Chapter 59A.

Marriage Partnership.

ARTICLE 1.

Marriage.

§§ 51‑1 through 51‑21: Repealed by Session Laws [ ].

§ 59A‑1, Preservation of marriages.

This Article and the other provisions of this Act shall not be construed so as to impair the obligations of any marriage existing when the Article or any other provision of this Act, as applicable, goes into effect, nor to affect any action or proceedings begun or right accrued before this Article or any other provision of this Act, as applicable, takes effect.

Article 2.

Marriage Partnership Act.

Part 1. Preliminary Provisions.

§ 59A‑21, Definition of terms.

As used in this Chapter, unless the context otherwise requires:

1. "Act" means the North Carolina Marriage Partnership Act and refers to all provisions therein.
2. “Adult partner” means a partner in the marriage partnership who is eighteen years of age or older.
3. "Bankrupt" means bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act.
4. "Business" means every trade, occupation, or profession.
5. “Child partner” means a partner in the marriage partnership who has not attained the age of eighteen years.
6. "Conveyance" means every assignment, lease, mortgage, or encumbrance.
7. "Court" means every court and judge having jurisdiction in the case.
8. "Domestic corporation" has the same meaning as in G.S. 55‑1‑40.
9. "Domestic limited liability company" has the same meaning as in G.S. 57C‑1‑03.
10. "Domestic limited partnership" has the same meaning as in G.S. 59‑102.
11. "Domestic nonprofit corporation" means a corporation as defined in G.S. 55A‑1‑40.
12. "Foreign corporation" has the same meaning as in G.S. 55‑1‑40.
13. "Foreign limited liability company" has the same meaning as in G.S. 57C‑1‑03.
14. "Foreign limited liability partnership" means a partnership that (i) is formed under laws other than the laws of this State, and has the status of a limited liability partnership or registered limited liability partnership under those laws.
15. "Foreign limited partnership" has the same meaning as in G.S. 59‑102.
16. "Foreign nonprofit corporation" means a foreign corporation as defined in G.S. 55A‑1‑40.
17. "Person" means individuals, partnerships, corporations, limited liability companies, and other associations.
18. "Principal place" means the location (in or out of this State) the marriage partnership designated in its most recent annual report filed with the Secretary of State or, if no annual report has yet been filed, in its application for registration as a marriage partnership.
19. "Real property" means land and any interest or estate in land.

§ 59A‑22. Interpretation of knowledge and notice.

(a) A person has "knowledge" of a fact within the meaning of this Act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances show 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.

§ 59A‑23. 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.

(b) The law of estoppel shall apply under this Act.

(c) The law of agency shall apply under this Act.

§ 59A‑24. Rules for cases not provided for in this Act.

In any case not provided for in this Act, the rules of law and equity, including the law merchant, shall govern.

§ 59A‑24.1. Filing of documents.

(a) A document required or permitted by this Act to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted for filing by the Secretary of State on behalf of a marriage partnership must be executed by all persons who are partners of the marriage partnership at the time the document is submitted.

(c) The Secretary of State may adopt and furnish on request forms for:

(1) Application for registration as a foreign marriage partnership; and

(4) Cancellation of registration as a foreign marriage partnership.

If the Secretary of State so requires, use of these forms is mandatory.

(d) The Secretary of State may adopt and furnish on request forms for other documents required or permitted to be filed by this Act, but their use is not mandatory.

§ 59A‑24.2. Filing, service, and copying fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document Fee

(1) Application for reserved name $10.00

(2) Notice of transfer of reserved name 10.00

(3) Application for registered name 10.00

(4) Application for renewal of registered name 10.00

(5) Registered marriage partnership's or foreign marriage partnership's statement of change of registered agent or registered office or both 5.00

(6) Agent's statement of change of registered office for each affected registered limited liability partnership or foreign limited liability partnership 5.00

(7) Agent's statement of resignation No Fee

(8) Designation of registered agent or registered office or both 5.00

(9) Articles of conversion (other than articles of conversion included as part of another document) 50.00

(10) Articles of merger 50.00

(11) Application for certificate of withdrawal by reason of merger, consolidation, or conversion 10.00

(12) Annual report 200.00

(13) Articles of correction 10.00

(14) Any other document required or permitted to be filed pursuant to this Act 10.00

(b) Whenever the Secretary of State is deemed appointed as a registered agent under this Act or under Chapter 55D of the General Statutes, the Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Act. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a filed marriage partnership document:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original.

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate.

Part 2. Nature of a Partnership.

§ 59A‑25. Marriage Partnership defined.

(a) A marriage partnership is an association of two or more persons to carry on as a family for the purpose of providing mutual affection and comfort, and raising a family.

(b) The marriage partnership is responsible for the care, health and education of all child partners.

§ 59A‑26. Rules for determining the existence of a marriage partnership.

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

(1) Except as provided by G.S. 59A‑46 persons who are not marriage partners as to each other are not marriage partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a marriage partnership, whether such co‑owners do or do not share any profits made by the use of the property.

(3) The representation of persons as being married prior to the effective date of the Act does not establish a marriage partnership.

(4) Cohabitation, bearing a child, raising a child, adopting a child and use of a common name, except as between members of different generations of a common family, are all prima facie evidence of the existence of a marriage partnership.

§ 59A‑27. Marriage Partnership property.

(a) All property originally brought into the partnership or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(b) Unless the contrary intention appears, property acquired with marriage partnership funds is marriage partnership property.

(c) Any estate in real property may be acquired in the marriage partnership name. Title so acquired can be conveyed only in the marriage partnership name. Where title to real property is in the marriage partnership name, the title is held by the partners by the entireties.

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

Part 3. Relations of Partners to Persons Dealing with the Marriage Partnership.

§ 59A‑28. Partner agent of marriage partnership as to marriage partnership activity.

(a) Every adult partner is an agent of the marriage partnership for the purpose of its activities, and the act of every adult partner, including the execution in the marriage partnership name of any instrument, for apparently carrying on the usual activities of the marriage partnership of which he is a member binds the marriage partnership, unless the partner so acting has in fact no authority to act for the marriage 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 activities 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, any group of partners 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) Do any other act which would make it impossible to carry on the ordinary activities of a marriage partnership,

(3) Confess a judgment,

(4) Convey real property held in the marriage partnership name, or

(4) 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 marriage partnership to persons having knowledge of the restriction.

§ 59A‑28.1. Act, admission or acknowledgment by partner.

After a cause of action has accrued on any obligation of a marriage partnership, any act, admission or acknowledgment by any adult partner acting in the ordinary activities of the partnership or with the authority of his partners which removes the bar of the statute of limitations or causes the statutes to begin running anew with respect to the partner doing such act or making such admission or acknowledgment has a like effect with respect to all of the partners and with respect to partnership liability, but when any adult partner is not so acting and does not have the authority of his partners, any act, admission or acknowledgment by the adult partner which removes the bar of the statute of limitations or causes the statute to begin running anew has such effect only as to the partner doing such act or making such admission or acknowledgment, and shall not renew, extend or in any manner impose liability of any kind against any partner who has not authorized or ratified the same nor against the partnership. No act of a child partner shall have the effect of removing the bar of the stature of limitations or causing the statutes to begin running anew with respect to the marriage partnership, or the other partners in the marriage partnership.

§ 59A‑29. Conveyance of real property of the marriage partnership.

(a) Where title to real property is in the name of the marriage partnership, a conveyance executed by an adult partner, in his own name, passes the equitable interest of the marriage partnership, provided the act is one within the authority of the partner under the provisions of subsection (a) of G.S. 59A‑28.

(b) 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 the partnership, the adult 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 subsection (a) of G.S. 59A‑28, unless the purchaser or his assignee, is a holder for value, without knowledge.

(c) 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 an adult 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 subsection (a) of G.S. 59A‑28.

(d) 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.

§ 59A‑30. Marriage partnership bound by admission of partner.

An admission or representation made by any adult partner concerning affairs of the marriage partnership within the scope of his authority as conferred by this Act is evidence against the partnership.

§ 59A‑31. Marriage partnership charged with knowledge of or notice to partner.

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

§ 59A‑32. Marriage 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 partners, 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.

§ 59A‑33. Marriage partnership bound by partner's breach of trust.

The marriage partnership is bound to make good the loss:

(1) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(2) Where the marriage partnership in the course of its activities 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 marriage partnership.

§ 59A‑34. Nature of partner's liability.

(a) All partners are jointly and severally liable for the acts and obligations of the marriage partnership.

(b) The liability of partners of a marriage partnership formed and existing under this Chapter shall at all times be determined solely and exclusively by this Chapter and the laws of this State.

(c) If a conflict arises between the laws of this State and the laws of any other jurisdiction with regard to the liability of a partner of a marriage partnership formed and existing under this Chapter for the debts, obligations, and liabilities of the marriage partnership, this Chapter and the laws of this State shall govern in determining the liability.

(d) Notwithstanding anything to the contrary in this Act, real property owned in the name of the marriage partnership shall be treated as property owned by all the partners by the entireties.

§ 59A‑35. Partner by estoppel.

(a) When a person, by words spoken or written, by conduct, or by contract, represents himself, or consents to another representing him to anyone, as a partner in an existing marriage 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 marriage 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 the representation or consenting to its being made.

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

(2) When no marriage 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 marriage 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 marriage partnership consent to the representation, a marriage 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.

§ 59A‑36. Mandatory admission to partnership

A child born to a partner, or adopted by a partner, before creation of the marriage partnership, shall be admitted as a partner as of the date of creation of the marriage partnership. A child adopted by a partner prior to the partner’s admission as a partner of the marriage partnership shall be admitted as a partner as of the date of admission of the partner to the marriage partnership. A child born to a partner after the date of admission of the partner to the marriage partnership, or adopted by the marriage partnership shall be admitted as a partner of the marriage partnership as of the date of the child’s birth or adoption.

§ 59A‑37. Liability of incoming partner.

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

Part 4. Relations of Partners to One Another.

§ 59A‑39. Rules determining rights and duties of partners.

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

1. Each partner is individually responsible for the care, health and education of each child partner until the child partner attains the age of eighteen years.
2. Each partner is individually responsible for the care and health of each other adult partner.
3. All adult partners have equal rights in the management and conduct of the partnership business.
4. No partner is entitled to remuneration for acting in marriage partnership activities, except that a surviving partner is entitled to reasonable compensation for his services in winding up the marriage partnership affairs.
5. No person can become a member of a marriage partnership without the consent of all the partners.
6. Any difference arising as to ordinary matters connected with marriage partnership activities 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.

§ 59A‑40. Partnership books.

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

§ 59A‑41. Duty of partners to render information.

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

§ 59A‑42. Partner accountable as a fiduciary.

(a) Every partner must account to the marriage 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 marriage partnership as the personal representatives of the last surviving partner.

§ 59A‑43. Right to an account.

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

(1) If he is wrongfully excluded from the partnership activities or possession of its property by his partners,

(2) If the right exists under the terms of any agreement,

(3) As provided by G.S. 59A‑40,

(4) Whenever other circumstances render it just and reasonable.

§ 59A‑44. Continuation of partnership beyond fixed term.

(a) When a marriage partnership for a fixed term is continued after the termination of the term without any express agreement, the rights and duties of the partners remain the same as they were at the termination, so far as is consistent with this Act.

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

Part 5. Property Rights of a Partner.

§ 59A‑45. Extent of property rights of a partner.

The property rights of a partner are:

(1) His right in specific partnership property,

(2) His interest in the partnership, and

(3) His right to participate in the management.

§ 59A‑46. 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 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, full rights under the homestead or exemption laws.

(4) On the death of a partner his right in specific partnership property vests 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, or allowances to widows, heirs, or next of kin.

§ 59A‑47. Nature of partner's interest in the partnership.

A partner's interest in the marriage partnership is his rights to the benefits of his partners obligations, and to his share of the marriage partnership property.

§ 59A‑48. Assignment of partner's interest.

(a) A conveyance by a partner of his interest in the marriage partnership property 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 or participate in the management or administration of the marriage partnership activities or affairs, or to require any information or account of the marriage partnership transactions, or to inspect the marriage partnership books; but it merely entitles the assignee to receive, at the time of dissolution of the marriage partnership, that portion of the marriage partnership property to which the assigning partner would otherwise be entitled, subject to the post-dissolution obligations of the marriage partnership.

(b) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest in the marriage partnership property, subject to the post-dissolution obligations of the marriage partnership, and may require an account from the date only of the last account agreed to by all the partners.

§ 59A‑49. 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 in marriage partnership property other than real estate with payment of the unsatisfied amount of the judgment debt with interest thereon; and may then or later appoint a receiver of his share of any money due or to fall due to him in respect of the marriage 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 shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

Part 6. Dissolution and Winding Up.

§ 59A‑59. 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. (1941, c. 374, s. 29.)

§ 59A‑60. Partnership not terminated by dissolution.

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed. (1941, c. 374, s. 30.)

§ 59A‑61. Causes of dissolution.

Dissolution is caused:

(1) Without violation of the agreement between the partners,

a. By the termination of the definite term or particular undertaking specified in the agreement,

b. By the express will of any partner when no definite term or particular undertaking is specified,

c. By the express will of all partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specific term or particular undertaking,

d. By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) 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;

(3) 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;

(4) By the death of any partner, unless the partnership agreement provides otherwise;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under G.S. 59A‑62. (1941, c. 374, s. 31; 1943, c. 384.)

§ 59A‑62. 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 adjudicated incompetent 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 wilfully 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 with him,

(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 G.S. 59A‑57 and 59A‑58:

(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.

(c) The name of a registered limited liability partnership becomes available for use by another entity as provided in G.S. 55D‑21. (1941, c. 374, s. 32; 1985, c. 589, s. 29; 2001‑358, s. 41; 2001‑387, ss. 173, 175(a); 2001‑413, s. 6; 2001‑487, s. 107(b).)

§ 59A‑63. 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,

(1) With respect to the partners,

a. When the dissolution is not by the act, bankruptcy or death of a partner; or

b. When the dissolution is by such act, bankruptcy or death of a partner, in cases where G.S. 59A‑64 so requires,

(2) With respect to persons not partners, as declared in G.S. 59A‑65. (1941, c. 374, s. 33.)

§ 59A‑64. 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

(1) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or

(2) 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. (1941, c. 374, s. 34.)

§ 59A‑65. Power of partner to bind partnership to third persons after dissolution; publication of notice of dissolution.

(a) After dissolution a partner can bind the partnership except as provided in subsection (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 published at least once a week for four successive weeks in some newspaper qualified for legal advertising in each county in which the partnership business was regularly carried on, or if no such newspaper is published in the county, posted for 30 days at the courthouse and three other public places in the county.

(b) The liability of a partner under subdivision (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; and

(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 subdivision (a)(2)b.

(d) Nothing in this section shall affect the liability under G.S. 59A‑46 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. (1941, c. 374, s. 35; 1951, c. 381, s. 1.)

§ 59A‑66. 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. (1941, c. 374, s. 36.)

§ 59A‑67. 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. (1941, c. 374, s. 37.)

§ 59A‑68. 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 interest 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 G.S. 59A‑66, subsection (b), 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 subsection (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 subdivision (b)(2) all the rights of a partner under subsection (a), subject to clause (b)(1)b, of this section,

b. If the business is continued under subdivision (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 goodwill of the business shall not be considered. (1941, c. 374, s. 38.)

§ 59A‑69. Rights where partnership is dissolved for fraud or misrepresentation.

Where 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,

(1) 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 by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(2) 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

(3) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership. (1941, c. 374, s. 39.)

§ 59A‑70. Rules for distribution.

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

(1) The assets of the partnership are

a. The partnership property,

b. The contributions of the partners necessary for the payment of all the liabilities specified in subdivision (2) of this section.

(2) The liabilities of the partnership shall rank in order of payment, as follows:

a. Those owing to creditors other than partners,

b. Those owing to partners other than for capital and profits,

c. Those owing to partners in respect of capital,

d. Those owing to partners in respect of profits.

(3) The assets shall be applied in the order of their declaration in subdivision (1) of this section to the satisfaction of the liabilities.

(4) The partners shall contribute, as provided by G.S. 59A‑48, subdivision (1) 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.

(5) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in subdivision (4) of this section.

(6) Any partner or his legal representative shall have the right to enforce the contributions specified in subdivision (4) of this section, to the extent of the amount which he has paid in excess of his share of the liability.

(7) The individual property of a deceased partner shall be liable for the contributions specified in subdivision (4) of this section.

(8) 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.

(9) Where a partner has become bankrupt or his estate is insolvent the claims against the separate property shall rank in the following order:

a. Those owing to separate creditors,

b. Those owing to partnership creditors,

c. Those owing to partners by way of contribution. (1941, c. 374, s. 40.)

§ 59A‑71. 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 and assign (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 subsections (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 G.S. 59A‑68, subdivision (b)(2), 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 the 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. (1941, c. 374, s. 41.)

§ 59A‑72. Rights of retiring partner 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 G.S. 59A‑71, subsections (a), (b), (c), (e), (f), or G.S. 59A‑68, subdivision (b)(2), 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 partnership 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 G.S. 59A‑71, subsection (h). (1941, c. 374, s. 42.)

§ 59A‑73. 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. (1941, c. 374, s. 43.)

Article 2A.

Conversion and Merger.

Part 1. General Provisions.

§ 59A‑73.1. Definitions.

As used in this Article:

(1) "Business entity" means a domestic corporation (including a professional corporation as defined in G.S. 55B‑2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B‑16), a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership, a domestic partnership, or any other partnership.

(2) "Domestic partnership" means a partnership as defined in G.S. 59A‑36 that is formed under the laws of this State, including a registered limited liability partnership, but excluding a domestic limited partnership.

(3) "Partnership" means a partnership as defined in G.S. 59A‑36 whether or not formed under the laws of this State including a registered limited liability partnership and a foreign limited liability partnership, but excluding a domestic limited partnership and a foreign limited partnership. (1999‑369, s. 4.1; 2001‑387, ss. 106, 107.)

§ 59‑73.2: Recodified as § 59‑73.20 by Session Laws 2001‑387, s. 105(b).

§ 59‑73.3: Recodified as § 59‑73.30 by Session Laws 2001‑387, s. 105(b).

§ 59‑73.4: Recodified as § 59‑73.31 by Session Laws 2001‑387, s. 105(b).

§ 59‑73.5: Recodified as § 59‑73.32 by Session Laws 2001‑387, s. 105(b).

§ 59‑73.6: Recodified as § 59‑73.33 by Session Laws 2001‑387, s. 105(b).

§ 59‑73.7: Recodified as § 59‑35.1 by Session Laws 2001‑358, s. 9.

§ 59‑73.8. Reserved for future codification purposes.

§ 59‑73.9. Reserved for future codification purposes.

Part 2. Conversion to Domestic Partnership.

§ 59A‑73.10. Conversion.

A business entity other than a domestic partnership may convert to a domestic partnership if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and

(2) The converting business entity complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section. (2001‑387, s. 108.)

§ 59A‑73.11. Plan of conversion.

(a) The converting business entity shall approve a written plan of conversion containing:

(1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the resulting domestic partnership into which the converting business entity shall convert;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic partnership or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting business entity or by any other person, group.

(3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

(b) The plan of conversion shall be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section but before the articles of conversion become effective, the plan of conversion may be amended or abandoned to the extent permitted by the laws that govern the organization and internal affairs of the converting business entity. (2001‑387, s. 108; 2001‑487, s. 62(r); 2005‑268, s. 52.)

§ 59A‑73.12. Filing of articles of conversion by converting business entity.

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59A‑73.11, the converting business entity shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) That the domestic partnership is being formed pursuant to a conversion of another business entity;

(2) The name of the resulting domestic partnership, a designation of its mailing address, and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;

(3) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and

(4) That a plan of conversion has been approved by the converting business entity as required by law.

If the resulting domestic partnership is to be a registered limited liability partnership when the conversion takes effect, then instead of the converting business entity delivering the articles of conversion to the Secretary of State for filing, the articles of conversion shall be included as part of the application for registration filed pursuant to G.S. 59A‑84.2 in addition to the matters otherwise required or permitted by law.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, an amendment to the articles of conversion withdrawing the articles of conversion shall be delivered to the Secretary of State for filing prior to the time the articles of conversion become effective.

(b) The conversion takes effect when the articles of conversion become effective.

(c) Certificates of conversion shall also be registered as provided in G.S. 47‑18.1. (2001‑387, s. 108; 2001‑487, s. 62(s); 2002‑159, s. 34(a).)

§ 59A‑73.13. Effects of conversion.

(a) When the conversion takes effect:

(1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic partnership;

(2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic partnership without reversion or impairment;

(3) All liabilities of the converting business entity continue as liabilities of the resulting domestic partnership;

(4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and

(5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic partnership or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

(b) When the conversion takes effect, the resulting domestic partnership is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting business entity and (ii) any obligation of the resulting domestic partnership arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 59A‑35.2. Upon receipt of service of process on behalf of a resulting domestic partnership in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the resulting domestic partnership. If the resulting domestic partnership is a registered limited liability partnership, the address for mailing shall be its principal office or, if there is no principal office on file, its registered office. If the resulting domestic partnership is not a registered limited liability partnership, the address for mailing shall be the mailing address designated pursuant to G.S. 59A‑73.12(a)(2). (2001‑387, s. 108; 2001‑387, s. 170(c).)

§§ 59A‑73.14 through 59A‑73.19. Reserved for future codification purposes.

Part 3. Conversion of Domestic Partnership.

§ 59A‑73.20. Conversion.

A domestic partnership may convert to a different business entity if:

(1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other business entity; and

(2) The converting domestic partnership complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section. (1999‑369, s. 4.1; 2001‑387, ss. 105(b), 109, 110.)

§ 59A‑73.21. Plan of conversion.

(a) The converting domestic partnership shall approve a written plan of conversion containing:

(1) The name of the converting domestic partnership;

(2) The name of the resulting business entity into which the domestic partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;

(3) The terms and conditions of the conversion; and

(4) The manner and basis for converting the interests in the domestic partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the converting domestic partnership or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the converting domestic partnership is a party, or any other agreement or document.

(b) The plan of conversion shall be approved by the domestic partnership in the manner provided for the approval of the conversion in a written partnership agreement or, if there is no such provision, by the unanimous consent of its partners. If any partner of the converting domestic partnership has or will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the domestic partnership shall require the consent of that partner. The converting domestic partnership shall provide a copy of the plan of conversion to each partner of the converting domestic partnership at the time provided in a written partnership agreement or, if there is no such provision, prior to its approval of the plan of conversion.

(c) After a plan of conversion has been approved by a domestic partnership but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion, or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of conversion or written partnership agreement or, if not so provided, as determined in the manner necessary for approval of the plan of conversion. (2001‑387, s. 111; 2001‑487, s. 62(t); 2005‑268, s. 53.)

§ 59A‑73.22. Articles of conversion.

(a) After a plan of conversion has been approved by the converting domestic partnership as provided in G.S. 59A‑73.21, the converting domestic partnership shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

(1) The name of the converting domestic partnership;

(2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and

(3) That a plan of conversion has been approved by the domestic partnership as required by law.

(b) If the domestic partnership is converting to a business entity whose formation requires the filing of a document with the Secretary of State, then notwithstanding subsection (a) of this section the articles of conversion shall be included as part of that document and shall contain the information required by the laws governing the organization and internal affairs of the resulting business entity.

(c) If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic partnership shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(d) The conversion takes effect when the articles of conversion become effective.

(e) Certificates of conversion shall also be registered as provided in G.S. 47‑18.1. (2001‑387, s. 111; 2001‑487, s. 62(u).)

§ 59A‑73.23. Effects of conversion.

(a) When the conversion takes effect:

(1) The converting domestic partnership ceases its prior form of organization and continues in existence as the resulting business entity;

(2) The title to all real estate and other property owned by the converting domestic partnership continues vested in the resulting business entity without reversion or impairment;

(3) All liabilities of the converting domestic partnership continue as liabilities of the resulting business entity;

(4) A proceeding pending by or against the converting domestic partnership may be continued as if the conversion did not occur; and

(5) The interests in the converting domestic partnership that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting domestic partnership are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting domestic partnership for any acts, omissions, or obligations of the converting domestic partnership made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic partnership in its form of organization as a domestic partnership in the conversion shall not constitute a dissolution or termination of the converting domestic partnership.

(b) If the resulting business entity is not a domestic corporation, a domestic limited partnership, or a domestic limited liability company, when the conversion takes effect the resulting business entity is deemed:

(1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic partnership and (ii) any obligation of the resulting business entity arising from the conversion; and

(2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 59A‑35.2. Upon receipt of service of process on behalf of a resulting business entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the resulting business entity. If the resulting business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the resulting business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59A‑73.22(a)(2). (2001‑387, ss. 111, 170(c); 2001‑487, s. 62(v).)

§§ 59A‑73.24 through 59A‑73.29. Reserved for future codification purposes.

Part 4. Merger.

§ 59A‑73.30. Merger.

A domestic partnership may merge with one or more other domestic partnerships or other business entities if:

(1) The merger is permitted by laws of the state or country governing the organization and internal affairs of each other merging business entity; and

(2) Each merging domestic partnership and each other merging business entity comply with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section. (1999‑369, s. 4.1; 2001‑387, ss. 105(b), 112.)

§ 59A‑73.31. Plan of merger.

(a) Each merging domestic partnership and each other merging business entity shall approve a written plan of merger containing:

(1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

(2) The name of the merging business entity that shall survive the merger;

(3) The terms and conditions of the merger; and

(4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part.

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

(1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by the domestic partnership or by any other person, group, or body.

(3) The terms of, or actions taken under, an agreement to which the domestic partnership is a party, or any other agreement or document.

(b) In the case of a merging domestic partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger or, if there is no provision, by the unanimous consent of its partners. If any partner of a merging domestic partnership has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic partnership shall require the consent of that partner. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

(c) After a plan of merger has been approved by the domestic partnership but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if not so provided, as determined by the unanimous consent of the partners. (1999‑369, s. 4.1; 2001‑387, ss. 105(b), 112, 113; 2005‑268, s. 54.)

§ 59A‑73.32. Articles of merger.

(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in G.S. 59A‑73.31, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

(1) Repealed by Session Laws 2005‑268, s. 55, effective October 1, 2005.

(2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.

(3) The name of the merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law.

(5) Repealed by Session Laws 2005‑268, s. 55, effective October 1, 2005.

If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting the abandonment of the plan of merger.

(b) A merger takes effect when the articles of merger become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47‑18.1. (1999‑369, s. 4.1; 2001‑387, ss. 105(b), 112, 114; 2005‑268, s. 55.)

§ 59A‑73.33. Effects of merger.

(a) When a merger takes effect:

(1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business entity except the surviving business entity ceases;

(2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;

(3) The surviving business entity has all liabilities of each merging business entity;

(4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;

(5) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation, as defined in G.S. 55‑1‑40, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and

(6) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity shall not constitute a dissolution or termination of the merging business entity.

(b) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

(1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59A‑36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and

(2) To have appointed the Secretary of State as its registered agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process and the fee required by G.S. 59A‑35.2. Upon receipt of service of process on behalf of a surviving business entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59A‑73.32(a)(3). (1999‑369, s. 4.1; 2000‑140, s. 52; 2001‑358, s. 10(a); 2001‑387, ss. 105(b), 112, 115, 170(c), 173, 175(a); 2002‑159, s. 17; 2007‑385, s. 5.)

Article 3.

Surviving Partners.

§ 59A‑74. Surviving partner to give bond.

Upon the death of any member of a partnership, the surviving partner shall, within 30 days, execute before the clerk of the superior court of the county where the partnership business was conducted, a bond payable to the State of North Carolina, with sufficient surety conditioned upon the faithful performance of his duties in the settlement of the partnership affairs. The amount of such bond shall be fixed by the clerk of the court; and the settlement of the estate and the liability of the bond shall be the same as under the law governing administrators and their bonds. (1915, c. 227, ss. 1, 2, 3; C.S., s. 3277.)

§ 59A‑75. Effect of failure to give bond.

Upon the failure of the surviving partner to execute the bond provided for in G.S. 59A‑74, the clerk of the superior court shall, upon application of any person interested in the estate of the deceased partner, appoint a collector of the partnership, who shall be governed by the same law governing an administrator of a deceased person. (1915, c. 227, s. 4; C.S., s. 3278.)

§ 59A‑76. Surviving partner and personal representative to make inventory.

When a member of any partnership dies the surviving partner, within 60 days after the death of the deceased partner, together with the personal representative of the deceased partner, shall make out a full and complete inventory of the assets of the partnership, including real estate, if there be any, together with a schedule of the debts and liabilities thereof, a copy of which inventory and schedule shall be retained by the surviving partner, and a copy thereof shall be furnished to the personal representative of the deceased partner. (1901, c. 640; Rev., s. 2540; C.S., s. 3279.)

§ 59A‑77. When personal representative may take inventory; receiver.

If the surviving partner should neglect or refuse to have such inventory made, the personal representative of the deceased partner may have the same made in accordance with the provisions of G.S. 59A‑76. Should any surviving partner fail to take such an inventory or refuse to allow the personal representative of the deceased partner's estate to do so, such personal representative of the deceased partner's estate may forthwith apply to a court of competent jurisdiction for the appointment of a receiver for such partnership, who shall thereupon proceed to wind up the same and dispose of the assets thereof in accordance with law. (1901, c. 640, s. 2; Rev., s. 2541; C.S., s. 3280; 2000‑140, s. 101(o); 2001‑387, s. 116.)

§ 59A‑78. Notice to creditors.

Every surviving partner, within 30 days after the death of the deceased partner, shall notify all persons having claims against the partnership which were in existence at the time of the death of the deceased partner, to exhibit the same to the surviving partner within six months from the date of first publication of such notice. The notice shall be published once a week for four consecutive weeks in a newspaper qualified to publish legal advertisements, if any such newspaper is published in the county. If there is no newspaper published in the county, but there is a newspaper having general circulation in the county, then at the option of the surviving partner the notice shall be published in the newspaper having general circulation in the county and posted at the courthouse or the notice shall be posted at the courthouse and four other public places in the county. (1901, c. 640, s. 3; Rev., s. 2542; C.S., s. 3281; 1951, c. 381, s. 2; 1973, c. 1410, ss. 1, 2.)

§ 59A‑79. Debts paid pro rata; liens.

All debts and demands against a copartnership, where one partner has died, shall be paid pro rata, except debts which are a specific lien on property belonging to the partnership. (1901, c. 640, s. 4; Rev., s. 2543; C.S., s. 3282.)

§ 59A‑80. Effect of failure to present claim in six months.

In an action brought on a claim which was not presented within six months from the first publication of the general notice to creditors, the surviving partner shall not be chargeable for any assets that he may have paid in satisfaction of any debts before such action was commenced, nor shall any costs be recovered in such action against the surviving partner. (1901, c. 640, s. 5; Rev., s. 2544; C.S., s. 3283; 1973, c. 1410, s. 3.)

§ 59A‑81. Procedure for purchase by surviving partner.

(a) Appraisal of Property. – The surviving partner may, if he so desire, make application to the clerk of the superior court of the county in which the partnership existed, after first giving notice to the executor or administrator of the time of the hearing of such application, for the appointment of three judicious, disinterested appraisers, one of whom may be named by the surviving partner, one by the representative of the deceased partner's estate, and the third named by the two appraisers selected, whose duty it shall be to make out under oath a full and complete inventory and appraisement of the entire assets of the partnership, including real estate if there be any, together with a schedule of the debts and liabilities thereof, and to deliver the same to the surviving partner; they shall also deliver a copy to the executor or administrator, and file a copy with the clerk of the court.

(b) Surviving Partner May Purchase. – The surviving partner may, with the consent of the executor or administrator of the deceased partner and the approval of the clerk of the superior court by whom such executor or administrator was appointed, purchase the interest of such deceased partner in the partnership assets at the appraised value thereof, including the good will of the business, first deducting therefrom the debts and liabilities of the partnership, for cash or upon giving to the executor or administrator his promissory note or notes, with good approved security, and satisfactory to the executor or administrator, for the payment of the interest of such deceased partner in the partnership assets.

(c) Surviving Partner to Give Bond. – In case the surviving partner shall avail himself of the privilege of purchasing such interest as provided for in this section, he shall give bond to the executor or administrator with surety for the payment of the debts and liabilities of the partnership, and for the performance of all contracts for which the partnership is liable.

(d) Sale of Real Estate. – In case of such sale of the real estate belonging to the partnership, the title to the real estate so purchased shall not pass until the sale thereof has been reported to and confirmed by the clerk of the superior court of the county in which the partnership was located, in a special proceeding to which the widow and heirs at law or devisees of the deceased partner are duly made parties. (1901, c. 640, s. 6; Rev., s. 2545; 1911, c. 12; C.S., s. 3284.)

§ 59A‑82. Surviving partner to account and settle.

In case the surviving partner shall not avail himself of the privilege of purchasing the interest of the deceased partner, he shall, within six months from the date of the first publication of notice to creditors, file with the clerk of the superior court of the county where the partnership was located, an account, under oath, stating his action as surviving partner, and shall come to a settlement with the executor or administrator of the deceased partner: Provided, that the clerk of the superior court shall have power, upon good cause shown, to extend the time within which said final settlement shall be made. The surviving partner for his services in settling the partnership estate shall receive commissions to be allowed by the court. (1901, c. 640, s. 7; Rev., s. 2546; C.S., s. 3285; 1947, c. 781; 1957, c. 783, s. 6; 1973, c. 1410, s. 4.)

§ 59A‑83. Accounting compelled.

In case any surviving partner fails to come to a settlement with the executor or administrator of the deceased partner within the time prescribed by law, the clerk of the superior court may, at the instance of such executor, administrator or other person interested in such deceased partnership estate, cite the surviving partners to a final settlement as provided for by law in the case of executors and administrators. (1901, c. 640, s. 8; Rev., s. 2547; C.S., s. 3286.)

§ 59A‑84. Settlement otherwise provided for.

When the original articles of partnership in force at the death of any partner or the will of a deceased partner make provision for the settlement of the deceased partner's interest in the partnership, and for a disposition thereof different from that provided for in this Chapter, the interest of such deceased partner in the partnership shall be settled and disposed of in accordance with the provisions of such articles of partnership or of such will. (1901, c. 640, s. 6; Rev., s. 2545; C.S., s. 3287.)

Article 3A.

Miscellaneous Provisions.

§ 59A‑84.1. Partnership to comply with "assumed name" statute; income taxation.

(a) Every partnership other than a limited partnership shall comply with, and be subject to, the provisions of Articles 14 and 15 of Chapter 66 of the General Statutes in all cases in which the same are applicable.

(b) A partnership, including a registered limited liability partnership and a foreign limited liability partnership, and a partner of one of these partnerships are subject to taxation under Article 4 of Chapter 105 of the General Statutes in accordance with their classification for federal income tax purposes. Accordingly, if any such partnership is classified for federal income tax purposes as a C corporation as defined in G.S. 105‑131(b)(2) or an S corporation as defined in G.S. 105‑131(b)(8), the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes to the same extent as a C corporation or an S corporation, as the case may be, and its shareholders. If any such partnership is classified for federal income tax purposes as a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes accordingly. If any such partnership is classified for federal income tax purposes as other than a corporation or a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes in a manner consistent with that classification. This section does not require a partnership, including any registered limited liability partnership or foreign limited liability partnership authorized to transact business in this State, to obtain an administrative ruling from the Internal Revenue Service on its classification under the Internal Revenue Code. (1951, c. 381, s. 9; 1993, c. 354, s. 5; 2001‑387, s. 117.)