

# PARTNERSHIPS

## CHAPTER 548

SENATE BILL NO. 2101  
(Committee on Industry, Business and Labor)  
(At the request of the Commission on Uniform State Laws)

### UNIFORM LIMITED PARTNERSHIP ACT CHANGES

AN ACT to amend and reenact subsections 1 and 6 of section 45-10.1-01, sections 45-10.1-05, 45-10.1-08, 45-10.1-09, 45-10.1-11, 45-10.1-12, 45-10.1-18, 45-10.1-20, 45-10.1-22, subsection 2 of section 45-10.1-23, section 45-10.1-25, subsections 4 and 5 of section 45-10.1-26, sections 45-10.1-31, 45-10.1-32, 45-10.1-33, 45-10.1-34, 45-10.1-36, 45-10.1-38, subsection 3 of section 45-10.1-41, and sections 45-10.1-45, 45-10.1-47, 45-10.1-52, 45-10.1-60, and 45-12-01 of the North Dakota Century Code, relating to the Uniform Limited Partnership Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 6 of section 45-10.1-01 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. "Certificate of limited partnership" means the certificate referred to in section 45-10.1-08, and the certificate as amended or restated.
6. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement ~~and named in the certificate of limited partnership as a limited partner~~.

SECTION 2. AMENDMENT. Section 45-10.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-05. (105) Records to be kept.

1. Each limited partnership shall keep at the office referred to in subsection 1 of section 45-10.1-04 the following:
  - ~~1.~~ a. A current list of the full name and last known business address of each partner ~~set forth, separately identifying the general partners in alphabetical order and the limited partners in alphabetical order~~.
  - ~~2.~~ b. 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-~~ c. Copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years.
- ~~4-~~ d. Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years. ~~Those records~~
- e. Unless contained in a written partnership agreement, a writing setting out:
- (1) 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.
  - (2) 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.
  - (3) 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.
  - (4) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.
2. 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.

SECTION 3. AMENDMENT. Section 45-10.1-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-08. (201) Certificate of limited partnership.

1. In order to form a limited partnership, ~~two or more persons must execute a certificate of limited partnership-~~ The certificate must be executed and filed in the office of the secretary of state and. The certificate must set forth:
  - a. The name of the limited partnership.
  - b. The general character of its business.
  - c. The address of the office and the name and address of the agent for service of process required to be maintained by section 45-10.1-04.
  - d. The name and the business address of each general partner, ~~specifying separately the general partners and limited partners.~~
  - e. ~~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 in the future.
- f. 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.
  - g. Any power of a limited partner to grant the right to become a limited partner to an assignee of any part of the limited partner's partnership interest, and the terms and conditions of the power.
  - h. If agreed upon, the time at which or the events on the happening of which a partner may terminate membership in the limited partnership and the amount of, or the method of determining, the distribution to which the partner may be entitled respecting the partner's partnership interest, and the terms and conditions of the termination and distribution.
  - i. Any right of a partner to receive distributions of property, including cash from the limited partnership.
  - j. 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.
  - k. Any time at which or events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.
  - l. Any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner.
- m. e. The latest date upon which the limited partnership is to dissolve.
- f. Any other matters the general partners determine to include therein.
2. 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.

SECTION 4. AMENDMENT. Section 45-10.1-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-09. (202) Amendment to certificate.

1. A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate must set forth all of the following:
  - a. The name of the limited partnership.

- b. The date of filing the certificate.
  - c. The amendment to the certificate.
2. An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within thirty days after the happening of any of the following events:
    - a. ~~A change in the amount or character of the contribution of any partner, or in any partner's obligation to make a contribution.~~
    - ~~b.~~ The admission of a new general partner.
    - ~~c.~~ b. The withdrawal of a general partner.
    - ~~d.~~ c. The continuation of the business under section 45-10.1-47 after an event of withdrawal of a general partner.
    - ~~e.~~ d. A change of office or an agent.
  3. 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, ~~but an amendment to show a change of address of a limited partner need be filed only once every twelve months.~~
  4. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.
  5. 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 2 if the amendment is filed within the thirty-day period specified in subsection 2.
  6. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

SECTION 5. AMENDMENT. Section 45-10.1-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-11. (204) Execution of certificates.

1. Each certificate required by sections 45-10.1-08 through 45-10.1-19 to be filed in the office of the secretary of state must be executed in the following manner:
  - a. An original certificate of limited partnership must be signed by all general partners ~~named therein.~~
  - b. 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 ~~or whose contribution is described as having been increased.~~

- c. A certificate of cancellation must be signed by all general partners.
2. Any person may sign a certificate by an attorney in fact, but a power of attorney to sign a certificate relating to the admission, ~~or increased contribution,~~ of a general partner must specifically describe the admission ~~or increase~~.
3. The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

SECTION 6. AMENDMENT. Section 45-10.1-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-12. (205) ~~Amendment or cancellation~~ Execution by judicial act. If a person required by section 45-10.1-11 to execute ~~a any certificate of amendment or cancellation~~ fails or refuses to do so, any other ~~partner, and any assignee of a partnership interest,~~ person who is adversely affected by the failure or refusal, may petition the district court to direct the ~~amendment or cancellation~~ execution of the certificate. If the court finds that ~~the amendment or cancellation~~ 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 ~~of amendment or cancellation~~.

SECTION 7. AMENDMENT. Section 45-10.1-18 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-18. (208) ~~Notice~~ 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 ~~limited general partners~~ are ~~limited general partners~~, but it is not notice of any other fact.

SECTION 8. AMENDMENT. Section 45-10.1-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-20. (301) Admission of ~~additional~~ limited partners.

1. A person becomes a limited partner:
  - a. At the time the limited partnership is formed; or
  - b. At any later time specified in the records of the limited partnership for becoming a limited partner.
2. After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:
  - a. 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.

- b. In the case of an assignee of a partnership interest of a partner who has the power, as provided in section 45-10.1-45, 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.

2- ~~In each case under subsection 1, the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.~~

SECTION 9. AMENDMENT. Section 45-10.1-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-22. (303) Liability to third parties.

1. Except as provided in subsection 4, a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner ~~takes part~~ participates in the control of the business. However, if the limited ~~partner's participation~~ partner participates in the control of the business ~~is not substantially the same as the exercise of the powers of a general partner,~~ the limited partner is liable only to persons who transact business with the limited partnership ~~with actual knowledge of the limited partner's participation in control~~ reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.
2. A limited partner does not participate in the control of the business within the meaning of subsection 1 solely by doing one or more of the following:
  - a. 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.
  - b. Consulting with and advising a general partner with respect to the business of the limited partnership.
  - c. Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership.
  - d. Approving or disapproving an amendment to the partnership agreement. Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership.
  - e. Voting on Requesting or attending a meeting of partners.

f. Proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

- (1) The dissolution and winding up of the limited partnership.
- (2) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership ~~other than in the ordinary course of its business.~~
- (3) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business.
- (4) A change in the nature of the business.
- (5) The admission or removal of a general partner.
- (6) The admission or removal of a limited partner.
- (7) A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners.
- (8) An amendment to the partnership agreement or certificate of limited partnership.
- (9) 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.

g. Winding up the limited partnership pursuant to section 45-10.1-49.

h. Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection.

3. The enumeration in subsection 2 does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.
4. A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by subsection 2 of section 45-10.1-02, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

SECTION 10. AMENDMENT. Subsection 2 of section 45-10.1-23 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A person who makes a contribution of the kind described in subsection 1 is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws

and an appropriate certificate is filed to show withdrawal, or before an appropriate certificate is filed to show ~~the person's status as a limited partner and, in the case of an amendment, after expiration of the thirty-day period for filing an amendment relating to the person as a limited partner under section 45-10.1-09~~ that the person 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.

SECTION 11. AMENDMENT. Section 45-10.1-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-25. (401) Admission of additional general partners. After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only 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 specific written consent of each partner all partners.

SECTION 12. AMENDMENT. Subsections 4 and 5 of section 45-10.1-26 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. Unless otherwise provided in writing in the certificate of limited partnership agreement, the general partner:
  - a. Makes an assignment for the benefit of creditors.
  - b. Files a voluntary petition in bankruptcy.
  - c. Is adjudicated a bankrupt or insolvent.
  - d. Files a petition or answer seeking for the general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation.
  - e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in any proceeding of this nature.
  - f. 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 the general partner's properties.
5. Unless otherwise provided in writing in the certificate of limited 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 the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties, the appointment is not vacated or

stayed or, within ninety days after the expiration of a stay, the appointment is not vacated.

SECTION 13. AMENDMENT. Section 45-10.1-31 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-31. (502) Liability for contribution.

1. 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.
2. Except as provided in the certificate of limited 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 the partner 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, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the certificate of limited partnership records required to be kept pursuant to section 45-10.1-05, of the stated contribution that has not been made.
- ~~3.~~ 3. 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 this chapter may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, otherwise acts in reliance on that obligation after the filing of the certificate of limited partnership or an amendment thereto partner signs a writing which, in either case, reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

SECTION 14. AMENDMENT. Section 45-10.1-32 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-32. (503) Sharing of profits and losses. The profits and losses of a limited partnership must 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 must be allocated on the basis of the value, as stated in the certificate of limited partnership records required to be kept pursuant to section 45-10.1-05, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

SECTION 15. AMENDMENT. Section 45-10.1-33 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-33. (504) Sharing of distributions. Distributions of cash or other assets of a limited partnership must 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 must be made on the basis of the value, as stated in the certificate of limited partnership records required to be kept pursuant to section 45-10.1-05, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

SECTION 16. AMENDMENT. Section 45-10.1-34 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-34. (601) Interim distributions. Except as provided in sections 45-10.1-34 through 45-10.1-41, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the dissolution and winding up thereof.

- 1- ~~To to the extent and at the times or upon the happening of the events specified in the partnership agreement; and~~
- 2- ~~If any distribution constitutes a return of any part of the partner's contribution under subsection 2 of section 45-10.1-38; to the extent and at the times or upon the happening of the events specified in the certificate of limited partnership.~~

SECTION 17. AMENDMENT. Section 45-10.1-36 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-36. (603) Withdrawal of limited partner. A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in the certificate of limited partnership and in accordance with writing in the partnership agreement. If the certificate 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 the general partner's address on the books of the limited partnership at its office in this state.

SECTION 18. AMENDMENT. Section 45-10.1-38 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-38. (605) Distribution in kind. Except as provided in writing in the certificate of limited partnership agreement, a partner, regardless of the nature of the partner's 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 the partner exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the limited partnership.

SECTION 19. AMENDMENT. Subsection 3 of section 45-10.1-41 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A partner receives a return of the partner's contribution to the extent that a distribution to the partner reduces the partner's share of the fair value of the net assets of the limited partnership below the value, as set forth in the certificate of limited partnership records required to be kept pursuant to section 45-10.1-05, of the partner's contribution that has not been distributed to the partner.

SECTION 20. AMENDMENT. Section 45-10.1-45 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-45. (704) Right of assignee to become limited partner.

1. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:
  - a. The assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership agreement; or
  - b. All other partners consent.
2. 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 this chapter. An assignee who becomes a limited partner also is liable for the obligations of the assignor to make and return contributions as provided in sections ~~45-10.1-34~~ 45-10.1-30 through 45-10.1-41. However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner and which could not be ascertained from the certificate of limited partnership.
3. If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under sections 45-10.1-17 and 45-10.1-31.

SECTION 21. AMENDMENT. Section 45-10.1-47 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-47. (801) Nonjudicial dissolution. A limited partnership is dissolved and its affairs must be wound up upon the happening of the first to occur of the following:

1. At the time or upon specified in the certificate of limited partnership.
2. Upon the happening of events specified in writing in the certificate of limited partnership agreement.
- ~~2-~~ 3. Written consent of all partners.
- ~~3-~~ 4. An event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of

limited written provisions of the partnership permits 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.

4- 5. Entry of a decree of judicial dissolution under section 45-10.1-48.

SECTION 22. AMENDMENT. Section 45-10.1-52 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-52. (902) Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state, on forms prescribed and furnished by the secretary of state, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth all of the following:

1. The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state.
2. The state and date of its formation.
3. The general character of the business it proposes to transact in this state.
4. 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 this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state.
5. A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence.
6. The address of the principal office of the foreign limited partnership.
7. The name and business address of each general partner.
8. 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.

The application must be accompanied by a certificate of identification, existence, and status of a foreign limited partnership, duly certified by the

proper officer of the state or country under the laws of which it is organized.

SECTION 23. AMENDMENT. Section 45-10.1-60 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-60. (1002) 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 the plaintiff complains or the plaintiff's status as a partner had must have devolved upon the plaintiff 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.

SECTION 24. AMENDMENT. Section 45-12-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-12-01. Provisions for existing limited partnerships.

1. A limited or special partnership formed under any statute of this state prior to July 1, 1959, until or unless it becomes a limited partnership under chapter 45-10.1, continues to be governed by the provisions of chapter 45-03 of the North Dakota Revised Code of 1943, through June 30, 1986, but the partnership may not be renewed unless so provided in the original agreement.
2. A limited partnership formed under former chapter 45-10 prior to July 1, 1985, until or unless it becomes a limited partnership under chapter 45-10.1, continues to be governed by the provisions of former chapter 45-10, through June 30, 1986, but the partnership may not be renewed unless so provided in the original agreement.
3. After June 30, 1986, chapter 45-10.1 applies to all existing limited partnerships formed under any law of this state providing for formation of limited partnerships. All provisions of partnership agreements that may be included in the partnership agreements under chapter 45-10.1 remain in effect. All provisions of the partnership agreements that are inconsistent with chapter 45-10.1 cease to be effective on July 1, 1986. Any provisions required by chapter 45-10.1 to be contained in the partnership agreement that do not appear in the partnership agreement are read into them as a matter of law.
4. Unless otherwise agreed by the partners, the applicable provisions of existing law governing allocation of profits and losses, rather than the provisions of section 45-10.1-32, distributions to a withdrawing partner, rather than the provisions of section 45-10.1-37, and distributions of assets upon the winding up of a limited partnership, rather than the provisions of section 45-10.1-50, govern limited partnerships formed before July 1, 1985.
5. The repeal of chapter 45-10 does not impair, or otherwise affect the organization or the continued existence of a limited partnership existing prior to July 1, 1985, nor does the repeal of chapter 45-10 as the result of enactment of chapter 45-10.1 impair any contract or affect any right accrued before July 1, 1985.

Approved March 17, 1989  
Filed March 17, 1989

## CHAPTER 549

HOUSE BILL NO. 1563  
(Oban, Vander Vorst)

**PARTNERSHIP NAMES AND DOCUMENTS**

AN ACT to amend and reenact sections 45-10.1-16, 45-11-02, 45-11-04.1, 45-11-05, and 45-11-06 of the North Dakota Century Code, relating to new and renewed fictitious name certificates and records filed with the secretary of state with respect to limited partnerships and fictitious partnership names.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 45-10.1-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-16. Duties of the secretary of state. The secretary of state shall maintain an alphabetical index of all limited partnerships and foreign limited partnerships on file with that office. All documents filed with the secretary of state pursuant to under this chapter must be retained in that office until ~~they~~ the documents have been committed to microcopy, at which time the documents may be ~~returned to the limited partnership or foreign limited partnership~~ destroyed.

SECTION 2. AMENDMENT. Section 45-11-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-02. How certificate executed - Content. A certificate filed with the secretary of state as provided in section 45-11-01 must be signed by one or more of the general partners and ~~acknowledged before some officer authorized to take acknowledgments of conveyances of real property~~. The certificate must state the fictitious name, the names in full of all the ~~members of the partnership~~ general partners, their places of residence, and the address of the principal place of business.

SECTION 3. AMENDMENT. Section 45-11-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-04.1. Renewal. Any fictitious name certificate filed under this chapter must be renewed every five years from the date of the initial filing, except that those filings existing prior to July 1, 1985, must be required to file the statement of renewal by July 1, 1987, and then every five years thereafter. The statement of renewal ~~shall~~ must be executed by the partnership on forms prescribed and furnished by the secretary of state which are sent to the address of the principal place of business at least sixty days ~~prior to~~ before the deadline for filing. The statement must include the fictitious name of the partnership, the state or country of organization, the address of the principal place of business, the names and addresses of all

~~members general partners~~, and a statement that the partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the filing fee of twenty-five dollars has been paid, the secretary of state shall file the ~~same statement~~. If the secretary of state finds that it does not so conform, the secretary of state shall promptly return the ~~same statement~~ to the partnership for any necessary corrections, in which event, the fictitious name certificate is subject to cancellation if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any partnership fails to file the statement of renewal when due, the fictitious name certificate must be canceled by the secretary of state and notice of such cancellation must be mailed to the address of the principal place of business.

SECTION 4. AMENDMENT. Section 45-11-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-05. New certificate required when members changed. Whenever there is a change in the general partners who are members of a partnership transacting business in this state under a fictitious name, or in a designation which does not show the names of the persons interested as general partners in the business, except in a case mentioned in section 45-11-03, a new certificate must be filed with the secretary of state as required by this chapter upon the formation of ~~such the~~ partnership.

SECTION 5. AMENDMENT. Section 45-11-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-06. Duty of secretary of state regarding fictitious name certificate. The secretary of state ~~must shall~~ keep an alphabetical file of the fictitious names filed with ~~him pursuant to the secretary of state under~~ this chapter. All documents filed with the secretary of state ~~pursuant to~~ under this chapter must be retained in that office until ~~they the documents~~ have been committed to microcopy, at which time the documents may be ~~returned to the partnership destroyed~~.

Approved April 11, 1989  
Filed April 12, 1989

## CHAPTER 550

HOUSE BILL NO. 1157  
(Committee on Industry, Business and Labor)  
(At the request of the Secretary of State)

### **FICTITIOUS PARTNERSHIP NAME CANCELLATION**

AN ACT to create and enact a new section to chapter 45-11 of the North Dakota Century Code, relating to fictitious partnership names.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 45-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cancellation. The secretary of state shall cancel any fictitious name upon written request for cancellation, from one or more partners, with the filing fee of ten dollars.

Approved March 14, 1989  
Filed March 15, 1989