

- the partner is an entity that has been dissolved or suspended by its jurisdiction of formation
- the partner is an individual who has died or has been determined by a court to be incapable of performing his duties as a GP

### 1.1.3.2.3. **Limited Partners' Rights and Obligations**

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While limited partners are not permitted to take any role in the day-to-day operations of the partnership, they do have some say in how the business is run. We have already seen that they have the right to vote in new or substitute partners, amend the partnership, approve a call for additional capital, and approve the early dissolution of the business. They may also vote to amend operating agreements or to remove or change the powers of the general partners. If the sole remaining partner dies, is incompetent, or goes bankrupt, limited partners may also vote whether to stay in business or dissolve it. Each partnership agreement will spell out which of the partners will have the right to vote on which particular issues.

They also have the right to inspect and copy books and records during normal business hours, to receive periodic reports, and to obtain a copy of the partnership's federal, state, and local income tax returns.

Any partner that does not contribute any of the additional capital contribution required of it within 10 days after a call notice will be in default. The partner will have 90 days from the date of the call notice to cure that default, and after the 11th day of the notice must pay 1% of its additional capital requirement per day until the defaulted amount is paid.

If the limited partner is unable to cure the default by the 90th day, it will be in breach of contract. At the option of the general partners, the limited partner's interest in the LP may be terminated. At this point the limited partner will become an unsecured creditor in the amount of its original contribution less any previously made distributions, its proportionate share of any LP losses, and any liquidated damages accruing to the other partners.

Limited partners must keep to their passive role, or they run the risk of being held personally liable for the business. Limited partners may withdraw from the partnership on six months' notice, unless the partnership agreement specifies otherwise.

### 1.1.3.3. **Transfer of Interest**

Partners may not transfer or sell their partnership interest, unless they meet certain conditions described in the partnership agreement. Generally, the partner must provide prior written notice to the remaining partners stating the price, terms, and conditions of the proposed transfer. The transfer cannot take effect without the prior written approval of the general partners. If a general partner wishes to transfer its partnership interest, it must also have the approval of the limited partners, all of them or a majority, depending on the agreement.

The partner must also deliver a legal opinion affirming the transfer's viability. The legal opinion must affirm that the transfer will not be in violation of the law or cause the partnership to be dissolved.

With these conditions met, the assigning partner may assign any part of its interests

at terms and conditions as it sees fit. However, a successful transfer does not necessarily mean the transferee becomes a substitute limited partner. Unless the partnership agreement states otherwise, transfer only means that the economic or **distribution rights** have been assigned or sold. The **governance rights** and obligations of a limited or general partner remain with the original partner. To become a substitute limited partner requires an additional vote of the limited partners and approval of the general partners. The distribution rights are also known as the **transferable interests**.

When a person receives a partner's transferred distribution rights but does not become a substitute limited partner, she has no right to receive any information regarding the partnership's transactions or to inspect the partnership books. She is only entitled to receive the shares of the profits or the return of the contribution to which her assignor would otherwise be entitled. The limited partner who has transferred her distribution rights remains a limited partner and retains liability to the partnership.

### 1.1.3.4. **Dissolution and Liquidation**

There are several reasons why a limited partnership may be dissolved prior to its expiration date. First, it may be dissolved automatically upon the death, incompetency, or withdrawal of the last remaining general partner. The limited partners may be allowed a certain amount of time (usually 90 days) to elect a new general partner by majority vote, if the partnership agreement specifies. Failure to agree on and install a new general partner within that time frame will result in dissolution.

Second, an LP will dissolve when all its assets have been sold off, either because its business purpose has been completed or because of bankruptcy. Third, an LP may be dissolved if at least 51% of the limited partners and all of the general partners sign a consent to dissolve document. Fourth, it may be dissolved by court order, either because a general partner has been found to be of unsound mind or because the business is incapable of carrying on without a loss.

**Dissolution** is the process by which an organization winds up its affairs and is brought to an end. **Termination** occurs after the partnership is legally dissolved and ceases to exist. When a limited partnership dissolves, it must liquidate its assets and distribute them: first to its creditors, and then to its partners in proportion to their unit shares. Debts are settled in the following order:

- secured lenders
- other creditors
- limited partners
- general partners

The general partner or, if none remains, the limited partners must generally file a **Certificate of Dissolution** with the secretary of state. In some states a Certificate of Dissolution is only required if the dissolution has not been agreed upon by all of the members. Once dissolution has begun, the general partner relinquishes all his rights and duties except as necessary to wind up the affairs of the partnership.

To terminate the partnership once the dissolution is completed, a general partner or, in the absence of a general partner, the limited partners may file a **Certificate of Termination**