

[ARTICLE] 4
GENERAL PARTNERS

SECTION 401. BECOMING GENERAL PARTNER. A person becomes a general partner:

- (1) as provided in the partnership agreement;
- (2) under Section 801(3)(B) following the dissociation of a limited partnership's last general partner;
- (3) as the result of a conversion or merger under [Article] 11; or
- (4) with the consent of all the partners.

Comment

This section does not make a person's status as a general partner dependent on the person being so designated in the certificate of limited partnership. If a person does become a general partner under this section without being so designated:

- the limited partnership is obligated to promptly and appropriately amend the certificate of limited partnership, Section 202(b)(1);
- each general partner that knows of the anomaly is personally obligated to cause the certificate to be promptly and appropriately amended, Section 202(c)(1), and is subject to liability for failing to do so, Section 208(a)(2);
- the "non-designated" general partner has:
 - ~ all the rights and duties of a general partner to the limited partnership and the other partners, and
 - ~ the powers of a general partner to bind the limited partnership under Sections 402 and 403, but
 - ~ no power to sign records which are to be filed on behalf of the limited partnership under this Act

Example: By consent of the partners of XYZ Limited Partnership, G is admitted as a general partner. However, XYZ’s certificate of limited partnership is not amended accordingly. Later, G – acting without actual authority – purports to bind XYZ to a transaction with Third Party. Third Party does not review the filed certificate of limited partnership before entering into the transaction. XYZ might be bound under Section 402.

Section 402 attributes to a limited partnership “[a]n act of a general partner . . . for apparently carrying on in the ordinary course the limited partnership’s activities or activities of the kind carried on by the limited partnership.” The limited partnership’s liability under Section 402 does not depend on the “act of a general partner” being the act of a general partner designated in the certificate of limited partnership. Moreover, the notice provided by Section 103(c) does not undercut G’s appearance of authority. Section 402 refers only to notice under Section 103(d) and, in any event, according to the second sentence of Section 103(c), the fact that a person is **not** listed as in the certificate as a general partner is **not** notice that the person is **not** a general partner. See Comment to Section 103(c).

Example: Same facts, except that Third Party does review the certificate of limited partnership before entering into the transaction. The result might still be the same.

The omission of a person’s name from the certificate’s list of general partners is **not** notice that the person is **not** a general partner. Therefore, Third Party’s review of the certificate does not mean that Third Party knew, had received a notification or had notice that G lacked authority. At most, XYZ could argue that, because Third Party knew that G was not listed in the certificate, a transaction entered into by G could not appear to Third Party to be for apparently carrying on the limited partnership’s activities in the ordinary course.

SECTION 402. GENERAL PARTNER AGENT OF LIMITED PARTNERSHIP.

(a) Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership’s name, for apparently carrying on in the ordinary course the limited partnership’s activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular