

[ARTICLE] 5
CONTRIBUTIONS AND DISTRIBUTIONS

SECTION 501. FORM OF CONTRIBUTION. A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

Comment

Source – ULLCA Section 401.

SECTION 502. LIABILITY FOR CONTRIBUTION.

(a) A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the partner's death, disability, or other inability to perform personally.

(b) If a partner does not make a promised non-monetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution which has not been made.

(c) The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this [Act] may be compromised only by consent of all partners. A creditor of a limited partnership which extends credit or otherwise acts in reliance on an obligation described in subsection (a), without notice of any compromise under this subsection, may enforce the original obligation.

Comment

In contrast with predecessor law, RULPA Section 502(a), this Act does not include a statute of frauds provision covering promised contributions. Section 111(9)(A) does require that the value of a promised contribution be memorialized, but that requirement does not affect enforceability. See Comment to Section 111(9).

Subsection (a) – Source: RULPA Section 502(b).

Under common law principles of impracticability, an individual's death or incapacity will sometimes discharge a duty to render performance. Restatement (Second) of Contracts, Sections 261 and 262. This subsection overrides those principles.

Subsection (b) – RULPA Section 502(b).

This subsection is a statutory liquidated damage provision, exercisable at the option of the limited partnership, with the damage amount set according to the value of the promised, non-monetary contribution as stated in the required information.

Example: In order to become a limited partner, a person promises to contribute to the limited partnership various assets which the partnership agreement values at \$150,000. In return for the person's promise, and in light of the agreed value, the limited partnership admits the person as a limited partner with a right to receive 25% of the limited partnership's distributions.

The promised assets are subject to a security agreement, but the limited partner promises to contribute them "free and clear." Before the limited partner can contribute the assets, the secured party forecloses on the security interest and sells the assets at a public sale for \$75,000. Even if the \$75,000 reflects the actual fair market value of the assets, under this subsection the limited partnership has a claim against the limited partner for "the value, as stated in the required information, of the stated contribution which has not been made" – i.e., \$150,000.

This section applies "at the option of the limited partnership" and does not affect other remedies which the limited partnership may have under other law.

Example: Same facts as the previous example, except that the public sale brings \$225,000. The limited partnership is not obliged to invoke this subsection and may instead sue for breach of the promise to make the contribution, asserting the \$225,000 figure as evidence of the actual loss suffered as a result of the breach.

Subsection (c) – Source: ULLCA Section 402(b); RULPA Section 502(c). The first sentence of this subsection applies not only to promised contributions but also to improper distributions. See Sections 508 and 509. The second sentence, pertaining to creditor’s rights, applies only to promised contributions.

SECTION 503. SHARING OF DISTRIBUTIONS. A distribution by a limited partnership must be shared among the partners on the basis of the value, as stated in the required records when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner.

Comment

This Act has no provision allocating profits and losses among the partners. Instead, the Act directly apportions the right to receive distributions.

Nearly all limited partnerships will choose to allocate profits and losses in order to comply with applicable tax, accounting and other regulatory requirements. Those requirements, rather than this Act, are the proper source of guidance for that profit and loss allocation.

Unlike predecessor law, this section apportions distributions in relation to the value of contributions received from each partner without regard to whether the limited partnership has returned any of those contributions. Compare RULPA Sections 503 and 504. This Act’s approach produces the same result as predecessor law, so long as the limited partnership does not vary this section’s approach to apportioning distributions.

This section’s rule for sharing distributions is subject to change under Section 110. A limited partnership that does vary the rule should be careful to consider not only the tax and accounting consequences but also the “ripple” effect on other provisions of this Act. See, e.g., Sections 801 and 803(c) (apportioning consent power in relation to the right to receive distributions).