp., § 70-144, enacted by Laws 1947, ch. 37, § 29; 1953 Comp., § 66-1-29.

Compiler's notes. - Section 54-1-29 NMSA 1978 is substantially similar to § 29 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 808 et seq.  
Right to use firm name on dissolution of partnership, 173 A.L.R. 444.  
Sale or transfer of interest by partner as dissolving partnership, 75 A.L.R.2d 1036.  
68 C.J.S. Partnership § 351.

### **§ 54-1-30. Partnership not terminated by dissolution.**

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

History: 1941 Comp., § 70-145, enacted by Laws 1947, ch. 37, § 30; 1953 Comp., § 66-1-30.

Compiler's notes. - Section 54-1-30 NMSA 1978 is substantially similar to § 30 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 808 et seq.  
Rights in profits earned by partnership or joint adventure after death or dissolution, 55 A.L.R.2d 1391.  
Rights as to business unfinished or fees uncollected upon withdrawal or death of

partner in law firm, 78 A.L.R.2d 280.  
68 C.J.S. Partnership § 351.

## **§ 54-1-31. Causes of dissolution.**

Dissolution is caused:

A. without violation of the agreement between the partners:

(1) by the termination of the definite term of particular undertaking specified in the agreement;

(2) by the express will of any partner when no definite term or particular undertaking is specified;

(3) by the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, before or after the termination of any specified term or particular undertaking;

(4) by the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

B. in contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

C. by any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

D. by the death of any partner;

E. by the bankruptcy of any partner or partnership;

F. by decree of court under Section 32 [54-1-32 NMSA 1978].

History: 1941 Comp., § 70-146, enacted by Laws 1947, ch. 37, § 31; 1953 Comp., § 66-1-31.

Compiler's notes. - Section 54-1-31 NMSA 1978 is substantially similar to § 31 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 810 et seq. Bankruptcy or insolvency of individual partner as dissolving copartnership, 29 A.L.R. 45. Agreement for dissolution as affecting partner's lien on or interest in assets of partnership, 43 A.L.R. 95.

Debt or liability arising from withdrawal or misappropriation of partnership funds by member of firm as dischargeable in his bankruptcy, 16 A.L.R.2d 1151.

Powers of liquidating partners with respect to incurring of obligations, 60 A.L.R.2d 826.

Sale or transfer of interest by partner as dissolving partnership, 75 A.L.R.2d 1036.

68 C.J.S. Partnership §§ 331 to 333.

## **§ 54-1-32. Dissolution by decree of court.**

A. On application by or for a partner the court shall decree a dissolution whenever:

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

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

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

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

(5) the business of the partnership can only be carried on at a loss;

(6) other circumstances render a dissolution equitable.

B. On the application of the purchaser of a partner's interest under Sections 28 [27, 54-1-27 NMSA 1978] or 29 [28, 54-1-28 NMSA 1978]:

(1) after the termination of the specified term or particular undertaking;

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

History: 1941 Comp., § 70-147, enacted by Laws 1947, ch. 37, § 32; 1953 Comp., § 66-1-32.

Compiler's notes. - Section 54-1-32 NMSA 1978 is similar to § 32 of the uniform act, with the following main exception: Subsection A(4) of the state act deletes the language "with him" at the end of subsection (1)(d) of the uniform act.

The reference in Subsection B to "sections 28 or 29" should be to sections 27 or 28, therefore the compiler has bracketed in the correct section references and their location.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 847 et seq. Misconduct of, or dissensions among, partners or joint adventurers as ground for dissolution by court, 118 A.L.R. 1421.

Inability of partnership to operate at profit as justification for court-ordered dissolution, 20 A.L.R.4th 122.

68 C.J.S. Partnership §§ 331 to 333, 405.

### **§ 54-1-33. General effect of dissolution on authority of partner.**

Except so far as may be necessary to wind up partnership affairs, or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership:

A. with respect to the partners:

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

(2) when the dissolution is by such act, bankruptcy or death of a partner, in cases where Section 34 [54-1-34 NMSA 1978] so requires; or

B. with respect to persons not partners, as declared in Section 35 [54-1-35 NMSA 1978].

History: 1941 Comp., § 70-148, enacted by Laws 1947, ch. 37, § 33; 1953 Comp., § 66-1-33; Laws 1967, ch. 76, § 1.

Compiler's notes. - Section 54-1-33 NMSA 1978 is substantially similar to § 33 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 877 et seq. Nonuse of trade name as affecting rights of partners inter se after dissolution of firm, 48 A.L.R. 1263.

Agency conferred upon partners as affected by dissolution of the partnership, 170 A.L.R. 512.

Powers of liquidating partner with respect to incurring obligations, 60 A.L.R.2d 826. 68 C.J.S. Partnership § 354.

### **§ 54-1-34. Right of partner to contribution from copartners after dissolution.**

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



A. the dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution; or

B. the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

History: 1941 Comp., § 70-149, enacted by Laws 1947, ch. 37, § 34; 1953 Comp., § 66-1-34.

Compiler's notes. - Section 54-1-34 NMSA 1978 is substantially similar to § 34 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 877 et seq. 68 C.J.S. Partnership §§ 377, 379 to 381.

### **§ 54-1-35. Power of partner to bind partnership to third persons after dissolution.**

A. After dissolution a partner can bind the partnership except as provided in Paragraph C:

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

(2) by any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(a) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(b) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

B. The liability of a partner under Paragraph A(2) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

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

(2) so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

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

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

(2) where the partner has become bankrupt; or

(3) where the partner has no authority to wind up partnership affairs; except by a transaction with one who:

(a) had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(b) had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in Paragraph A(2)(b).

D. Nothing in this section shall affect the liability under Section 16 [54-1-16 NMSA 1978] of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

History: 1941 Comp., § 70-150, enacted by Laws 1947, ch. 37, § 35; 1953 Comp., § 66-1-35.

Compiler's notes. - Section 54-1-35 NMSA 1978 is substantially similar to § 35 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 934 et seq. Liability of former partners as such in respect of transactions subsequent to incorporation of their business, 89 A.L.R. 986.

Agency conferred upon partners as affected by dissolution of partnership, 170 A.L.R. 512.

Debt or liability arising from withdrawal or misappropriation of partnership funds by member of firm as dischargeable in his bankruptcy, 16 A.L.R.2d 1151.

Power of liquidating partner with respect to incurring of obligations, 60 A.L.R.2d 826.

Sale or transfer of interest by partner as dissolving partnership, 75 A.L.R.2d 1036.

68 C.J.S. Partnership § 354.

### **§ 54-1-36. Effect of dissolution on partner's existing liability.**

A. The dissolution of the partnership does not of itself discharge the existing liability of any partner.

B. A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person

or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

C. Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

D. The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

History: 1941 Comp., § 70-151, enacted by Laws 1947, ch. 37, § 36; 1953 Comp., § 66-1-36.

Compiler's notes. - Section 54-1-36 NMSA 1978 is substantially similar to § 36 of the uniform act.

No assumpsit for previous debt. - Under an agreement between partners that the partnership should "stand dissolved from and after" a named date, the retiring partner to retain an interest in the accruing profits of the new firm until a certain date, when an appraisal of the firm assets would be made and a final accounting had, new firm could not maintain action of assumpsit against retired partner for an alleged indebtedness previously accruing. *G. Wormser & Co. v. Lindauer*, 9 N.M. 23, 49 P. 896 (1897).

Chancery court with jurisdiction. - In an action of assumpsit on contract of partnership to recover an amount alleged to be due by reason of partnership transactions, where record disclosed that, although the firm was dissolved, the accounts and business of the firm remained unsettled at the time of the institution of the suit, district court erred in retaining jurisdiction and submitting cause to jury, as court of chancery alone had jurisdiction to settle the accounts. *Willey v. Renner*, 8 N.M. 641, 45 P. 1132 (1896).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 906 et seq. Partner's lien on or interest in assets of partnership as affected by dissolution agreement, 43 A.L.R. 95.

Creditor's failure to dissent to retiring partner's notice of noncontinuing liability as assent to his release, 52 A.L.R. 499.

Right of partnership creditor to proceed against estate of deceased partner, 61 A.L.R. 1410.

Appointment of receiver in proceedings arising out of dissolution of partnership or joint adventure, otherwise than by death of partner or at instance of creditor, 23 A.L.R.2d 583.

Profits after death or dissolution as affected by loans, 55 A.L.R.2d 1414.  
68 C.J.S. Partnership § 354.

## **§ 54-1-37. Right to wind up.**

Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court.

History: 1941 Comp., § 70-152, enacted by Laws 1947, ch. 37, § 37; 1953 Comp., § 66-1-37.

Compiler's notes. - Section 54-1-37 NMSA 1978 is substantially similar to § 37 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 1100 et seq. Right of solvent partner to close firm business upon bankruptcy or insolvency of copartner, 29 A.L.R. 45.

Power of surviving partner or member of joint adventure to grant or sell oil and gas lease or other mineral rights covering land belonging to partnership or joint adventure, 89 A.L.R. 588.

Construction and application of statute requiring surviving partner to give bond as condition of his right to manage and settle partnership affairs, 121 A.L.R. 860.

Discharge or settlement by, or payment to, estate of deceased partner, as affecting rights of surviving partner, 142 A.L.R. 374.

Appointment of receiver in proceedings arising out of dissolution of partnership or joint adventure, otherwise than by death of partner or at instance of creditor, 23 A.L.R.2d 583.

Rights as to business unfinished or fees uncollected upon withdrawal or death of partner in law firm, 78 A.L.R.2d 280.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.

68 C.J.S. Partnership § 273.

## **§ 54-1-38. Rights of partners to application of partnership property.**

A. When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under Section 36(2) [54-1-36B NMSA 1978], he shall receive in cash only the net amount due him from the partnership.

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

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

(a) all the rights specified in Paragraph A of this section; and

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

(2) the partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under Clause B(1)(b) of this section, and in like manner indemnify him against all present or future partnership liabilities;

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

(a) if the business is not continued under the provisions of Paragraph B(2) all the rights of a partner under Paragraph A, subject to Clause B(1)(b), of this section;

(b) if the business is continued under Paragraph B(2) of this section the right as against his copartners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good will of the business shall not be considered.

History: 1941 Comp., § 70-153, enacted by Laws 1947, ch. 37, § 38; 1953 Comp., § 66-1-38.

Compiler's notes. - Section 54-1-38 NMSA 1978 is substantially similar to § 38 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 1100 et seq. Remedy where additional assets or liabilities are discovered after settlement of partnership affairs as at law or in equity, 41 A.L.R. 1454.

Validity, construction and effect of agreement for disposition of interest in partnership in event of death of partner, 73 A.L.R. 983.

Discharge or settlement by, or payment to, estate of deceased partner, as affecting rights of surviving partner, 142 A.L.R. 374.

Rights in profits earned by partnership or joint adventure after death or dissolution, 55

A.L.R.2d 1391.

Accountability for good will on dissolution of partnership, 65 A.L.R.2d 521.

68 C.J.S. Partnership § 363.

### **§ 54-1-39. Rights where partnership is dissolved for fraud or misrepresentation.**

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

A. to a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

B. to stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

C. to be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

History: 1941 Comp., § 70-154, enacted by Laws 1947, ch. 37, § 39; 1953 Comp., § 66-1-39.

Compiler's notes. - Section 54-1-39 NMSA 1978 is substantially similar to § 39 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 871.

Right of one partner to maintain an action at law against others for damages from wrongful dissolution of firm, 4 A.L.R. 158.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.

68 C.J.S. Partnership § 354.

### **§ 54-1-40. Rules for distribution.**

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

A. the assets of the partnership are:

(1) the partnership property;

(2) the contributions of the partners necessary for the payment of all the liabilities specified in Clause B of this paragraph;

B. the liabilities of the partnership shall rank in order of payment, as follows:

(1) those owing to creditors other than partners;

(2) those owing to partners other than for capital and profits;

(3) those owing to partners in respect of capital;

(4) those owing to partners in respect of profits;

C. the assets shall be applied in the order of their declaration in Clause A of this paragraph to the satisfaction of the liabilities;

D. the partners shall contribute, as provided by Section 18 (a) [54-1-18A NMSA 1978] the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities;

E. an assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in Clause D of this paragraph;

F. any partner or his legal representative shall have the right to enforce the contributions specified in Clause D of this paragraph, to the extent of the amount which he has paid in excess of his share of the liability;

G. the individual property of a deceased partner shall be liable for the contributions specified in Clause D of this paragraph;

H. when partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore;

I. where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

(1) those owing to separate creditors;

(2) those owing to partnership creditors;

(3) those owing to partners by way of contribution.

History: 1941 Comp., § 70-155, enacted by Laws 1947, ch. 37, § 40; 1953 Comp., § 66-1-40.

Cross-references. - For Uniform Disposition of Unclaimed Property Act, see 7-8-1 NMSA 1978.

Compiler's notes. - Section 54-1-40 NMSA 1978 is substantially similar to § 40 of the uniform act.

Distribution on dissolution, absent agreement. - The assets of a partnership are distributed on dissolution in such a way that each partner receives back the capital he has contributed plus his share in any surplusage, absent an agreement by the parties to distribute the assets in a different way. *Citizens Bank v. Williams*, 96 N.M. 373, 630 P.2d 1228 (1981).

Law reviews. - For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership §§ 476, 1315 et seq.

Right of partner to preference over creditors of copartner, 6 A.L.R. 160.

Equalization as between firm creditors, some of whom have received dividends from estates of individual partners and others not, 7 A.L.R. 990.

Remedy where additional assets or liabilities are discovered after settlement of partnership affairs as to law or in equity, 41 A.L.R. 1454.

Validity and effect of chattel mortgage on partner's interest in firm, 54 A.L.R. 534.

Duty of former partner acquiring property occupied by partnership business to renew lease, 4 A.L.R.2d 102.

Rights in profits earned by partnership or joint adventure after death or dissolution, 55 A.L.R.2d 1391.

Good will, accounting for on dissolution, 65 A.L.R.2d 521.

Rights as to business unfinished or fees uncollected upon withdrawal or death of partner in law firm, 78 A.L.R.2d 280.

Relative rights of surviving partner and the estate of the deceased partner in proceeds of life insurance acquired pursuant to partnership agreement, 83 A.L.R.2d 1347.

68 C.J.S. Partnership §§ 377, 379 to 381.

## **§ 54-1-41. Liability of persons continuing the business in certain cases.**

A. When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the



partnership so continuing the business.

B. When all but one partner retire[s] and assign[s] (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

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

D. When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

E. When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of Section 38(2b) [54-1-38B(2) NMSA 1978], either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

F. When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

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

H. When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

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

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

History: 1941 Comp., § 70-156, enacted by Laws 1947, ch. 37, § 41; 1953 Comp., § 66-1-41.

Compiler's notes. - Section 54-1-41 NMSA 1978 is substantially similar to § 41 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership §§ 913 et seq., 1128 et seq.

Incoming partner's liability for existing debts, 45 A.L.R. 1240.

Liability of surety or guarantor for partnership in respect of transactions or defaults subsequent to change in personnel of the partnership, 45 A.L.R. 1426.

Construction and application of provisions of Uniform Partnership Act (54-1-1 NMSA 1978 et seq.) as to rights of creditors where partnership business is continued without liquidation after retirement or death of partner, 111 A.L.R. 1093.

68 C.J.S. Partnership §§ 255, 272, 284.

### **§ 54-1-42. Rights of retiring or estate of deceased partner when the business is continued.**

When any partner retires or dies, and the business is continued under any of the conditions set forth in Section 41 (1, 2, 3, 5, 6) [54-1-41A, B, C, E, F NMSA 1978], or Section 38(2b) [54-1-38B(2) NMSA 1978] without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnerships may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by Section 41(8) [54-1-41 H NMSA 1978] of this act.

History: 1941 Comp., § 70-157, enacted by Laws 1947, ch. 37, § 42; 1953 Comp., § 66-1-42.

Compiler's notes. - Section 54-1-42 NMSA 1978 is substantially similar to § 42 of the uniform act.

Duties of surviving partner. - A surviving partner must perform the contracts of the partnership entered into before the death of the copartner; and a contract for hauling logs must be carried out. *National Sur. Co. v. George E. Breece Lumber Co.* 60 F.2d 847 (10th Cir. 1932).

Auditors' settlement final. - Any partner may petition the district judge to appoint auditors to adjust the accounts between partners where one partner refuses to settle partnership affairs, and upon such settlement the partners, widow, and heirs of the deceased partner must abide, and may continue the business by agreement, but this does not authorize a probate proceeding. *Gillett v. Chavez*, 12 N.M. 353, 78 P. 68 (1904).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership §§ 520 et seq., 1127 et seq.

Notice of protest of notes, to whom given, where one partner dead, 1 A.L.R. 476.

Partnership land as real or personal property for purposes of descent and distribution, 25 A.L.R. 389.

Dower rights of widow in partnership real estate, 25 A.L.R. 411.

Validity, construction and effect of agreement for disposition of interest in partnership in event of death of partner, 73 A.L.R. 983.

Joint judgment as affected by death, 100 A.L.R. 814; 122 A.L.R. 752.

Rights of creditor where partnership business is continued without liquidation after retirement or death of partner, under provisions of Uniform Partnership Act (54-1-1 NMSA 1978 et seq.), 111 A.L.R. 1093.

Continuation of business: § 42 of Uniform Partnership Act (54-1-42 NMSA 1978) as to rights of parties where business is continued after a partner retires or dies, 2 A.L.R.2d 1084.

Profits: rights in profits earned by partnership after death of partner, 55 A.L.R.2d 1391.

Rights as to business unfinished or fees uncollected upon withdrawal or death of partner in law firm, 78 A.L.R.2d 280.

Relative rights of surviving partner and the estate of the deceased partner in proceeds of life insurance acquired pursuant to partnership agreement, 83 A.L.R.2d 1347.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.

68 C.J.S. Partnership §§ 251, 293.

### **§ 54-1-43. Accrual of actions.**

The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

History: 1941 Comp., § 70-158, enacted by Laws 1947, ch. 37, § 43; 1953 Comp., § 66-1-43.

Compiler's notes. - Section 54-1-43 NMSA 1978 is substantially similar to § 43 of the uniform act.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership §§ 1079, 1175, 1176.

Accounting as remedy with respect to rights in profits earned by partnership after death or dissolution, 55 A.L.R.2d 1426.

When statute of limitations commences to run on right of partnership accounting, 44 A.L.R.4th 678.

68 C.J.S. Partnership §§ 413, 414.

## **Article 2**

### **Uniform Limited Partnerships**

#### **§ 54-2-1. Short title.**

Chapter 54, Article 2 NMSA 1978 may be cited as the "Uniform Limited Partnership Act".

History: 1978 Comp., § 54-2-1, enacted by Laws 1988, ch. 90, § 1.

Repeals and reenactments. - Laws 1988, ch. 90, § 1 repeals 54-2-1 NMSA 1978, as enacted by Laws 1947, ch. 120, § 1, and enacts the above section, effective September 1, 1989.

Severability clauses. - Laws 1988, ch. 90, § 64, effective September 1, 1989, provides for the severability of the Uniform Limited Partnership Act (Chapter 54, Article 2 NMSA 1978) if any part or application thereof is held invalid.

Object of limited partnership. - A limited partnership is strictly a creature of statute, its object being to enable persons not desiring to engage in a particular business to invest capital in it and to share in the profits which might be expected to result from its use, without becoming liable as general partners for all partnership debts. *Hoefler v. Hall*, 75 N.M. 751, 411 P.2d 230 (1965).

Partnership upon execution of agreement. - Where a written agreement is clear and unambiguous that the parties agreed to form a limited partnership pursuant to statute and to execute a certificate setting forth its duration and specifically providing that a partnership was to begin upon the execution of the certificate, a limited partnership as between the parties came into existence upon their execution of the certificate of limited partnership. *Hoefler v. Hall*, 75 N.M. 751, 411 P.2d 230 (1965).

Law reviews. - For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M. L. Rev. 251 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership §§ 1237, 1238.

Liability of special partner who has withdrawn his capital, to creditors of the firm, 67 A.L.R. 1096.

Application to limited partnerships of statute as to doing business under an assumed or fictitious name or designation not showing the names of the persons interested, 42 A.L.R.2d 544.

68 C.J.S. Partnership § 449.

## **§ 54-2-2. Definitions.**

As used in the Uniform Limited Partnership Act [this article]:

A. "certificate of limited partnership" means the certificate referred to in Section 54-2-9 NMSA 1978 and the certificate as amended or restated;

B. "contribution" means any cash, property, services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services which a partner contributes to a limited partnership in his capacity as a partner;

C. "event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 54-2-24 NMSA 1978;

D. "foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners;

E. "general partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner;

F. "limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;

G. "limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners;

H. "partner" means a limited or general partner;

I. "partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;

J. "partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets; and

K. "person" means a natural person, partnership, domestic or foreign limited partnership, trust, estate, association or corporation.

History: 1978 Comp., § 54-2-2, enacted by Laws 1988, ch. 90, § 2.

Repeals and reenactments. - Laws 1988, ch. 90, § 2 repeals 54-2-2 NMSA 1978, as amended by Laws 1951, ch. 23, § 1, and enacts the above section, effective September 1, 1989.

### **§ 54-2-3. Name.**

The name of each limited partnership, as set forth in its certificate of limited partnership:

A. shall contain without abbreviation the words "limited partnership";

B. may not contain the name of a limited partner unless:

(1) it is also the name of a general partner or the corporate name or a corporate general partner; or

(2) the business of the limited partnership had been carried on under that name before the admission of that limited partner; and

C. may not be the same as, or deceptively similar to, the name of any corporation or limited partnership organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

History: 1978 Comp., § 54-2-3, enacted by Laws 1988, ch. 90, § 3.

Repeals and reenactments. - Laws 1988, ch. 90, § 3 repeals 54-2-3 NMSA 1978, as enacted by Laws 1947, ch. 120, § 3, and enacts the above section, effective September 1, 1989.

### **§ 54-2-4. Reservation of name.**

A. The exclusive right to the use of a name may be reserved by:

(1) any person intending to organize a limited partnership under the Uniform Limited Partnership Act [this article] and to adopt that name;

(2) any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(3) any foreign limited partnership intending to register in this state and adopt that name; and

(4) any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

B. The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive right of the applicant for a period of one hundred twenty days. Once having so reserved a name, the applicant may not again reserve the same name until more than sixty days after the expiration of the last one hundred twenty-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

C. The fee for filing an application to reserve a specified name or filing a notice of transfer or a reserved name shall be twenty-five dollars (\$25.00).

History: 1978 Comp., § 54-2-4, enacted by Laws 1988, ch. 90, § 4.

Repeals and reenactments. - Laws 1988, ch. 90, § 4 repeals 54-2-4 NMSA 1978, as enacted by Laws 1947, ch. 120, § 4, and enacts the above section, effective September 1, 1989.

### **§ 54-2-5. Specified office and agent.**

Each limited partnership shall maintain continuously in this state:

A. an office, which may be a place of its business in this state, at which shall be kept the records required by Section 54-2-6 NMSA 1978; and

B. an agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation or a foreign corporation authorized to do business in this state.

History: 1978 Comp., § 54-2-5, enacted by Laws 1988, ch. 90, § 5.

Repeals and reenactments. - Laws 1988, ch. 90, § 5 repeals 54-2-5 NMSA 1978, as enacted by Laws 1947, ch. 120, § 5, and enacts the above section, effective September 1, 1989.

### **§ 54-2-6. Records to be kept.**

A. Each limited partnership shall keep at the office referred to in Subsection A of Section 54-2-5 NMSA 1978 the following:

- (1) a current list of the full name and last known business address of each partner, separately identifying the general partners and the limited partners in alphabetical order;
- (2) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;
- (3) copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the three most recent years;
- (4) copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years; and
- (5) unless contained in a written partnership agreement, a writing setting out:
  - (a) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;
  - (b) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;
  - (c) any right of a partner to receive or of a general partner to make distributions to a partner which include a return of all or any part of the partner's contribution; and
  - (d) any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

B. Records kept under this section are subject to inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours.

History: 1978 Comp., § 54-2-6, enacted by Laws 1988, ch. 90, § 6.

Repeals and reenactments. - Laws 1988, ch. 90, § 6 repeals 54-2-6 NMSA 1978, as enacted by Laws 1947, ch. 120, § 6, and enacts the above section, effective September 1, 1989.

### **§ 54-2-7. Nature of business.**

A limited partnership may carry on any business that a partnership without limited partners may carry on.



History: 1978 Comp., § 54-2-7, enacted by Laws 1988, ch. 90, § 7.

Repeals and reenactments. - Laws 1988, ch. 90, § 7 repeals 54-2-7 NMSA 1978, as enacted by Laws 1947, ch. 120, § 7, and enacts the above section, effective September 1, 1989.

### **§ 54-2-8. Business transactions of partner with partnership.**

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

History: 1978 Comp., § 54-2-8, enacted by Laws 1988, ch. 90, § 8.

Repeals and reenactments. - Laws 1988, ch. 90, § 8 repeals 54-2-8 NMSA 1978, as enacted by Laws 1947, ch. 120, § 8, and enacts the above section, effective September 1, 1989.

### **§ 54-2-9. Certificate of limited partnership.**

A. In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the secretary of state. The certificate shall set forth:

- (1) the name of the limited partnership;
- (2) the address of the office and the name and address of the agent for service of process required to be maintained by Section 54-2-5 NMSA 1978;
- (3) the name and the business address of each general partner;
- (4) the latest date upon which the limited partnership is to dissolve; and
- (5) any other matters the general partners determine to include therein.

B. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section. Limited partnerships organized under the laws of the state of New Mexico which do not participate in a public offering or general solicitation and have fewer than ten limited partners, shall not file certificates of limited partnership with the secretary of state but shall file for record certificates of limited partnership, amendments and certificates of cancellation in the office of the county clerk wherein is located the principal place of business.

History: 1978 Comp., § 54-2-9, enacted by Laws 1988, ch. 90, § 9.

Repeals and reenactments. - Laws 1988, ch. 90, § 9 repeals 54-2-9 NMSA 1978, as enacted by Laws 1947, ch. 120, § 9, and enacts the above section, effective September 1, 1989.

### **§ 54-2-10. Amendment to certificate.**

A. A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

- (1) the name of the limited partnership;
- (2) the date of filing the certificate; and
- (3) the amendment to the certificate.

B. Within 30 days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed and shall set forth:

- (1) the admission of a new general partner;
- (2) the withdrawal of a general partner; or
- (3) the continuation of the business pursuant to Section 52-2-45 NMSA 1978 after an event of withdrawal of a general partner.

C. A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

D. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

E. No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in Subsection B of this section if the amendment is filed within the thirty-day period specified in Subsection B.

F. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

History: 1978 Comp., § 54-2-10, enacted by Laws 1988, ch. 90, § 10.

Repeals and reenactments. - Laws 1988, ch. 90, § 10 repeals 54-2-10 NMSA 1978, as enacted by Laws 1947, ch. 120, § 10, and enacts the above section, effective September 1, 1989.

Compiler's notes. - The reference to 52-2-45 NMSA 1978 in Subsection B(3) appears to be erroneous. The apparent intended reference is to 54-2-45 NMSA 1978.

### **§ 54-2-11. Cancellation of certificate.**

A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the secretary of state and set forth:

- A. the name of the limited partnership;
- B. the date of filing of its certificate of limited partnership;
- C. the reason for filing the certificate of cancellation;
- D. the effective date of cancellation if it is not to be effective upon the filing of the certificate; and
- E. any other information the general partners filing the certificate determine.

History: 1978 Comp., § 54-2-11, enacted by Laws 1988, ch. 90, § 11.

Repeals and reenactments. - Laws 1988, ch. 90, § 11 repeals 54-2-11 NMSA 1978, as enacted by Laws 1947, ch. 120, § 11, and enacts the above section, effective September 1, 1989.

### **§ 54-2-12. Execution of certificates.**

A. Each certificate required by the Uniform Limited Partnership Act [this article] to be filed in the office of the secretary of state shall be executed in the following manner:

- (1) an original certificate of limited partnership must be signed by all general partners;
- (2) a certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner; and
- (3) a certificate of cancellation must be signed by all general partners.

B. Any person may sign a certificate under a power of attorney but a power of attorney

relating to the admission of a general partner must specifically describe the admission.

C. The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

History: 1978 Comp., § 54-2-12, enacted by Laws 1988, ch. 90, § 12.

Repeals and reenactments. - Laws 1988, ch. 90, § 12 repeals 54-2-12 NMSA 1978, as enacted by Laws 1947, ch. 120, § 12, and enacts the above section, effective September 1, 1989.

### **§ 54-2-13. Execution by judicial act.**

If a person required by Section 54-2-12 NMSA 1978 to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the district court to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate.

History: 1978 Comp., § 54-2-13, enacted by Laws 1988, ch. 90, § 13.

Repeals and reenactments. - Laws 1988, ch. 90, § 13 repeals 54-2-13 NMSA 1978, as enacted by Laws 1947, ch. 120, § 13, and enacts the above section, effective September 1, 1989.

### **§ 54-2-14. Filing with the secretary of state.**

A. Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation or of any judicial decree of amendment or cancellation shall be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Upon receipt of the certificate and all filing fees required by law he shall:

(1) endorse on each duplicate original the word "Filed" and the day, month and year of the filing thereof;

(2) file one duplicate original in his office; and

(3) return the other duplicate original to the person who filed it.

B. Upon the filing of a certificate of amendment or judicial decree of amendment in the office of the secretary of state, the certificate of limited partnership shall be amended as set for therein, and upon the effective date of a certificate of cancellation or a judicial

decree thereof, the certificate of limited partnership is canceled.

C. The fee for filing a certificate of limited partnership shall be one hundred dollars (\$100). The fee for filing any other document permitted to be filed by this section shall be twenty-five dollars (\$25.00).

History: 1978 Comp., § 54-2-14, enacted by Laws 1988, ch. 90, § 14.

Repeals and reenactments. - Laws 1988, ch. 90, § 14 repeals 54-2-14 NMSA 1978, as enacted by Laws 1947, ch. 120, § 14, and enacts the above section, effective September 1, 1989.

### **§ 54-2-15. Liability for false statement in certificate.**

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

A. any person who executes the certificate or causes another to execute it on his behalf and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

B. any general partner who, within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate or to file a petition for its cancellation or amendment under Section 54-2-13 NMSA 1978, knows or should have known that any arrangement or other fact described in the certificate has changed making the statement inaccurate in any respect.

History: 1978 Comp., § 54-2-15, enacted by Laws 1988, ch. 90, § 15.

Repeals and reenactments. - Laws 1988, ch. 90, § 15 repeals 54-2-15 NMSA 1978, as enacted by Laws 1947, ch. 120, § 15, and enacts the above section, effective September 1, 1989.

### **§ 54-2-16. Scope of notice.**

The fact that a certificate of limited partnership is on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated therein as general partners are general partners, but it is not notice of any other fact.

History: 1978 Comp., § 54-2-16, enacted by Laws 1988, ch. 90, § 16.

Repeals and reenactments. - Laws 1988, ch. 90, § 16 repeals 54-2-16 NMSA 1978, as enacted by Laws 1947, ch. 120, § 16, and enacts the above section, effective September 1, 1989.

### **§ 54-2-17. Delivery of certificates to limited partners.**

Upon the return by the secretary of state pursuant to Section 54-2-14 NMSA 1978 of a certificate marked "Filed", the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

History: 1978 Comp., § 54-2-17, enacted by Laws 1988, ch. 90, § 17.

Repeals and reenactments. - Laws 1988, ch. 90, § 17 repeals 54-2-17 NMSA 1978, as enacted by Laws 1947, ch. 120, § 17, and enacts the above section, effective September 1, 1989.

### **§ 54-2-18. Admission of limited partners.**

A. A person becomes a limited partner:

- (1) at the time the limited partnership is formed; or
- (2) at any later time specified in the records of the limited partnership for becoming a limited partner.

B. After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

- (1) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or if the partnership agreement does not so provide, upon the written consent of all partners; and
- (2) in the case of an assignee of a partnership interest of a partner who has the power, as provided in Section 54-2-43 NMSA 1978, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

History: 1978 Comp., § 54-2-18, enacted by Laws 1988, ch. 90, § 18.

Repeals and reenactments. - Laws 1988, ch. 90, § 18 repeals 54-2-18 NMSA 1978, as enacted by Laws 1947, ch. 120, § 18, and enacts the above section, effective September 1, 1989.

## **§ 54-2-19. Voting.**

Subject to Section 54-2-20 NMSA 1978, the partnership agreement may grant to all or a specified group of the limited partners the right to vote upon any matter.

History: 1978 Comp., § 54-2-19, enacted by Laws 1988, ch. 90, § 19.

Repeals and reenactments. - Laws 1988, ch. 90, § 19 repeals 54-2-19 NMSA 1978, as enacted by Laws 1947, ch. 120, § 19, and enacts the above section, effective September 1, 1989.

## **§ 54-2-20. Liability to third parties.**

A. Except as provided in Subsection D of this section, a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

B. A limited partner does not participate in the control of the business within the meaning of Subsection A of this section solely by doing one or more of the following:

(1) being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

(2) consulting with and advising a general partner with respect to the business of the limited partnership;

(3) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(4) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(5) requesting or attending a meeting of partners;

(6) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(a) the dissolution and winding up of the limited partnership;

(b) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;

(c) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(d) a change in the nature of the business;

(e) the admission or removal of a general partner;

(f) the admission or removal of a limited partner;

(g) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(h) an amendment to the partnership agreement or certificate of limited partnership; or

(i) matters related to the business of the limited partnership not otherwise enumerated in this subsection which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(7) winding up the limited partnership pursuant to Section 54-2-47 NMSA 1978; or

(8) exercising any right or power permitted to limited partners under the Uniform Limited Partnership Act [this article] and not specifically enumerated in this subsection.

C. The enumeration in Subsection B of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

D. A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by Section 54-2-3 NMSA 1978, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

History: 1978 Comp., § 54-2-20, created by Laws 1988, ch. 90, § 20.

Repeals and reenactments. - Laws 1988, ch. 90, § 20 repeals 54-2-20 NMSA 1978, as enacted by Laws 1947, ch. 120, § 20, and enacts the above section, effective September 1, 1989.

### **§ 54-2-21. Person erroneously believing himself a limited partner.**

A. Except as provided in Subsection B of this section, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he



has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(1) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(2) withdraws from future equity participation in the enterprise by executing and filing with the secretary of state a certificate declaring withdrawal under this section. The fee for filing such a certificate shall be twenty-five dollars (\$25.00).

B. A person who makes a contribution of the kind described in Subsection A of this section is liable as a general partner to any third party who transacts business with the enterprise:

(1) before the person withdraws and an appropriate certificate is filed to show withdrawal; or

(2) before an appropriate certificate is filed to show that he is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

History: 1978 Comp., § 54-2-21, enacted by Laws 1988, ch. 90, § 21.

Repeals and reenactments. - Laws 1988, ch. 90, § 21 repeals 54-2-21 NMSA 1978, as enacted by Laws 1947, ch. 120, § 21, and enacts the above section, effective September 1, 1989.

## **§ 54-2-22. Information.**

Each limited partner has the right to:

A. inspect and copy any of the partnership records required to be maintained by Section 54-2-6 NMSA 1978; and

B. obtain from the general partners from time to time upon reasonable demand:

(1) true and full information regarding the state of the business and financial condition of the limited partnership;

(2) promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year; and

(3) other information regarding the affairs of the limited partnership as is just and reasonable.

History: 1978 Comp., § 54-2-22, enacted by Laws 1988, ch. 90, § 22.

Repeals and reenactments. - Laws 1988, ch. 90, § 22 repeals 54-2-22 NMSA 1978, as enacted by Laws 1947, ch. 120, § 22, and enacts the above section, effective September 1, 1989.

### **§ 54-2-23. Admission of additional general partners.**

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.

History: 1978 Comp., § 54-2-23, enacted by Laws 1988, ch. 90, § 23.

Repeals and reenactments. - Laws 1988, ch. 90, § 23 repeals 54-2-23 NMSA 1978, as enacted by Laws 1947, ch. 120, § 23, and enacts the above section, effective September 1, 1989.

### **§ 54-2-24. Events of withdrawal.**

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:

A. the general partner withdraws from the limited partnership as provided in Section 54-2-33 NMSA 1978;

B. the general partner ceases to be a member of the limited partnership as provided in Section 54-2-41 NMSA 1978;

C. the general partner is removed as a general partner in accordance with the partnership agreement;

D. unless otherwise provided in writing in the partnership agreement, the general partner:

(1) makes an assignment for the benefit of creditors;

(2) files a voluntary petition in bankruptcy;

(3) is adjudicated as bankrupt or insolvent;

(4) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation;

(5) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(6) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;

E. unless otherwise provided in writing in the partnership agreement, one hundred twenty 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, or if within ninety days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety days after the expiration of any such stay, the appointment is not vacated;

F. in the case of a general partner who is a natural person:

(1) his death; or

(2) the entry of an order by a court of competent jurisdiction adjudicating him incompetent;

G. in the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

H. in the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

I. in the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

J. in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

History: 1978 Comp., § 54-2-24, enacted by Laws 1988, ch. 90, § 24.

Repeals and reenactments. - Laws 1988, ch. 90, § 24 repeals 54-2-24 NMSA 1978, as enacted by Laws 1947, ch. 120, § 24, and enacts the above section, effective September 1, 1989.

## **§ 54-2-25. General powers and liabilities.**

A. Except as provided in the Uniform Limited Partnership Act [this article] or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

B. Except as provided in the Uniform Limited Partnership Act, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners, and except as provided in the Uniform Limited Partnership Act or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

History: 1978 Comp., § 54-2-25, enacted by Laws 1988, ch. 90, § 25.

Repeals and reenactments. - Laws 1988, ch. 90, § 25 repeals 54-2-25 NMSA 1978, as enacted by Laws 1947, ch. 120, § 25, and enacts the above section, effective September 1, 1989.

## **§ 54-2-26. Contributions by general partner.**

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of and in distributions from the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner.

History: 1978 Comp., § 54-2-26, enacted by Laws 1988, ch. 90, § 26.

Repeals and reenactments. - Laws 1988, ch. 90, § 26 repeals 54-2-26 NMSA 1978, as enacted by Laws 1947, ch. 120, § 26, and enacts the above section, effective September 1, 1989.

## **§ 54-2-27. Voting.**

The partnership agreement may grant to all or certain identified general partners the right to vote on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

History: 1978 Comp., § 54-2-27, enacted by Laws 1988, ch. 90, § 27.

Repeals and reenactments. - Laws 1988, ch. 90, § 27 repeals 54-2-27 NMSA 1978, as enacted by Laws 1947, ch. 120, § 27, and enacts the above section, effective September 1, 1989.

### **§ 54-2-28. Form of contribution.**

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

History: 1978 Comp., § 54-2-28, enacted by Laws 1988, ch. 90, § 28.

Repeals and reenactments. - Laws 1988, ch. 90, § 28 repeals 54-2-28 NMSA 1978, as enacted by Laws 1947, ch. 120, § 28, and enacts the above section, effective September 1, 1989.

### **§ 54-2-29. Liability for contribution.**

A. A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

B. Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to Section 54-2-6 NMSA 1978, of the stated contribution which has not been made.

C. Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of the Uniform Limited Partnership Act [this article] may be compromised only by consent of all partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation and before the amendment or cancellation thereof to reflect the compromise may enforce the original obligation.

History: 1978 Comp., § 54-2-29, enacted by Laws 1988, ch. 90, § 29.

Repeals and reenactments. - Laws 1988, ch. 90, § 29 repeals 54-2-29 NMSA 1978, as enacted by Laws 1947, ch. 120, § 29, and enacts the above section, effective September 1, 1989.

### **§ 54-2-30. Sharing of profits and losses.**

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 54-2-6 NMSA 1978, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

History: 1978 Comp., § 54-2-30, enacted by Laws 1988, ch. 90, § 30.

Repeals and reenactments. - Laws 1988, ch. 90, § 30 repeals 54-2-30 NMSA 1978, as enacted by Laws 1947, ch. 120, § 30, and enacts the above section, effective September 1, 1989.

### **§ 54-2-31. Sharing of distributions.**

Distributions of cash or other assets of a limited partnership shall be allocated among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 54-2-6 NMSA 1978, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

History: 1978 Comp., § 54-2-31, enacted by Laws 1988, ch. 90, § 31.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-32. Interim distributions.**

Except as provided in the Uniform Limited Partnership Act [this article], a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

History: 1978 Comp., § 54-2-32, enacted by Laws 1988, ch. 90, § 32.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-33. Withdrawal of general partner.**

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover damages from the withdrawing general partner for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

History: 1978 Comp., § 54-2-33, enacted by Laws 1988, ch. 90, § 33.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-34. Withdrawal of limited partner.**

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state.

History: 1978 Comp., § 54-2-34, enacted by Laws 1988, ch. 90, § 34.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-35. Distribution upon withdrawal.**

Except as provided in the Uniform Limited Partnership Act [this article], any withdrawing partner is entitled to receive any distribution upon withdrawal to which he is entitled under the partnership agreement and, if not otherwise provided in the agreement, he is entitled to receive within a reasonable time after withdrawal the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

History: 1978 Comp., § 54-2-35, enacted by Laws 1988, ch. 90, § 35.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-36. Distribution in kind.**

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

History: 1978 Comp., § 54-2-36, enacted by Laws 1988, ch. 90, § 36.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-37. Right to distribution.**

At the time 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.

History: 1978 Comp., § 54-2-37, enacted by Laws 1988, ch. 90, § 37.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-38. Limitations on distribution.**

A partner may not receive a distribution from a limited partnership 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.

History: 1978 Comp., § 54-2-38, enacted by Laws 1988, ch. 90, § 38.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-39. Liability upon return of contribution.**

A. If a partner has received the return of any part of his contribution without violation of



the partnership agreement or the Uniform Limited Partnership Act [this article], he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

B. If a partner has received the return of any part of his contribution in violation of the partnership agreement or the Uniform Limited Partnership Act, he is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

C. A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership records required to be kept pursuant to Section 54-2-6 NMSA 1978, of his contribution which has not been distributed to him.

History: 1978 Comp., § 54-2-39, enacted by Laws 1988, ch. 90, § 39.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-40. Nature of partnership interest.**

A partnership interest is personal property.

History: 1978 Comp., § 54-2-40, enacted by Laws 1988, ch. 90, § 40.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-41. Assignment of partnership interest.**

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

History: 1978 Comp., § 54-2-41, enacted by Laws 1988, ch. 90, § 41.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

## **§ 54-2-42. Rights of creditor.**

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. The Uniform Limited Partnership Act [this article] does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

History: 1978 Comp., § 54-2-42, enacted by Laws 1988, ch. 90, § 42.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

## **§ 54-2-43. Right of assignee to become limited partner.**

A. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

- (1) the assignor gives the assignee that right in accordance with authority described in the partnership agreement; or
- (2) all other partners consent.

B. An assignee who has become a limited partner has to the extent assigned the rights and powers and is subject to the restrictions and liabilities of a limited partner under the partnership agreement and the Uniform Limited Partnership Act [this article]. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner.

C. If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under Sections 54-2-15 and 54-2-29 NMSA 1978.

History: 1978 Comp., § 54-2-43, enacted by Laws 1988, ch. 90, § 43.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

## **§ 54-2-44. Power of estate of deceased or incompetent partner.**

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to

be incompetent, the partner's executor, administrator, guardian, conservator or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. 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.

History: 1978 Comp., § 54-2-44, enacted by Laws 1988, ch. 90, § 44.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-45. Nonjudicial dissolution.**

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the following occurrences:

- A. the certificate of limited partnership specifies a certain time;
- B. events specified in writing in the partnership agreement happen;
- C. there is written consent of all partners;
- D. a general partner withdraws, 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, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if, within ninety 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; or
- E. a decree of judicial dissolution under Section 54-2-46 NMSA 1978 is entered.

History: 1978 Comp., § 54-2-45, enacted by Laws 1988, ch. 90, § 45.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-46. Judicial dissolution.**

On application by or for a partner, the district court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

History: 1978 Comp., § 54-2-46, enacted by Laws 1988, ch. 90, § 46.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-47. Winding up.**

Except as 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 partnership's affairs; but the district court may wind up the limited partnership's affairs upon application of any partner, his legal representative or assignee.

History: 1978 Comp., § 54-2-47, enacted by Laws 1988, ch. 90, § 47.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-48. Distribution of assets.**

Upon the winding up of a limited partnership, the assets shall be distributed as follows:

A. to creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 54-2-32 or 54-2-35 NMSA 1978;

B. except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 54-2-32 or 54-2-35 NMSA 1978; and

C. 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.

History: 1978 Comp., § 54-2-48, enacted by Laws 1988, ch. 90, § 48.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-49. Law governing.**

Subject to the New Mexico constitution, the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the

liability of its limited partners, and a foreign limited partnership may not be denied registration under Sections 54-3-1 through 54-3-7 [54-2-49 to 54-2-56] NMSA 1978 for the purpose of doing business in this state by reason of any difference between those laws and the laws of New Mexico.

History: 1978 Comp., § 54-3-1, enacted by Laws 1979, ch. 85, § 1; recompiled as 1978 Comp., § 54-2-49 by Laws 1988, ch. 90, § 49.

Recompilations. - Laws 1988, ch. 90, § 49 recompiles 54-3-1 NMSA 1978 as 54-2-49 NMSA 1978, effective September 1, 1989.

### **§ 54-2-50. Definition.**

As used in this act [54-2-49 to 54-2-56 NMSA 1978], "foreign limited partnership" means a partnership formed under the limited partnership laws of any territory, possession, commonwealth or state of the United States other than New Mexico, having as members one or more general partners and one or more limited partners.

History: 1978 Comp., § 54-3-1.1, enacted by Laws 1979, ch. 85, § 2; recompiled as 1978 Comp., § 54-2-50 by Laws 1988, ch. 90, § 50.

Recompilations. - Laws 1988, ch. 90, § 50 recompiles 54-3-1.1 NMSA 1978 as 54-2-50 NMSA 1978, effective September 1, 1989.

### **§ 54-2-51. Registration.**

A. Before transacting business in New Mexico, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall file with the secretary of state a statement of registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in New Mexico;

(2) the state and date of its formation;

(3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of New Mexico, a domestic corporation or a foreign corporation having a place of business in, and authorized to do business in New Mexico;

(4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under Paragraph (3) of this subsection or, if appointed, the agent's authority has been revoked or if the agent

cannot be found or served with the exercise of reasonable diligence;

(5) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) the name and address of each general partner; and

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

B. The fee for filing the statement of registration and preparing a certified copy thereof shall be one hundred dollars (\$100).

C. Upon receiving a statement of registration and the filing fee, the secretary of state shall:

(1) endorse on the statement of registration the word "Filed" and the month, day and year of the filing thereof;

(2) file the statement of registration in his office; and

(3) at the request of the person who filed the statement of registration or his representative, prepare and deliver a certified copy of the statement of registration to such person or his representative.

History: 1978 Comp., § 54-3-2, enacted by Laws 1979, ch. 85, § 3; recompiled as 1978 Comp., § 54-2-51 by Laws 1988, ch. 90, § 51.

The 1988 amendment, effective September 1, 1989, deleted former Subsection A(3), which read "the general character of the business it proposes to transact in New Mexico" and redesignated former Subsections A(5) and A(6) as present Subsections A(4) and A(5); deleted former Subsection (7), which read "if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and addresses of the partners, a list of the names and addresses"; and added present Subsections A(6) and A(7).

Recompilations. - Laws 1988, ch. 90, § 51 recompiles 54-3-2 NMSA 1978 as 54-2-51 NMSA 1978, effective September 1, 1989.

Compiler's notes. - Section 54-2-51 NMSA 1978 is similar to § 902 of the uniform act, with the following main exceptions: the state act substitutes "file with" for "submit to" and "a statement of" for "in duplicate, an application for" in the second sentence in the introductory paragraph of Subsection A; and the state act adds Subsections B and C.

## **§ 54-2-52. Name.**

A foreign limited partnership may register with the secretary of state under any name, as long as it includes the words "limited partnership", whether or not it is the name under which it is registered in its state of organization, that could be registered by a domestic limited partnership.

History: 1978 Comp., § 54-3-3, enacted by Laws 1979, ch. 85, § 4; recompiled as 1978 Comp., § 54-2-52 by Laws 1988, ch. 90, § 52.

The 1988 amendment, effective September 1, 1989, inserted "as long as it includes the words 'limited partnership'".

Recompilations. - Laws 1988, ch. 90, § 52 recompiles 54-3-3 NMSA 1978 as 54-2-52 NMSA 1978, effective September 1, 1989.

Compiler's notes. - Section 54-2-52 NMSA 1978 is similar to § 904 of the uniform act, with the following main exception: this section of the state act deletes "includes without abbreviation the words 'limited partnership' and," as it appears preceding "that could be registered" in § 904 of the uniform act.

## **§ 54-2-53. Changes and amendments.**

If any statement in the statement of registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the statement inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting such statement. The fee for filing such a certificate shall be ten dollars (\$10.00).

History: 1978 Comp., § 54-3-4, enacted by Laws 1979, ch. 85, § 5; recompiled as 1978 Comp., § 54-2-53 by Laws 1988, ch. 90, § 53.

Recompilations. - Laws 1988, ch. 90, § 53 recompiles 54-3-4 NMSA 1978 as 54-2-53 NMSA 1978, effective September 1, 1989.

Compiler's notes. - Section 54-2-53 NMSA 1978 is similar to § 905 of the uniform act, with the following main exceptions: this section of the state act added the second sentence; and, in the first sentence, this section of the state act refers to "statement," while § 905 of the uniform act refers to "application."

## **§ 54-2-54. Cancellation of registration.**

A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transaction of business in New Mexico. The fee for filing such a certificate of cancellation shall be ten dollars (\$10.00).

History: 1978 Comp., § 54-3-5, enacted by Laws 1979, ch. 85, § 6; recompiled as 1978 Comp., § 54-2-54 by Laws 1988, ch. 90, § 54.

Recompilations. - Laws 1988, ch. 90, § 54 recompiles 54-3-5 NMSA 1978 as 54-2-54 NMSA 1978, effective September 1, 1989.

Compiler's notes. - Section 54-2-54 NMSA 1978 is similar to § 906 of the uniform act, with the following main exceptions: this section of the state act adds the last sentence; and, in the second sentence, this section of the state act chooses the bracketed alternative "[causes of action]," instead of the other bracketed alternative "[claims for relief]," as provided for in § 906 of the uniform act.

### **§ 54-2-55. Transaction of business without registration.**

A. A foreign limited partnership transacting business in New Mexico may not maintain any action, suit or proceeding in any court of this state until it has registered in this state.

B. The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit or proceeding in any court of this state.

C. A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the limited partnership having transacted business in New Mexico without registration.

D. A foreign limited partnership, by transacting business in New Mexico without registration, appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in New Mexico.

History: 1978 Comp., § 54-3-6, enacted by Laws 1979, ch. 85, § 7; recompiled as 1978 Comp., § 54-2-55 by Laws 1988, ch. 90, § 55.

Recompilations. - Laws 1988, ch. 90, § 55 recompiles 54-3-6 NMSA 1978 as 54-2-55 NMSA 1978, effective September 1, 1989.



Compiler's notes. - Section 54-2-55 NMSA 1978 is similar to § 907 of the uniform act, with the following main exceptions: Subsection C of the state act inserts "the limited partnership"; and, in Subsection D, the state act chooses the bracketed alternative "[causes of action]," instead of the other bracketed alternative "[claims for relief]," as provided for in subsection (d) of the uniform act.

### **§ 54-2-56. Action by attorney general.**

The attorney general may bring an action to restrain a foreign limited partnership from transacting business in New Mexico in violation of the Uniform Limited Partnership Act [this article].

History: 1978 Comp., § 54-3-7, enacted by Laws 1979, ch. 85, § 8; recompiled as 1978 Comp., § 54-2-56 by Laws 1988, ch. 90, § 56.

The 1988 amendment, effective September 1, 1989, substituted "the Uniform Limited Partnership Act" for "Sections 54-3-1 through 54-3-7 NMSA 1978".

Recompilations. - Laws 1988, ch. 90, § 56 recompiles 54-3-7 NMSA 1978 as 54-2-56 NMSA 1978, effective September 1, 1989.

Compiler's notes. - Section 54-2-56 NMSA 1978 is similar to § 908 of the uniform act, with the following main exception: this section of the state act, carrying out the instructional bracketed language in § 908 of the uniform act, designates the attorney general as the appropriate official to bring a restraining action.

### **§ 54-2-57. Right of action.**

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

History: Laws 1978 Comp., § 54-2-57, enacted by Laws 1988, ch. 90, § 57.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-58. Proper plaintiff.**

In a derivative action, the plaintiff must be a partner at the time of bringing the action and must have been a partner at the time of the transaction of which he complains or his status as a partner must have devolved upon him by operation of law or pursuant to

the terms of the partnership agreement from a person who was a partner at the time of the transaction.

History: Laws 1978 Comp., § 54-2-58, enacted by Laws 1988, ch. 90, § 58.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-59. Pleading.**

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

History: Laws 1978 Comp., § 54-2-59, enacted by Laws 1988, ch. 90, § 59.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-60. Expenses.**

If a derivative action is successful in whole or in part or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

History: Laws 1978 Comp., § 54-2-60, enacted by Laws 1988, ch. 90, § 60.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

### **§ 54-2-61. Construction and application.**

The Uniform Limited Partnership Act [this article] shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to its subject among states enacting it.

History: Laws 1978 Comp., § 54-2-61, enacted by Laws 1988, ch. 90, § 61.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

## **§ 54-2-62. Rules for cases not provided for.**

In any case not provided for in the Uniform Limited Partnership Act [this article], the provisions of the Uniform Partnership Act [54-1-1 to 54-1-43 NMSA 1978] shall govern.

History: Laws 1978 Comp., § 54-2-62, enacted by Laws 1988, ch. 90, § 62.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

## **§ 54-2-63. Provisions for existing limited partnership.**

A. A limited partnership formed under any statute of this state prior to the adoption of the Uniform Limited Partnership Act [this article] may become a limited partnership under that act by complying with the provisions of Section 54-2-9 NMSA 1978.

B. A limited partnership formed under any statute of this state prior to the adoption of the Uniform Limited Partnership Act, until or unless it becomes a limited partnership under that act, shall continue to be governed by the provisions of the existing limited partnership act or acts, except that that partnership shall not be renewed unless so provided in the original agreement.

History: Laws 1978 Comp., § 54-2-63, enacted by Laws 1988, ch. 90, § 63.

Effective dates. - Laws 1988, ch. 90, § 65 makes the Uniform Limited Partnership Act effective on September 1, 1989.

Severability clauses. - Laws 1988, ch. 90, § 64, effective September 1, 1989, provides for the severability of the Uniform Limited Partnership Act if any part or application thereof is held invalid.

## **Article 3**

### **Foreign Limited Partnerships**

§§ 54-3-1 to 54-3-7. Recompiled.

Recompilations. - Laws 1988, ch. 90, § 49 recompiles 54-3-1 to 54-3-7 NMSA 1978 as 54-2-49 to 54-2-56 NMSA 1978, effective September 1, 1989.

Compiler's notes. - Laws 1979, ch. 85, enacted New Mexico's version of Article 9 (Foreign Limited Partnerships), §§ 901 to 908, of the Uniform Limited Partnership Act, as amended in 1976. Section 54-2-50 NMSA 1978 has no parallel uniform act section.

Section 903 ("Issuance of registration") of the uniform act was not adopted by New Mexico. See notes following 54-3-7 NMSA 1978.

Compiler's notes following each section of the New Mexico act indicate the similar uniform act provision and its differences, if any, with the New Mexico provision.

Section 54-2-56 NMSA 1978 is similar to § 901 of the uniform act, with the following main exception: this section of the state act inserts "under Sections 54-3-1 through 54-3-7 NMSA 1978 for the purpose of doing business in this state."

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59A Am. Jur. 2d Partnership § 1248.