

## **IC 23-16-3**

### **Chapter 3. Formation and Certificate of Limited Partnership**

#### **IC 23-16-3-1**

##### **Partnership agreement**

Sec. 1. (a) A limited partnership must have a partnership agreement. Except as provided in IC 23-16-8-2 and IC 23-16-8-4, a person has the rights, and is subject to the liabilities, of a general partner only if the person has signed a partnership agreement in person or by an attorney-in-fact.

(b) The partnership agreement of a limited partnership may be amended from time to time. Unless the partnership agreement provides otherwise, an amendment of the partnership agreement may be made only with the written consent of each limited partner who may be adversely affected by an amendment that would accomplish any of the following:

- (1) Increase the obligations of any limited partner to make contributions.
- (2) Alter the allocation for tax purposes of any items of income, gain, loss, deduction, or credit.
- (3) Alter the manner of computing the distributions of any partner.
- (4) Alter, except as provided in IC 23-16-4-2(a), the voting or other rights of any limited partner.
- (5) Allow the obligation of a partner to make a contribution to be compromised by written consent of fewer than all partners.
- (6) Alter the procedures for amendment of the partnership agreement.

*As added by P.L.147-1988, SEC.1.*

#### **IC 23-16-3-2**

##### **Certificate of limited partnership**

Sec. 2. (a) To form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the secretary of state. The certificate must include the following:

- (1) The name of the limited partnership.
- (2) The address of the office and the name and address of the agent for service of process required to be maintained by IC 23-16-2-3.
- (3) The name and the business address of each general partner.
- (4) The latest date upon which the limited partnership is to dissolve.
- (5) Any other matters the general partners agree to include.

(b) A limited partnership is formed at the time of the filing of the initial certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section. Unless the certificate specifies an effective date that is different from the filing date, the time and date of the filing of the certificate is conclusive evidence as to when

a limited partnership is formed.  
*As added by P.L.147-1988, SEC.1.*

### **IC 23-16-3-3**

#### **Amendment to certificate**

Sec. 3. (a) A certificate of limited partnership is amended by filing a certificate of amendment in the office of the secretary of state. The certificate of amendment must include the following:

- (1) The name of the limited partnership.
- (2) The amendment to the certificate of limited partnership.

(b) Within sixty (60) days after any of the following events occurs, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed:

- (1) The admission of a new general partner.
- (2) The withdrawal of a general partner.
- (3) The continuation of the business under IC 23-16-9-1 after an event of withdrawal of a general partner.
- (4) The discovery by a general partner that any statement in the certificate of limited partnership was false when made.
- (5) The discovery by a general partner that any facts or arrangements described in the certificate of limited partnership have changed, making the certificate inaccurate in any respect.

(c) The filing of an amendment reflecting the occurrence of an event referred to in subsection (b) within the time required under subsection (b) absolves a person from any liability that might arise because the certificate did not reflect the occurrence of that event before the filing of the amendment.

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

*As added by P.L.147-1988, SEC.1.*

### **IC 23-16-3-4**

#### **Cancellation of certificate**

Sec. 4. A certificate of limited partnership shall be cancelled by filing a certificate of cancellation upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the secretary of state and must include the following:

- (1) The name of the limited partnership.
- (2) The date of filing of its certificate of limited partnership.
- (3) The reason for filing the certificate of cancellation.
- (4) The effective date or time (which must be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate.
- (5) Any other information the person filing the certificate of cancellation determines.

*As added by P.L.147-1988, SEC.1.*

### **IC 23-16-3-5**

#### **Execution of certificates**

Sec. 5. (a) Each certificate required or permitted to be filed in the office of the secretary of state under this article shall be executed in the following manner:

- (1) An initial certificate of limited partnership must be signed by all general partners.
- (2) A certificate of amendment or restatement must be signed by at least one (1) general partner and by each other general partner designated in the certificate as a new general partner; however, if there are no general partners a certificate of amendment or restatement must be signed by each new general partner as designated in the certificate.
- (3) A certificate of cancellation must be signed by all general partners; however, if there is no general partner, a certificate of cancellation must be signed by a majority in interest of the limited partners.

(b) Any person may sign a certificate, a partnership agreement, or an amendment to a certificate or partnership agreement by an attorney in fact. Powers of attorney relating to the signing of a certificate, a partnership agreement, or an amendment to a certificate or partnership agreement by an attorney in fact need not be sworn to, verified, acknowledged, or signed in the presence of a notary public, and need not be filed with the secretary of state, but must be retained among the records of the partnership. A power of attorney may be included in the partnership agreement and need not be a separate document.

(c) The execution of a certificate by any person constitutes an oath or affirmation under the penalties of perjury that to the best of the person's knowledge and belief the statements made in the certificate are true.

(d) A signature on a document under this section that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

- (1) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and
- (2) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

*As added by P.L.147-1988, SEC.1. Amended by P.L.130-2006, SEC.22; P.L.40-2013, SEC.3.*

### **IC 23-16-3-6**

#### **Execution by judicial act**

Sec. 6. If a person required to execute any certificate under section 5 of this chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the circuit or superior court of the county in which the office described in IC 23-16-2-3 is located to direct the execution of the certificate. If the office referred to in IC 23-16-2-3 is not within Indiana, the petition

may be made to the circuit or superior court of the county in which the business address of the registered agent referred to in IC 23-16-2-3 is located. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to file a certificate in form and substance as directed by the court.

*As added by P.L.147-1988, SEC.1.*

### **IC 23-16-3-7**

#### **Filing in office of secretary of state**

Sec. 7. (a) The original signed copy (together with a duplicate copy, which may be either a signed or conformed copy) of the certificate of limited partnership, of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation), and of any restated certificate shall be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of the person's authority as a prerequisite to filing. Unless the secretary of state finds that a certificate does not conform to law, upon receipt of all filing fees required by law, the secretary of state shall:

- (1) endorse on the original and each copy the word "filed" and the date and time of the filing;
- (2) file the original certificate; and
- (3) return the copy to the person who filed it or to that person's representative.

(b) In the absence of fraud an endorsement by the secretary of state under subsection (a) is conclusive evidence of the date and time of the filing of the certificate.

(c) Upon the filing of a certificate of amendment (or judicial decree of amendment) or a restated certificate in the office of the secretary of state, or upon the effective date or time provided for in a certificate of amendment (or judicial decree of amendment) or a restated certificate, the certificate of limited partnership is amended or restated as set forth in the certificate of amendment or restated certificate. Upon the filing of a certificate of cancellation (or a judicial decree of cancellation), or upon the effective date or time of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is cancelled.

*As added by P.L.147-1988, SEC.1.*

### **IC 23-16-3-8**

#### **Liability for false statement in certificate**

Sec. 8. (a) Except as provided in subsection (b), if any certificate of limited partnership or certificate of amendment or cancellation contains a materially false statement, a person who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

- (1) any person who executed the certificate, or caused another to execute the certificate on that person's behalf, and who knew

the statement to be false at the time the certificate was executed;  
(2) any general partner who knew or should have known the statement to be false at the time the certificate was executed;  
and

(3) any general partner who:

(A) after the execution of the certificate, but at least sixty (60) days before the statement was reasonably relied upon, knew or should have known that any arrangement or other fact described in a statement in the certificate had changed, making the statement inaccurate; and

(B) failed to cancel or amend the certificate or to file a petition for the cancellation or amendment of the certificate under section 6 of this chapter before the statement was reasonably relied upon.

(b) A general partner is not liable for failing to cancel or amend a certificate or for failing to file a petition for the amendment or cancellation of a certificate under subsection (a)(2) if a certificate of amendment, certificate of cancellation, or petition for amendment or cancellation is filed within sixty (60) days after the general partner knew or should have known to the extent provided in subsection (a) that the statement in the certificate was false in any material respect.  
*As added by P.L.147-1988, SEC.1.*

#### **IC 23-16-3-9**

##### **Scope of notice**

Sec. 9. The fact that a certificate of limited partnership is on file in the office of the secretary of state is notice that the partnership is a limited partnership and is notice of all other facts that are required to be set forth in a certificate of limited partnership under section 2 of this chapter and that are set forth in the certificate.

*As added by P.L.147-1988, SEC.1.*

#### **IC 23-16-3-10**

##### **Delivery of certificates to limited partners**

Sec. 10. Upon the return by the secretary of state of a certificate marked "Filed" under section 7 of this chapter, the general partners shall promptly deliver or mail a copy of the certificate to each limited partner, unless the partnership agreement provides otherwise.

*As added by P.L.147-1988, SEC.1.*

#### **IC 23-16-3-11**

##### **Integration and restatement of certificate**

Sec. 11. (a) Whenever it so desires, a limited partnership may integrate into a single instrument all of the provisions of its certificate of limited partnership that are in effect and operative as a result of the previous filing with the secretary of state of one (1) or more certificates or other instruments under this article by filing a restated certificate of limited partnership specifically designated as a "Restated Certificate of Partnership", and stating in its heading or in a separate paragraph that there is no discrepancy between the

provisions of the original certificate of limited partnership with its amendments and the restated certificate. If the restated certificate restates and integrates and also further amends in any respect the certificate of limited partnership, as previously amended or supplemented, it must bear a heading with the words "Amended and Restated Certificate of Limited Partnership" together with such other words as the partnership considers appropriate, it must be executed by at least one (1) general partner and by each other general partner designated in the amended and restated certificate of limited partnership as a new general partner, and it must be filed under section 7 of this chapter in the office of the secretary of state.

(b) A restated or amended and restated certificate of limited partnership must state, either in its heading or in an introductory paragraph, the limited partnership's present name (and, if it has been changed, the name under which the limited partnership was originally filed), the date of filing of the original certificate of limited partnership with the secretary of state, and the effective date or time (which must be a date or time certain) of the restated or amended and restated certificate, if it is not to be effective upon the filing of the restated or amended and restated certificate. A restated or amended and restated certificate must also state that it was duly executed and is being filed in accordance with this section.

(c) Upon the filing of the restated certificate of limited partnership with the secretary of state, or upon the effective date or time provided for in the restated certificate of limited partnership, the initial certificate of limited partnership, as previously amended or supplemented, is superseded. After that filing, the restated certificate of limited partnership, including any further amendment or changes made by the restated certificate, is the certificate of limited partnership, but the original effective date of formation of the limited partnership remains unchanged.

(d) Any amendment or change effected in connection with the restatement and integration of the certificate of limited partnership under this section is subject to any other provision of this article that is not inconsistent with this section and that would apply if a separate certificate of amendment were filed to effect the amendment or change.

*As added by P.L.147-1988, SEC.1.*

### **IC 23-16-3-12**

#### **Mergers**

Sec. 12. (a) A domestic limited partnership may merge with or into one (1) or more domestic limited partnerships or foreign limited partnerships formed under the laws of another state, with one (1) partnership, as provided in the merger agreement, being the surviving partnership.

(b) A domestic limited partnership that is not the surviving partnership in the merger shall file a certificate of cancellation, which must have an effective date not later than the effective date of the merger.

(c) If, following a merger of one (1) or more domestic limited partnerships and one (1) or more foreign limited partnerships formed under the laws of another state, the surviving partnership is not a domestic limited partnership, the surviving partnership shall execute a certificate, which must be attached to the certificate of cancellation filed for each domestic limited partnership under section 4 of this chapter, that states that it agrees that it may be served with process in Indiana in any action for the enforcement of any obligation of the domestic limited partnership, that irrevocably appoints the secretary of state as its agent to accept service of process in any such action, and that specifies the address to which the secretary of state may mail a copy of process served in any such action. If there is service of process on the secretary of state under this subsection, the plaintiff in any such action shall furnish the secretary of state with the address specified in the certificate provided for in this section and any other address that the plaintiff may elect to furnish, and the secretary of state shall notify the surviving partnership at all such addresses furnished by the plaintiff in accordance with this section.

(d) When the certificate of cancellation required by section 4 of this chapter becomes effective, for all purposes of the laws of Indiana, all of the rights, privileges, and powers of each of the partnerships that have merged, and all real property, personal property, and mixed property and all debts due to any of the partnerships, as well as all other things and causes of action belonging to each of the partnerships, shall be vested in the surviving partnership and become the property of the surviving partnership as they were of each of the partnerships that have merged. The title to any real property vested by deed or otherwise under the laws of Indiana in any of the partnerships does not revert and is not impaired by reason of this chapter. However, all rights of creditors and all liens upon any property of any of the partnerships are preserved unimpaired, and all debts, liabilities, and duties of each of the partnerships that have merged attach to the surviving partnership and may be enforced against it to the same extent as if those debts, liabilities, and duties had been incurred or contracted by it.

*As added by P.L.147-1988, SEC.1.*

### **IC 23-16-3-13**

#### **Requirements for merger of domestic limited partnership with other business entity; plan of merger**

Sec. 13. (a) As used in this section, "other business entity" means a corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law.

(b) As used in this section, "surviving entity" means the corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic limited partnerships may merge with

or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the following requirements are met:

(1) Each domestic limited partnership corporation that is a party to the merger complies with the applicable provisions of this chapter.

(2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.

(3) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.

(4) The merging entities approve a plan of merger that sets forth the following:

(A) The name of each domestic limited partnership and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic corporation or other business entity into which each other domestic corporation or other business entity plans to merge.

(B) The terms and conditions of the merger.

(C) The manner and basis of converting the limited partnership shares of each domestic limited partnership that is a party to the merger and the partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management of the limited liability company is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or



incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

(d) The plan of merger required by subsection (c)(4) will be adopted and approved by each domestic corporation that is a party to the merger in the same manner as is provided in this chapter.

(e) Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a party to the merger does not, as a result of the merger, become a general partner of the surviving entity and the merger does not become effective under this chapter, unless:

(1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and

(2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity;

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

(e) This section, to the extent applicable, applies to the merger of one (1) or more domestic limited partnerships with or into one (1) or more other business entities.

(f) Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic limited partnerships with or into one (1) or more foreign corporations must be made solely according to the requirements of this section.

*As added by P.L.178-2002, SEC.104.*

#### **IC 23-16-3-14**

##### **Entity conversion**

Sec. 14. (a) As used in this section, "other entity" has the meaning set forth in IC 23-1-38.5-1.

(b) A domestic corporation, domestic other entity, foreign corporation, or foreign other entity may convert to a domestic limited partnership under IC 23-1-38.5.

(c) A domestic limited partnership may convert to a domestic corporation, domestic other entity, foreign corporation, or foreign other entity under IC 23-1-38.5.

*As added by P.L.130-2006, SEC.23.*