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DELAWARE STATE SENATE  
148th GENERAL ASSEMBLY

SENATE BILL NO. 76

AN ACT TO AMEND CHAPTER 15, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 15-123, Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 15-123. Irrevocable power of attorney or proxy.

For all purposes of the laws of the State of Delaware, a power of attorney or proxy with respect to ~~matters relating to the organization, internal affairs or termination of a partnership or granted by a person as a partner or a transferee of an economic interest or by a person seeking to become a partner or a transferee of an economic interest~~ a partnership granted to any person shall be irrevocable if it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power or proxy. Such irrevocable power of attorney or proxy, unless otherwise provided therein, shall not be affected by subsequent death, disability, incapacity, dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney or proxy with respect to matters relating to the organization, internal affairs or termination of a partnership or granted by a person as a partner or a transferee of an economic interest or by a person seeking to become a partner or a transferee of an economic interest and, in either case, granted to the partnership, a partner thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in law to support an irrevocable power or proxy. The provisions of this section shall not be construed to limit the enforceability of a power of attorney or proxy that is part of a partnership agreement.

Section 2. Amend § 15-202(f), Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(f) ~~Unless otherwise provided in a partnership agreement, a~~ partnership has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney.

Section 3. Amend § 15-401(l), Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(l) A partner has the power and authority to delegate to 1 or more other persons the partner's rights and powers to manage and control the business and affairs of the partnership, including to delegate to agents, officers and employees of the partner or the partnership, and to delegate by a management agreement or other agreement with, or otherwise to, other persons. Such delegation by a partner shall be irrevocable if it states that it is irrevocable. Such delegation by a partner shall not cause the partner to cease to be a partner of the partnership or cause the person to whom any such rights and powers have been delegated to be a partner of the partnership.

Section 4. Amend § 15-401(m), Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(m) ~~Unless otherwise provided in a partnership agreement or another agreement, a~~A partner shall have no preemptive right to subscribe to any additional issue of partnership interests or another interest in a partnership.

Section 5. Amend § 15-407(d), Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(d) ~~Unless otherwise provided in a partnership agreement, m~~Meetings of partners may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. On any matter that is to be voted on, consented to or approved by partners, the partners may take such action without a meeting, without prior notice and without a vote if consented to, in writing or by electronic transmission, by partners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all partners entitled to vote thereon were present and voted. ~~Unless otherwise provided in a partnership agreement, i~~f a person (whether or not then a partner) consenting as a partner to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a partner at such future time so long as such person is then a partner. On any matter that is to be voted on by partners, the partners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. ~~Unless otherwise provided in a partnership agreement, a~~A consent transmitted by electronic transmission by a partner or by a person or persons authorized to act for a partner shall be deemed to be written and signed for purposes of this subsection (d). For purposes of this subsection (d), the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 6. Amend § 15-407(e), Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) If a partnership agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the partnership agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, including as permitted by § 15-902(g) of this title (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended). If a partnership agreement does not provide for the manner in which it may be amended, the

partnership agreement may be amended with the approval of all the partners or as otherwise permitted by law, including as permitted by § 15-902(g) of this title. ~~Unless otherwise provided in a partnership agreement, a~~ supermajority amendment provision shall only apply to provisions of the partnership agreement that are expressly included in the partnership agreement. As used in this section, "supermajority amendment provision" means any amendment provision set forth in a partnership agreement requiring that an amendment to a provision of the partnership agreement be adopted by no less than the vote or consent required to take action under such latter provision.

Section 7. Amend § 15-807(h), Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(h) A limited liability partnership which has dissolved (i) shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured contractual claims, known to the limited liability partnership, (ii) shall make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited liability partnership which is the subject of a pending action, suit or proceeding to which the limited liability partnership is a party and (iii) shall make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability partnership or that have not arisen but that, based on facts known to the limited liability partnership, are likely to arise or to become known to the limited liability partnership within 10 years after the date of dissolution. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets available therefor. ~~Unless otherwise provided in the partnership agreement, a~~Any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding up a limited liability partnership's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability partnership by reason of such person's actions in winding up the limited liability partnership.

Section 8. Amend § 15-902(b), Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(b) Pursuant to an agreement of merger or consolidation, 1 or more domestic partnerships may merge or consolidate with or into 1 or more domestic partnerships or 1 or more other business entities formed or organized under the laws of the State of Delaware or any other state or the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic partnership or other business entity as the agreement shall provide being the surviving or resulting domestic partnership or other business entity. ~~Unless otherwise provided in the partnership agreement, a~~An agreement of merger or consolidation or a plan of merger shall be approved by each domestic partnership which is to merge or consolidate by all of its partners. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic partnership or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in a domestic partnership or other business entity which is not the surviving or resulting domestic partnership or other business entity in the merger or consolidation, may remain outstanding or may be canceled. Notwithstanding prior approval, an agreement of

merger or consolidation or a plan of merger may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation or plan of merger.

Section 9. Amend § 15-1207(a)(5), Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(5) The Secretary of State may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies, whether certified or not, a fee of \$10 shall be paid for the first page and \$2.00 for each additional page. ~~The Secretary of State may also issue microfiche copies of instruments on file as well as instruments, documents and other papers not on file, and for each such microfiche a fee of \$2.00 shall be paid therefor.~~ Notwithstanding the State of Delaware's Freedom of Information Act [Chapter 100 of Title 29] or other provision of ~~this Code law~~ granting access to public records, the Secretary of State upon request shall issue only photocopies, ~~microfiche~~ or electronic image copies of public records in exchange for the fees described ~~above~~ in this section, and in no case shall the Secretary of State be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form other than photocopies or electronic image copies of such public records in exchange for the fees, as applicable, described in this section or § 2318 of Title 29 for each such record associated with a file number.

Section 10. Sections 1 through 8 shall become effective August 1, 2015. Section 9 shall be effective upon its enactment into law.

#### SYNOPSIS

This bill continues the practice of amending periodically the Delaware Revised Uniform Partnership Act (the "Act") to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments of the Act.

Section 1. This section amends § 15-123 of the Act to confirm that the provisions of that section relating to a power of attorney also apply to a proxy.

Sections 2, 4, 5, 6, 7 and 8. These sections amend § 15-202(f), § 15-401(m), § 15-407(d), § 15-407(e), § 15-807(h) and § 15-902(b) to delete surplus language and do not change the effect of those sections as, pursuant to § 15-103 of the Act, a partnership agreement can otherwise provide with respect to those sections.

Section 3. This section amends § 15-401(l) of the Act to confirm that unless otherwise provided in a partnership agreement, a delegation of rights and powers is irrevocable if it states that it is irrevocable.

Section 9. This section amends § 15-1207(a)(5) of the Act to confirm that in exchange for the fees described the Secretary of State may issue public records in the form of photocopies or electronic image copies and need not provide public records in any other form.

Section 10. This section amends the proposed amendments of the Act shall become effective August 1, 2015, except that the amendment to Section 15-1207(a)(5) shall be effective upon its enactment into law.

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