

CHAPTER 51

CORPORATIONS AND ASSOCIATIONS

HOUSE BILL 99-1259

BY REPRESENTATIVES Kaufman and Tate;
also SENATOR Lamborn.

AN ACT

CONCERNING PRESUMPTIONS RELATED TO CERTIFICATES OF LIMITED PARTNERSHIP.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 7-62-205, Colorado Revised Statutes, is amended to read:

7-62-205. Execution by judicial act - presumptions. (1) Any person who is adversely affected by a failure or refusal to execute and file any certificate may petition the district court in the county where the address of the agent for service of process of the limited partnership, as reflected in the last certificate, is located or, if no such address or certificate is on file, in the city and county of Denver, to direct the execution and filing of the certificate. If the court finds that it is proper for the certificate to be executed and filed and that there has been a failure or refusal to execute and file the certificate, it shall order the secretary of state to record an appropriate certificate.

(2) (a) FOR THE PURPOSES OF THIS SUBSECTION (2), THE DEFINITIONS IN SECTION 7-62-101 SHALL APPLY; EXCEPT THAT:

(I) "GENERAL PARTNER" INCLUDES A PARTNER WHO IS IDENTIFIED OR OTHERWISE CLASSIFIED AS A GENERAL PARTNER BY OR IN ACCORDANCE WITH THE AGREEMENT OF THE PARTNERS, NOTWITHSTANDING ANY DELAY OR FAILURE TO FILE AN ORIGINAL CERTIFICATE OF LIMITED PARTNERSHIP NAMING THE GENERAL PARTNER AS SUCH.

(II) "LIMITED PARTNER" INCLUDES A PARTNER WHO IS IDENTIFIED OR OTHERWISE CLASSIFIED AS A LIMITED PARTNER BY OR IN ACCORDANCE WITH THE AGREEMENT OF THE PARTNERS, NOTWITHSTANDING ANY DELAY OR FAILURE TO FILE AN ORIGINAL CERTIFICATE OF LIMITED PARTNERSHIP.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(III) "LIMITED PARTNERSHIP" INCLUDES A PARTNERSHIP BEFORE THE FILING OF THE ORIGINAL CERTIFICATE OF LIMITED PARTNERSHIP WITH THE SECRETARY OF STATE AND IN WHICH THERE IS AT LEAST ONE GENERAL PARTNER AND ONE LIMITED PARTNER.

(IV) "PARTNER" INCLUDES A PERSON WHO ENTERS INTO THE AGREEMENT CONTEMPLATED IN PARAGRAPH (b) OF THIS SUBSECTION (2) AS A CO-OWNER WITH THE RIGHTS OF A GENERAL PARTNER OR A LIMITED PARTNER OR WHO ACQUIRES AN INTEREST IN A LIMITED PARTNERSHIP AS A CO-OWNER WITH SUCH RIGHTS.

(b) THE PRESUMPTIONS SET FORTH IN THIS SUBSECTION (2) SHALL APPLY TO EACH LIMITED PARTNERSHIP WHOSE PARTNERS ENTER INTO AN AGREEMENT ON OR AFTER OCTOBER 31, 1981, TO FORM SUCH LIMITED PARTNERSHIP, AND TO WHICH A CONTRIBUTION IS MADE BY OR ON BEHALF OF ONE OR MORE OF SUCH PARTNERS BEFORE THE FILING OF AN ORIGINAL CERTIFICATE OF LIMITED PARTNERSHIP FOR SUCH PARTNERSHIP.

(c) IT SHALL BE PRESUMED THAT THE PARTNERS OF SUCH LIMITED PARTNERSHIP SHALL HAVE AGREED THAT:

(I) THE RELATIONSHIP OF THE PARTNERS WITH RESPECT TO ANY CONTRIBUTIONS MADE TO THE PARTNERSHIP AND RELATIONS AMONG THE PARTNERS AND BETWEEN THE PARTNERS AND THE PARTNERSHIP SHALL BE THE SAME AS IF A CERTIFICATE OF LIMITED PARTNERSHIP HAD BEEN FILED PURSUANT TO SECTION 7-62-201 AT THE TIME THE PARTNERS ENTERED INTO THE AGREEMENT CONTEMPLATED IN PARAGRAPH (b) OF THIS SUBSECTION (2);

(II) THE GENERAL PARTNERS OF SUCH LIMITED PARTNERSHIP SHALL EXECUTE AND CAUSE TO BE FILED SUCH CERTIFICATE;

(III) THE FAILURE OF THE GENERAL PARTNERS TO EXECUTE AND CAUSE TO BE FILED SUCH CERTIFICATE SHALL ENTITLE ANY PARTNER TO OBTAIN A COURT ORDER PURSUANT TO SUBSECTION (1) OF THIS SECTION REQUIRING THE SECRETARY OF STATE TO RECORD AN APPROPRIATE CERTIFICATE.

(d) THE PRESUMPTIONS SET FORTH IN THIS SUBSECTION (2) SHALL APPLY TO SUCH A LIMITED PARTNERSHIP, NOTWITHSTANDING ANY ONE OR MORE PROVISIONS OF ANY AGREEMENT OF THE PARTNERS OF SUCH LIMITED PARTNERSHIP THAT:

(I) THE TERM OF SUCH PARTNERSHIP SHALL COMMENCE UPON THE FILING OF SUCH CERTIFICATE;

(II) AN AGREEMENT SETS FORTH THE ENTIRE UNDERSTANDING OF THE PARTIES; OR

(III) THE AGREEMENT OF THE PARTIES SHALL BE IN WRITING.

(e) THE PRESUMPTION SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH (c) OF THIS SUBSECTION (2) SHALL NOT APPLY IN AN ACTION FOR DAMAGES AGAINST A GENERAL PARTNER BY THE OTHER PARTNERS BASED ON ANY DELAY OR FAILURE TO EXECUTE OR FILE A CERTIFICATE OF LIMITED PARTNERSHIP.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 24, 1999