

Chapter 69

1983 REPLACEMENT PART

Limited Partnerships

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CROSS REFERENCES

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69.010 [Repealed by 1971 c.594 §36]

69.020 [Amended by 1965 c.505 §1; 1971 c.200 §6; repealed by 1971 c.594 §36]

69.030 [Amended by 1965 c.505 §2; 1971 c.318 §12; repealed by 1971 c.594 §36]

69.040 [Repealed by 1971 c.594 §36]

69.050 [Repealed by 1971 c.594 §36]

69.060 [Repealed by 1971 c.594 §36]

69.070 [Repealed by 1971 c.594 §36]

69.080 [Repealed by 1971 c.594 §36]

69.090 [Repealed by 1971 c.594 §36]

69.100 [Repealed by 1971 c.594 §36]

69.110 [Repealed by 1971 c.594 §36]

69.120 [Amended by 1965 c.505 §3; 1971 c.200 §7; repealed by 1971 c.594 §36]

69.130 [Repealed by 1971 c.594 §36]

69.150 Short title. ORS 69.150 to 69.530 may be cited as the Uniform Limited Partnership Act. [1971 c.594 §28]

69.160 Limited partnership described. A limited partnership is a partnership formed by two or more persons under ORS 69.180, having as members one or more general partners and one or more limited partners. A limited partner as such shall not be bound by the obligations of the partnership. [1971 c.594 §1]

69.170 Powers of limited partnership. A limited partnership may carry on any business which a partnership without limited partners may carry on. [1971 c.594 §4]

69.180 Formation procedure; filing; fees; effect of substantial compliance. (1) Two or more persons desiring to form a limited partnership shall:

(a) Sign and verify a certificate, which shall state:

(A) The name of the partnership;

(B) The character of the business;

(C) The location of the principal place of business;

(D) The address of the initial registered office of the limited partnership including street and number, if any, and the name of its initial registered agent at such address;

(E) That the undersigned general partners each designate the initial registered agent of the limited partnership and any successor registered agent as their personal registered agent and attorney upon whom any process, notice or demand which arises out of the conduct of the partnership affairs and which is required or

permitted by law to be served upon a general partner, may be served;

(F) The name and place of residence of each member, general and limited partners being respectively designated;

(G) The term for which the partnership is to exist;

(H) The amount of cash and a description of the agreed value of the other property contributed by each limited partner;

(I) The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made;

(J) The time, if agreed upon, when the contribution of each limited partner is to be returned;

(K) The share of the profits or other compensation by way of income which each limited partner shall receive by reason of his contribution;

(L) The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution;

(M) The right, if given, of the partners to admit additional limited partners;

(N) The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority;

(O) The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner;

(P) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution;

(Q) The right, if given, of a limited partner to vote upon any of the matters described by ORS 69.280 (2) and the vote required for election or removal of general partners, or to cause other action to be effective as to the limited partnership; and

(R) The right, if given, of a general partner to exercise a power of attorney to sign on behalf of a limited partner a certificate of limited partnership or amendments thereto.

(b) File one copy of such certificate in the office of the Corporation Commissioner.

(2) The second copy of the certificate shall be kept in the files of the partnership. The Corporation Commissioner shall be paid a filing fee

of \$25 upon filing the copy and he shall issue his receipt therefor. The receipt shall be prima facie evidence of the filing.

(3) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of subsection (1) of this section. [1971 c.594 §2; 1975 c.604 §2]

69.190 Admission of additional limited partners after formation. After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with ORS 69.410. [1971 c.594 §9]

69.200 Partnership name; inclusion of surname of limited partner prohibited; exception. (1) The surname of a limited partner shall not appear in the partnership name, unless:

(a) It is also the surname of a general partner; or

(b) Prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to subsection (1) of this section is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner. [1971 c.594 §6]

69.210 Limitations on filing of names of partnerships. (1) Except as provided in subsection (2) of this section, the Corporation Commissioner shall not accept for filing a certificate of limited partnership containing a partnership name which is the same as, or deceptively similar to, any corporate, limited partnership, reserved or registered name currently on file with the Corporation Commissioner, the Insurance Commissioner or the Superintendent of Banks, an assumed business name registered as provided in ORS 648.010, or a trade-mark, trade name or service mark registered as provided in ORS chapter 647.

(2) The Corporation Commissioner may accept for filing a certificate of limited partnership containing a reserved or registered name, trade-mark, trade name or service mark described in subsection (1) of this section if the applicant files with the Corporation Commissioner:

(a) A written consent of the holder of the reserved or registered name, trade-mark, trade name or service mark authorizing the applicant to use the name or mark, and adds one or more words or symbols to make the name or mark

distinguishable from the reserved or registered name or mark; or

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to use the reserved or registered name or mark in this state. [1971 c.594 §34; 1981 c.633 §68]

69.220 [1971 c.594 §3; 1973 c.367 §8; repealed by 1975 c.604 §12]

69.230 Status of limited partners as between such partners; establishing priorities. If there are several limited partners, the partners may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income or as to any other matter. If such an agreement is made, it shall be stated in the certificate and, in the absence of such a statement, all the limited partners shall stand upon equal footing. [1971 c.594 §15]

69.240 Rights of limited partner. (1) A limited partner shall have the same rights as a general partner to:

(a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them.

(b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs, whenever circumstances render it just and reasonable.

(c) Have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided by ORS 69.270 and 69.320. [1971 c.594 §11]

69.250 [1971 c.594 §14; repealed by 1979 c.859 §1 (69.251 enacted in lieu of 69.250)]

69.251 Transacting business with the partnership. Except as provided in the partnership agreement, a general partner or a limited partner may lend money to and transact other business with the partnership and, subject to the provisions of ORS chapter 95 on fraudulent conveyances and other applicable law, has the same rights and obligations with respect to the partnership as a person who is not a partner. [1979 c.859 §2 (enacted in lieu of 69.250)]

69.260 Liability of limited partner to partnership. (1) A limited partner is liable to the partnership:

(a) For the difference between his contribu-

tion as actually made, and that stated in the certificate as having been made; and

(b) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership:

(a) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned; and

(b) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth by this section can be waived or compromised only by the consent of all partners; but a waiver or compromise shall not affect the right of a creditor of a partnership who extended credit, or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a partner has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return. [1971 c.594 §18]

69.270 Receipt of share of profits or compensation from partnership by limited partner; restrictions. A limited partner may receive from the partnership the share of the profits or the compensation by way of income stated in the certificate. However, such a payment shall not be made unless, after the payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership, except liabilities to limited partners on account of their contributions and to general partners. [1971 c.594 §16]

69.280 Liability of limited partner as general partner. (1) A limited partner shall not become liable as a general partner unless, in addition to the exercise of rights and powers as a limited partner, the limited partner takes part in the control of the business.

(2) A limited partner shall not be considered as taking part in the control of the business by virtue of possessing or exercising a power, specified in the certificate or partnership agreement, to vote upon matters affecting the basic struc-

ture of the partnership, including the following matters or others of a similar nature:

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

(b) The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all the assets of the partnership other than in the ordinary course of business;

(c) Incurring of indebtedness by the partnership other than in the ordinary course of business;

(d) A change in the nature of the business of the partnership;

(e) The election or removal of a general partner;

(f) The amendment of the partnership agreement; or

(g) The continuation of the partnership as provided in ORS 69.360.

(3) A limited partner does not participate in the control of the business within the meaning of subsection (1) of this section solely by participating in a derivative action as provided in ORS 69.475.

(4) The statement of powers set forth in subsections (2) and (3) of this section shall not be construed as exclusive or as indicating that any other powers possessed or exercised by a limited partner shall be sufficient to cause the limited partner to be considered taking part in the control of the business within the meaning of subsection (1) of this section. [1971 c.594 §8; 1979 c.859 §9]

69.290 Interest of limited partner as personal property. The interest of a limited partner in the partnership is personal property. [1971 c.594 §19]

69.300 Assignment of limited partner's interest; substituted limited partner. (1) The interest of a limited partner is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or who has assigned his interest in the partnership.

(3) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions, to inspect the partnership books or to vote on any of the matters as to which a limited partner would be entitled to vote pursuant to ORS 69.280 and the certificate of limited partnership. He is entitled to receive only the share of the profits or other compensa-

tion by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the partners (except the assignor) consent thereto or if the assignor, being empowered to do so by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with ORS 69.410.

(6) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under ORS 69.260 and 69.390. [1971 c.594 §20]

69.310 [1971 c.594 §5; repealed by 1979 c.859 §3 (69.311 enacted in lieu of 69.310)]

69.311 Contributions of partner. 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. [1979 c.859 §4 (enacted in lieu of 69.310)]

69.320 Withdrawal or reduction of limited partner's contribution; dissolution of partnership upon failure or inability to repay contribution. (1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

(a) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them;

(b) The consent of all partners is obtained, unless the return of the contribution may be rightfully demanded under subsection (2) of this section; and

(c) The certificate is canceled or so amended as to set forth the withdrawal or reduction.

(2) A limited partner may rightfully demand the return of his contribution:

(a) On the dissolution of a partnership;

(b) When the date specified in the certificate for its return has arrived; or

(c) After he has given six months' notice in writing to all other partners, if no time is specified in the certificate either for the return of the

contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or of the consent of all partners, a limited partner, irrespective of the nature of his contribution, has the right to demand and receive only cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when:

(a) He rightfully but unsuccessfully demands the return of his contribution; or

(b) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment, as required by paragraph (a) of subsection (1) of this section, and the limited partner would otherwise be entitled to the return of his contribution. [1971 c.594 §17]

69.330 Effect of death of limited partner; liability of estate. (1) On the death of a limited partner, his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner. [1971 c.594 §22]

69.340 Effect of erroneous belief by contributor that he is limited partner. A person who has contributed to the capital of a business conducted by a person or partnership, erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business. Furthermore, he is not bound by the obligations of such person or partnership. However, this section does not apply unless, on ascertaining the mistake, he promptly renounces his interest in the profits of the business or other compensation by way of income from his contribution. [1971 c.594 §12]

69.350 Rights, powers and liabilities of general partners in limited partnership. (1) A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that, without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to:

(a) Do any act in contravention of the certificate.

(b) Do any act which would make it impossible to carry on the ordinary business of the partnership.

(c) Confess a judgment against the partnership.

(d) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.

(e) Admit a person as a general partner.

(f) Admit a person as a limited partner, unless the right so to do is given in the certificate.

(g) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate.

(2) In the event of the removal or failure of reelection of a general partner, pursuant to the vote of the limited partners in accordance with the certificate, such general partner shall cease to be liable as such upon:

(a) The filing of an amended certificate of limited partnership as provided by ORS 69.400 and 69.410; and

(b) Compliance by the partnership or the partner with all of the requirements of notice and publication of a former partner in a partnership without limited partners. [1971 c.594 §10]

69.360 Retirement, death or insanity of general partner. The retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

(1) Under a right so to do stated in the certificate; or

(2) With the consent of all partners. [1971 c.594 §21]

69.365 Effect of dissolution or revocation of certificate of authority when general partner is corporation; reactivating limited partnership. (1) If the sole general partner is a domestic corporation which has been voluntarily or involuntarily dissolved, the limited partnership shall become inactive at the time of the general partner's dissolution.

(2) If the sole general partner is a foreign corporation and its certificate of authority is revoked, the limited partnership shall become inactive at the time of the revocation of the certificate of authority.

(3) Any limited partnership becoming inactive under this section shall become active by

filing with the Corporation Commissioner a certificate of limited partnership designating a substituted general partner.

(4) If the sole general partner is a domestic or foreign corporation, upon notice to the limited partnership by the Corporation Commissioner that the domestic corporation has been dissolved or that the foreign corporation's certificate of authority has been revoked, the limited partnership shall file with the Corporation Commissioner an amendment to its certificate of limited partnership designating a new general partner not later than the 90th day after the date that the notice is mailed. If the amendment is not filed by the 90th day, the limited partnership's name shall become available and the provisions of ORS 69.510 (8) regarding availability of the limited partnership's name shall apply.

(5) This section applies to both domestic and foreign limited partnerships. [1977 c.78 §8; 1983 c.717 §28]

69.370 Same person as both general partner and limited partner. (1) A person may be a general partner and a limited partner in the same partnership at the same time.

(2) A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other partners which he would have had if he were not also a general partner. [1971 c.594 §13]

69.380 Partner as party to proceedings by or against partnership. A partner, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a right or liability of a limited partner against or to the partnership. [1971 c.594 §27]

69.390 Effect of false statement in certificate. (1) If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who:

(a) Knew the statement to be false at the time he signed the certificate; or

(b) Learned of the falsity subsequent to signing but with sufficient time before such reliance to enable the party to cause the certificate to be canceled or amended or a petition to be filed for cancellation or amendment of the certificate as provided by ORS 69.410 (3).

(2) Any corporate officer signing the certificate on behalf of the corporation shall also be

liable personally as provided by paragraphs (a) and (b) of subsection (1) of this section. Such officer shall have the right to petition for cancellation or amendment as though he were a partner. [1971 c.594 §7]

69.400 Certificate to be canceled or amended in certain cases. (1) The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such.

(2) A certificate shall be amended when:

(a) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner.

(b) A person is substituted as a limited partner.

(c) An additional limited partner is admitted.

(d) A person is admitted as a general partner.

(e) A general partner retires, dies or becomes insane, and the business is continued under ORS 69.360.

(f) There is a change in the character of the business of the partnership.

(g) There is a false or erroneous statement in the certificate.

(h) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution.

(i) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate.

(j) The partners desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them. [1971 c.594 §25]

69.410 Amendment and cancellation of certificate. (1) The writing to amend a certificate shall:

(a) Conform to the requirements of ORS 69.180 (1)(a) as far as necessary to set forth clearly the change in the certificate which it is desired to make; and

(b) Be signed and verified by all partners. An amendment substituting a limited partner or adding a limited or general partner shall be signed also by the partners to be substituted or added. When a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all partners.

(3) A person desiring the cancellation or amendment of a certificate, if any partner designated in subsections (1) and (2) of this section as a partner who must execute the writing refuses to do so, may petition the circuit court to direct a cancellation or amendment of the certificate.

(4) If the court finds that the petitioner has a right to have the writing executed by a partner who refuses to do so, it shall order the Corporation Commissioner to record the cancellation or amendment of the certificate. If in addition the certificate is to be amended, the court shall also cause to be filed for record in such office a certified copy of its decree setting forth the amendment.

(5) A certificate is amended or canceled when there is filed for record in the office of the Corporation Commissioner:

(a) A writing in accordance with subsection (1) or (2) of this section, accompanied by a filing fee of \$10; or

(b) A certified copy of a court order in accordance with subsection (4) of this section.

(6) After the certificate is amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by ORS 69.150 to 69.530 and 648.005.

(7) Notwithstanding paragraph (b) of subsection (1) of this section, if the partnership certificate permits and the partnership has 10 or more limited partners immediately prior to the event requiring amendment of the certificate under ORS 69.150 to 69.200 and 69.230 to 69.470, the writing to amend the certificate:

(a) May be signed by a general partner and by the partner to be substituted or added in the case of an amendment substituting a limited partner or adding a limited or general partner;

(b) Shall be signed also by the assigning limited partner when a limited partner is to be substituted; and

(c) May be signed by any general partner, if the amendment reflects the retirement, death or insanity of a general partner and the business is continued under ORS 69.360. [1971 c.594 §26]

69.420 Rights of creditor of limited partner. (1) On due application to a court of competent jurisdiction by any creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim; and may appoint a receiver, and make all other orders, directions and inquiries which the circumstances of the case may require.

(2) The interest of a limited partner if so charged may be redeemed with the separate property of such limited partner or any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by subsection (1) of this section shall not be considered exclusive of others which may exist.

(4) Nothing in ORS 69.150 to 69.200 and 69.230 to 69.470 is intended to deprive a limited partner of his statutory exemption. [1971 c.594 §23]

69.430 [1971 c.594 §24; repealed by 1979 c.859 §5 (69.431 enacted in lieu of 69.430)]

Note: Section 5, chapter 859, Oregon Laws 1979, provides:

Sec. 5. ORS 69.430 is repealed and section 6 of this Act is enacted in lieu thereof except as to limited partnerships in existence on the effective date of this Act [October 3, 1979] which do not elect to be governed by section 6 of this Act.

69.431 Distribution of assets upon dissolution. (1) Upon the winding up of the partnership, the assets shall be distributed in the following order:

(a) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the partnership other than liabilities for distributions to partners.

(b) To partners and former partners in satisfaction of liabilities for distributions, unless otherwise provided in the partnership agreement.

(c) To limited partners for the return of their contributions, unless otherwise provided in the partnership agreement.

(d) To general partners for the return of their contributions, unless otherwise provided in the partnership agreement.

(2) Any assets remaining after distribution has been made under subsection (1) of this section shall be distributed to the partners in the proportions in which they share in distributions, unless otherwise provided in the partnership agreement. [1979 c.859 §6 (enacted in lieu of 69.430)]

69.440 Foreign limited partnerships; reciprocity; election of name to be used in this state. (1) A foreign limited partnership that has filed a certificate of limited partnership in another state shall, by filing with the Corporation Commissioner a certified copy of such filing with such other state, accompanied by a filing fee of \$25, enjoy the same rights and privileges as a limited partnership filed in this state, and shall enjoy the same rights and privileges and shall be

subject to the same duties, restrictions, penalties and liabilities imposed upon a limited partnership which has filed a certificate of limited partnership in this state.

(2) If the name of the foreign limited partnership does not meet the requirements of ORS 69.210, then the limited partnership may file a supplemental statement, signed by a general partner, of the name meeting such requirements that the partnership elects to use within this state. [1971 c.594 §32; 1973 c.367 §9]

69.450 Certification of agent for service of process by and service on foreign limited partnerships. (1) Each limited partnership which is domiciled without this state shall file a certificate in the office of the Corporation Commissioner in accordance with ORS 69.440 and designate some natural person or corporation as agent of the partnership and the general partners upon whom any process, notice or demand which arises out of the conduct of the partnership affairs and which is required or permitted by law to be served on the limited partnership or any general partner, may be served.

(2) Such process may be served as provided by ORCP 7 D.(3)(b) on the person designated pursuant to subsection (1) of this section or, in the event that no such person has been designated or the person designated cannot be found, then service may be made as provided by ORS 69.500. [1971 c.594 §31; 1973 c.367 §10; 1975 c.604 §3; 1979 c.284 §88]

69.460 Rules of construction. (1) The rule that statutes, in derogation of the common law, are to be strictly construed shall have no application to ORS 69.150 to 69.530 and 648.005.

(2) ORS 69.150 to 69.530 shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact the Uniform Limited Partnership Act.

(3) ORS 69.150 to 69.530 shall not be so construed as to impair the obligations of any contract existing on September 9, 1971, nor to affect any action or proceedings begun or right accrued before September 9, 1971. [1971 c.594 §29]

69.470 Rules governing cases not otherwise provided for. In any case not provided for by ORS 69.150 to 69.530 the rules of law and equity, including the law merchant, shall govern. [1971 c.594 §30]

69.475 Derivative action on behalf of partnership by limited partner. (1) A limited partner may bring a derivative action on behalf of the partnership to recover a judgment in favor of the partnership if the 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.

(2) In a derivative action, the plaintiff must be a partner at the time of bringing the action and:

(a) At the time of the transaction of which the plaintiff complains; or

(b) The plaintiff's status as a partner 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.

(3) 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.

(4) 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 fees at trial and on appeal, and shall direct that the remainder of the proceeds received by the plaintiff be remitted to the partnership. [1979 c.859 §8; 1981 c.897 §17]

69.480 Registered office and registered agent requirement. Each domestic limited partnership and each foreign limited partnership doing business in this state and all general partners of either of them shall have and continuously maintain in this state:

(1) A single registered office which may be, but need not be, the same as the limited partnership's place of business; and

(2) A single registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical to such registered office. [1975 c.604 §5]

69.490 Procedure for changing registered office or registered agent; resignation of registered agent. (1) A limited partnership and the general partners thereof may change their registered office or change their registered agent, or both, upon filing in the office

of the Corporation Commissioner a statement stating:

(a) The name and address of the limited partnership and each general partner thereof;

(b) If the address of the registered office be changed, the address to which the registered office is to be changed, including the street and number, if any;

(c) If the registered agent be changed, the name of their successor registered agent; or

(d) That the address of the registered office and the address of the business office of the registered agent, as changed, will be identical.

(2) Such statement shall be executed by all general partners and delivered to the office of the Corporation Commissioner. The filing of such statement shall immediately terminate the existing registered office or agent, or both, and establish the newly appointed registered office or agent, or both, as that of the limited partnership and the general partners thereof.

(3) Any registered agent may change his or its business address and the address of the registered office of the limited partnerships and the general partners thereof by filing a statement as required by subsection (1) of this section, except that it need be signed only by the registered agent, need not be responsive to paragraph (c) of subsection (1) of this section, and must recite that a copy of the statement has been mailed to the limited partnership and each general partner thereof. If the Corporation Commissioner finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office.

(4) Any registered agent of the limited partnership may resign as agent upon filing a signed statement to resign with the Corporation Commissioner. The resignation shall be effective 30 days after the filing of the signed statement, unless the limited partnership and the general partners thereof shall sooner appoint a successor registered agent, as provided in this section, thereby terminating the capacity of such agent. Upon the filing of the signed statement, the Corporation Commissioner shall forthwith notify the limited partnership and all general partners thereof of the filing of such statement and the effect thereof, which notices shall be addressed to the limited partnership at its registered office, and to the general partners at their last-known address as shown by the records of the Corporation Commissioner. [1975 c.604 §6]

69.500 Duties of registered agent; Corporation Commissioner as agent in certain cases; restriction on defaults;

court jurisdiction unaffected. (1) The registered agent shall be an agent of the limited partnership and the general partners thereof upon whom any process, notice or demand which arises out of the conduct of the partnership affairs and which is required or permitted by law to be served upon the limited partnership or any general partner thereof may be served.

(2) The Corporation Commissioner shall be an agent of the limited partnership and each general partner thereof upon whom any such process, notice or demand may be served:

(a) Whenever the limited partnership and its general partners fail to appoint or maintain a registered agent in this state, or

(b) Whenever the registered agent cannot with reasonable diligence be found at the registered office.

(3) Service shall be made on the Corporation Commissioner by:

(a) Service on the Corporation Commissioner or a clerk on duty in any office of the Corporation Commissioner of a copy of the process, notice or demand with any papers required by law to be delivered in connection with the service, and a \$2 fee;

(b) Transmittal by the person initiating the proceedings by certified or registered mail, return receipt requested, of notice of the service on the Corporation Commissioner and a copy of the process, notice or demand and accompanying papers to the registered agent and the limited partnership at the last registered address of the registered agent and the limited partnership as shown by the records on file in the office of the Corporation Commissioner and to all general partners being served at the last-known address of such general partner as shown by the records on file in the office of the Corporation Commissioner; and

(c) Filing with the appropriate court or other body, as part of the return of service, of the return receipt of mailing and an affidavit of the person initiating the proceedings that this section has been complied with.

(4) No default shall be entered against any defendant served under subsection (3) of this section who has not either received or rejected a registered or certified letter containing the notice of such service and a copy of the process, notice or demand and accompanying papers, unless the plaintiff can show that the defendant, after due diligence, cannot be found within or without the state and that fact appears by affidavit to the satisfaction of the court or judge thereof. Due diligence is satisfied when it appears

from such affidavit that the defendant cannot be found at the most recent address given by the defendant to the Corporation Commissioner under this chapter, if it appears from the affidavit that inquiry at such address was made within a reasonable time preceding service on the Corporation Commissioner. Where due diligence is proved to the court by such affidavit, the service upon the Corporation Commissioner shall be sufficient valid personal service upon such defendant notwithstanding that the defendant did not actually receive a notice of such service because of the defendant's failure to notify the Corporation Commissioner of a change in address as required by this chapter.

(5) The Corporation Commissioner shall keep a record of all processes, notices and demands served upon the commissioner under this section.

(6) Nothing contained in this section shall limit or affect the jurisdiction of the courts of this state now or hereafter conferred by law; shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served on a limited partnership or the general partners thereof in any other manner now or hereafter permitted by law; or shall enlarge the purposes for which service on the Corporation Commissioner is permitted where such purposes are limited by any other provision of law. [1975 c.604 §7; 1979 c.284 §89]

69.510 Annual statement required; contents; fee; status of limited partnerships failing to comply. Each domestic limited partnership and each foreign limited partnership authorized to transact business in this state shall file an annual statement stating:

(a) The name of the limited partnership and the state or country under the laws of which it is formed;

(b) The address of the registered office of the limited partnership in this state, and the name of its registered agent in this state at such address and, in the case of a foreign limited partnership, the address of its principal office in the state or country under the laws of which it is formed;

(c) The names and respective addresses, including street and number, if any, of each general partner of the limited partnership;

(d) That the undersigned general partners each designate the registered agent of the limited partnership and any successor registered agent as their personal registered agent and attorney upon whom any process, notice or demand which arises out of the conduct of the partnership

affairs and which is required or permitted by law to be served upon a general partner, may be served;

(e) That there have been no changes in the identity of any of the partners to the partnership or their capital contributions thereto or the other provisions as set forth in the most recent certificate on file with the commissioner and that no other event has occurred which requires an amendment to the certificate of limited partnership under ORS 69.400; and

(f) The character of the business in which the limited partnership is actually engaged in this state.

(2) The information contained in the annual statement shall be given as of 30 days before the anniversary of the limited partnership.

(3) The annual statement shall be signed by each general partner.

(4) Not less than 30 days before the anniversary date, the Corporation Commissioner shall notify the registered agent of the limited partnership of the requirement to file an annual statement. The notice shall be sent by first class mail, shall indicate the date on which the annual statement is due and shall include the forms for the annual statement. The notice shall state that if the registered agent fails to submit the statement on or before the date due, the name filed for the limited partnership is automatically canceled and the name is available.

(5) The annual statement of a domestic or foreign limited partnership and a \$25 fee shall be delivered to the Corporation Commissioner before the first day of the first calendar month following each anniversary of the limited partnership.

(6) If the Corporation Commissioner finds that the statement conforms to the requirements of this chapter, the commissioner shall file the same.

(7) If the commissioner finds that it does not conform to the requirements of this chapter, the commissioner shall return the statement to the registered agent of the limited partnership. The limited partnership shall correct the annual statement and return it to the Corporation Commissioner within 30 days after such report has been returned by the Corporation Commissioner.

(8) If no statement is filed, the Corporation Commissioner shall send a final notice to the registered agent advising the limited partnership that no statement has been filed, that it is therefore assumed that the limited partnership is no longer active and that the name shall be avail-

able unless a statement is filed within 30 days after the mailing of the final notice. The Corporation Commissioner shall not be required to send a final notice to any limited partnership if a general partner has previously notified the commissioner that the limited partnership does not intend to file a statement. The final notice shall be sent by first-class mail. Not less than 30 days after the date the final notice is mailed, the commissioner may assume that the partnership is inactive and the commissioner shall note on the commissioner's records that the partnership is inactive. Thereafter, the name of the partnership is available. The partnership may give notice of its active status after the date the statement is due by filing the required statement. The commissioner shall then remove the notation of the inactive status and name availability. However, if the name has been used in the intervening period or is currently reserved by another entity with the same or a deceptively similar corporate, limited partnership, reserved or registered name currently on file with the Corporation Commissioner, the Insurance Commissioner or the Superintendent of Banks, an assumed business name registered as provided in ORS 648.010, or a trade-mark, trade name or service mark registered as provided in ORS chapter 647, the filing of the report shall be accompanied by an amended certificate to change its name to comply with ORS 69.150 to 69.530 and 648.005. [1975 c.604 §8; 1977 c.78 §4; 1981 c.633 §69]

69.520 Withdrawal of foreign limited partnerships; procedure; fee; service of process on partnerships conducting unauthorized transactions; duties of Corporation Commissioner. (1) A foreign limited partnership authorized to transact business in this state may withdraw from this state upon procuring from the Corporation Commissioner a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign limited partnership shall deliver to the commissioner an application for withdrawal, which shall set forth:

(a) The name of the limited partnership and the state or country under the laws of which it is organized;

(b) That the limited partnership is not transacting business in this state;

(c) That the limited partnership revokes the authority of its registered agent in this state to accept service of process, notice or demand, and consents that service of process, notice or demand, in any action, suit or proceedings based upon any transaction, event or occurrence which

took place in this state prior to the issuance of the certificate of withdrawal may thereafter be made on such limited partnership by service thereof on the commissioner;

(d) A post-office address, including street and number, if any, to which the person initiating any proceeding may mail a copy of any process, notice or demand to the limited partnership which has been served on the commissioner; and

(e) Such additional information as may be necessary or appropriate in order to enable the commissioner to determine and assess any unpaid fees or charges payable by such foreign limited partnership as in this chapter prescribed.

(2) The application for withdrawal shall be made on forms prescribed and furnished by the Corporation Commissioner and shall be executed and verified by one of its general partners or, if the foreign limited partnership is in the hands of a receiver or trustee, shall be executed on behalf of the limited partnership by such receiver or trustee and verified by the receiver or trustee.

(3) A foreign limited partnership which transacted business in this state without being authorized to do so as provided in this chapter will be subject to service after it has ceased to transact business in this state in the same manner as though it had been authorized to transact business, had later withdrawn, and, in connection with such withdrawal, filed a consent to service in the manner required in paragraph (c) of subsection (1) of this section.

(4) One original and one true copy of such application for withdrawal shall be delivered to the Corporation Commissioner accompanied by

a filing fee of \$10. If the commissioner finds that such application conforms to the provisions of this section, the Corporation Commissioner shall, when all fees and charges have been paid as in this chapter prescribed:

(a) Indorse on the original and on the true copy the word "Filed," and the month, day and year of the filing thereof;

(b) File the original in the office of the Corporation Commissioner; and

(c) Issue a certificate of withdrawal to which the Corporation Commissioner shall affix the true copy.

(5) The certificate of withdrawal, together with the true copy of the application for withdrawal affixed thereto by the commissioner, shall be returned to the foreign limited partnership or its representative. Upon the issuance of such certificate of withdrawal, the authority of the foreign limited partnership to transact business in this state shall cease. [1975 c.604 §9; 1977 c.78 §5; 1981 c.633 §70]

69.530 Authority of Corporation Commissioner to administer chapter. The commissioner shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him. [1975 c.604 §10]

CHAPTER 70
[Reserved for expansion]

