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A. (§4.1) Limited Partnership Defined

A limited partnership is a partnership consisting of one or more general partners and one or more limited partners. ORS 70.005(15). General partners manage the limited partnership business and are personally liable for limited partnership obligations. Limited partners do not participate in the management of the limited partnership business, and their liability for limited partnership obligations is limited to their capital contributions. See §§4.15–4.25, infra.

B. (§4.2) History

Limited partnerships are a product of statute. The Uniform Limited Partnership Act was approved by the National Conference of Commissioners on Uniform State Laws in 1916. Oregon adopted a modified version of the Uniform Limited Partnership Act in 1971. In 1976, the National Conference of Commissioners on Uniform State Laws approved the Revised Uniform Limited Partnership Act, which modernized and updated the Uniform Limited Partnership Act. In 1985, Oregon enacted, with minor modifications, the Revised Uniform Limited Partnership Act, which is codified in ORS chapter 70 and known as the Oregon Uniform Limited Partnership Act (“Oregon ULPA”). ORS 70.625. In 1987, the Oregon ULPA was amended to incorporate changes to the Revised Uniform Limited Partnership Act that were approved by the National Conference of Commissioners on Uniform State Laws in 1985.

The enactment of the Oregon Revised Partnership Act in 1997 has had a significant effect on Oregon limited partnerships. See ORS 70.615, which provides that “[i]n any case governing limited
partnerships that is not provided for in [the Oregon ULPA], the provisions of ORS chapter 67 govern.” The Oregon ULPA was designed to complement the antiquated Oregon Uniform Partnership Law, ORS chapter 68, which will be fully repealed on January 1, 2003. Because the Oregon Revised Partnership Act constitutes a significant departure from the Oregon Uniform Partnership Law, the Oregon Revised Partnership Act effectively changes the law governing Oregon limited partnerships through the linkage provision in ORS 70.615. See chapter 2, supra.

NOTE: For limited partnerships formed before January 1, 1998, that have not elected to be governed by ORS chapter 67, matters not provided for in the Oregon ULPA will be governed by ORS chapter 68 until January 1, 2003. See note following ORS 70.615.

In 1999, the Oregon ULPA was amended to permit another type of business entity to convert to a limited partnership and to permit a limited partnership to convert to another type of business entity. See §4.33, infra. In addition, the 1999 amendments to the Oregon ULPA permit a limited partnership to merge with one or more other types of business entities. See §4.34, infra.

C. (§4.3) Limited Partnerships Compared to Other Types of Business Entities

Historically, the popularity of limited partnerships derived from the limited liability afforded to limited partners, the management control vested in the general partners, and partnership tax treatment. In recent years, the distinctions between limited partnerships and other types of entities have begun to blur, particularly with the emergence of limited liability companies (LLCs).

Limited partnerships are more formal and hierarchical in structure than general partnerships. Limited partnerships must comply with public filing requirements, whereas general partnerships have virtually no filing requirements. In limited partnerships, management control is vested in the general partners who have unlimited liability, and the limited partners, who are usually passive investors, have limited liability and little or no control. In contrast, the partners in a general partnership have the right to participate in the management of the partnership but are subject to unlimited liability. See chapter 2, supra. In recent years, however, the distinctions between limited partnerships and general partnerships have become less pronounced. For example, many large general partnerships have developed management structures that limit
the management rights of nonmanaging partners. In addition, the partners in a general partnership that renders professional service, as defined in ORS 67.005(12)–(13), may escape personal liability for certain partnership liabilities by becoming a limited liability partnership (LLP). See chapter 3, supra.

In comparing corporations to limited partnerships, there is no corporate counterpart to the unlimited liability of a general partner. Moreover, a corporation cannot obtain the partnership tax treatment that is available to limited partnerships; the pass-through tax treatment that some corporations can achieve by making a Subchapter S election significantly differs from partnership taxation. Compare chapter 5 and chapter 13, infra. Furthermore, limited partnerships and corporations differ regarding the greater entrenchment of general partners relative to directors and the more limited rights that limited partners have in comparison to shareholders. Some of these differences, however, may be mitigated. For example, provisions in the limited partnership agreement may enhance the rights of limited partners (but not subject them to liability under ORS 70.135), such as enabling the limited partners to remove a general partner under specified circumstances. Similarly, corporations may have dual-class capital structures or shareholder agreements that vest management control in certain shareholders to the exclusion of other shareholders.

The attributes that favored limited partnerships in the past, including partnership tax treatment, are now largely available through LLCs. Unlike limited partnerships, LLCs provide limited liability to all members, including those who participate in management. Consequently, investors who would have been limited partners in a limited partnership can, through an LLC, take part in the control of the LLC without risking personal liability. In comparison to the structural rigidities inherent in limited partnerships, the statutory framework for LLCs provides for significant flexibility that enables each LLC to be tailored to the needs of its members. See chapter 7, infra.

If the distinctions among different types of entities are blurring, under what circumstance is the limited partnership clearly preferred over other types of entities? In general, a limited partnership is most useful in contexts such as real estate and venture capital, where a need exists for partnership taxation and where the managers need to be vested with complete managerial discretion over the investment funds provided by passive investors.
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71 Agreement BetweenSubmitter of Ideas or
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72 Employee or Consultant
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73  Short Form Confidentiality Agreement

74  Franchise Agreement

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