XI. November 9, 1992 Draft - Revised Uniform Partnership Act (RUPA) - with Comments


   The Subcommittee on RUPA prepared this report to explain its position and recommendations concerning RUPA. After they discussed the background of RUPA and the Subcommittee, they addressed both major achievements and problems with the Act. In their exhibit section to the RUPA Report, the Subcommittee explained which provisions they believed should be modified and what those changes should be.

2. April 14, 1993: Preliminary Working Draft (Redlined Text) of the Revised Uniform Partnership Act (Not Approved by Drafting Committee or NCCUSL).


4. June 17, 1993: Correspondence from John W. Larson to Edith O. Davies. Redlined and blocked changes to § 601 and § 801.

5. July 2, 1993: Correspondence from Edith O. Davies to Commissioners, Associate Members and Advisory Members.

   Letter explaining the procedural process for an amendment to the Uniform Act to be passed.

6. July 21, 1993: Correspondence from Gerald V. Niesar to the Subcommittee on RUPA.

   Administrative letter which discussed the tasks facing the Subcommittee.

Enclosures:

   a. May 13, 1993: Correspondence from John M. McCabe to J. Dennis Hynes.

      An explanation was given about what the Uniform Law Commissioners have been doing, followed by examples of how the Uniform Act had been and remains open for comments. The importance of uniformity was also addressed.

   b. July 20, 1993: Correspondence from Gerald V. Niesar to John M. McCabe.
This letter represented the sole views of Gerald V. Niesar, not the entire Subcommittee on RUPA. He expressed NCCUSL may have misperceived the intentions of the Ad Hoc Subcommittee.

UNIFORM PARTNERSHIP ACT (1992)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS

UNIFORM STATE LAWS

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-FIRST YEAR
IN SAN FRANCISCO, CALIFORNIA
JULY 30 - AUGUST 6, 1992

NOVEMBER 2, 1992, DRAFT WITH COMMENTS
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# REVISED UNIFORM PARTNERSHIP ACT

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ARTICLE 1

GENERAL PROVISIONS

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Section 104. Supplemental Principles of Law.
Section 105. Execution, Filing, and Recording of Statements.
Section 106. Law Governing Internal Affairs.
Section 107. Partnership Subject to Amendment or Repeal of [Act].

SECTION 101. DEFINITIONS. In this [Act]:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

   (i) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

   (ii) a comparable order under federal or state law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership.
(5) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(9) "Statement" means a statement of partnership authority under Section 303, a statement of denial under Section 304, a statement of dissociation under Section 704, a statement of dissolution under Section 806, a statement of merger under Section 906, or an amendment or cancellation of any of the foregoing.

(10) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.
The Revised Uniform Partnership Act (RUPA or the Act) continues the definition of "business" from Section 2 of the Uniform Partnership Act (UPA).

RUPA uses the more contemporary term "debtor in bankruptcy" instead of "bankrupt." The definition is adapted from the new Georgia Partnership Act, Ga. Code Ann. § 14-8-2(1). The definition does not distinguish between a debtor in liquidation under Chapter 7 of the Bankruptcy Code and a debtor under one of the rehabilitation chapters. The filing of a voluntary petition under Section 301 of the Bankruptcy Code constitutes an order for relief, but the debtor is entitled to notice and an opportunity to be heard before the entry of an order for relief in an involuntary case under Section 303 of the Code.

The definition of "distribution" is new and adds precision to the accounting rules established in Sections 401 and 808 and related sections. Transfers to a partner in the partner's capacity as a creditor, lessor, or employee of the partnership, for example, are not "distributions."

The definition of "partnership agreement" is based on Section 101(9) of the Revised Uniform Limited Partnership Act (RULPA). The RUPA definition includes any agreement among the partners, including amendments, concerning either the affairs of the partnership or the conduct of its business. It also includes any agreement among inadvertent partners.

Any partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking is a "partnership at will."

The definition of "person" is the usual definition used by the National Conference of Commissioners on Uniform State Laws (NCCUSL or the Conference). A limited liability company is another legal entity within the definition of "person."

"Property" is defined broadly to include all types of property, as well as any interest in property.

The definition of "State" is the Conference’s usual definition.
The definition of "statement" is new and refers to one of the various statements authorized by RUPA to enhance or limit the agency authority of a partner, to deny the authority or status of a partner, or to give notice of certain events, such as the dissociation of a partner or the dissolution of the partnership. Generally, statements must be executed, filed, and, if appropriate, recorded pursuant to Section 105.

"Transfer" is defined broadly to include all manner of conveyances, including leases and encumbrances.

The term "partnership" is defined in Section 202 as an association of two or more persons to carry on as co-owners a business for profit, unless the association is created under another statute. Thus, as used in RUPA, the term "partnership" is restricted to general partnerships and does not include limited partnerships.

SECTION 102. KNOWLEDGE AND NOTICE.

(a) A person knows a fact if the person has knowledge of it.

(b) A person has notice of a fact if the person:

(1) knows of it;

(2) has received a notification of it; or

(3) has reason to know it exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(d) A person receives a notification when it:

(1) comes to the person’s attention; or
(2) is duly delivered at the person’s place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as provided in subsection (f), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual’s attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner’s knowledge, notice or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, but is not
effective as such if the partner committed or consented to a fraud on the partnership.

COMMENT

The concepts and definitions of "knowledge," "notice," and "notification" draw heavily on Sections 1-201(25) to (27) of the Uniform Commercial Code (UCC). The UCC text has been altered somewhat to improve clarity and style, but in general no substantive changes are intended from the UCC concepts. "A notification" replaces the redundant phrase "a notice or notification" throughout.

A person "knows" a fact only if she has actual knowledge of it. Knowledge is cognitive awareness of the fact. It is solely a matter of evidentiary fact. This is a change from the UPA Section 3(1) definition of "knowledge" which embodied the concept of constructive notice.

"Notice" is a lower degree of awareness based on a person's: (i) actual knowledge; (ii) receipt of a notification; or (iii) reason to know based on a her actual knowledge of other facts and the circumstances at the time. The latter is the traditional concept of constructive notice.

A person "receives" a notification when (i) the notification is delivered to the person's place of business (or other place for receiving communications) or (ii) the recipient otherwise actually learns of its existence. The sender "notifies" or gives a notification by making an effort to inform the recipient, which is reasonably calculated to do so in ordinary course, even if the recipient does not actually learn of it.

The Official Comment to UCC Section 1-201(26), on which RUPA is based, explains that "notifies" is the word used when the essential fact is the proper dispatch of the notice, not its receipt. When the essential fact is the other party's receipt of the notice, that is stated. A notification is not required to be in writing under either RUPA or the UCC. This is a change from UPA Section 3(2)(b). As under the UCC, the time and circumstances under which a notification may cease to be effective are not determined by RUPA.

Subsection (e) governs when an agent's knowledge or notice is imputed to an organization, such as a
partnership or a corporation (rather than to an individual person). In general, only the knowledge or notice of the agent conducting the particular transaction is imputed to the organization. Organizations are expected to maintain reasonable internal routines to insure that important information reaches the individual agent handling a transaction. If, in the exercise of reasonable diligence on the part of the organization, the agent should have known or had notice of a fact, or received a notification of it, the organization is bound. The Official Comment to UCC Section 1-201(27) explains:

This makes clear that reason to know, knowledge, or a notification, although "received" for instance by a clerk in Department A of an organization, is effective for a transaction conducted in Department B only from the time when it was or should have been communicated to the individual conducting that transaction.

The UCC term "organization" has been replaced with the phrase "person other than an individual."

As under UPA Section 12, a partner’s knowledge or notice of any fact relating to the partnership is imputed to the partnership, except in the case of fraud. Limited partners, however, are not "partners" within the meaning of RUPA. See Section 202(e) and Comment.

Statements filed pursuant to Section 105 do not constitute constructive notice except as expressly provided in RUPA. Compare § 301(1)(generally requiring knowledge of limitations on partner’s apparent authority) with §§ 704(b)(statement of dissociation effective 90 days after filing), 806(c)(statement of dissolution same). Recorded statements generally do constitute constructive notice with respect to the transfer of real property held in the partnership name. See §§ 303(d)(2), 303(e).

SECTION 103. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE PROVISIONS.

(a) Except as provided in subsection (b), a partnership agreement governs relations among the partners and between the partners and the partnership.
To the extent the partnership agreement does not otherwise provide, this [Act] governs relations among the partners and between the partners and the partnership.

(b) A partnership agreement may not:

(1) vary the rights and duties under Section 105 except to eliminate the duty to provide copies of statements to all of the partners;

(2) unreasonably restrict a partner's right of access to books and records under Section 403(b);

(3) eliminate the duty of loyalty under Section 404(b);

(4) unreasonably reduce the duty of care under Section 404(d);

(5) eliminate the obligation of good faith and fair dealing under Section 404(e);

(6) vary the power to withdraw as a partner under Section 601(1), except to require the notice to be in writing;

(7) vary the right to expulsion of a partner by a court in the events specified in Section 601(5);

(8) vary the requirement to wind up the partnership business in cases specified in Section 801(4), (5), or (6); or

(9) restrict rights of third parties under this [Act].
COMMENT

The general rule is that the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partners by agreement fail to specify a contrary rule, RUPA provides the default rules. Only the rights and duties listed in subsection (b), and implicitly the corresponding liabilities and remedies under Sections 405 and 406, are mandatory and cannot be waived or varied by agreement. These are the only exceptions to the general philosophy that the provisions of RUPA are merely default rules, subject to modification by the partners.

Under subsection (b)(1), the partnership agreement may not vary the requirements for executing, filing, and recording statements under Section 105, except the duty to provide copies to all the partners. A statement which is not executed, filed, and recorded in accordance with the statutory requirements will not be accorded the effect prescribed in the Act, except as provided in Section 303(d).

Subsection (b)(2) states that the partnership agreement may not unreasonably restrict a partner’s access to books and records under Section 403(b). It is left to the courts to determine what restrictions are reasonable. Other information rights in Section 403 are subject to contrary agreement.

Subsections (b)(3), (4), and (5) are aimed at ensuring a fundamental core of fiduciary responsibility. Neither the duty of loyalty, nor the obligation of good faith and fair dealing, may be eliminated entirely. However, both can be modified by agreement. Section 404(c) permits the partners to identify specific types or categories of partnership activities that do not violate the duty, while Section 404(e) expressly invites the partners to determine the standards by which the performance of the obligation of good faith and fair dealing is to be measured. Thus, the partners can negotiate and draft specific contract provisions tailored to their particular needs, but blanket waivers are unenforceable. In either case, the modifications must not be manifestly unreasonable. This should tend to discourage overreaching by a partner with superior bargaining power since the courts may refuse to enforce an overly broad exculpatory clause.

The partners’ duty of care may not be unreasonably reduced below the statutory standard set forth in
Section 404(d), that is, to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law. See Comment to Section 404.

Under UPA Section 31(2), the power to withdraw as a partner can not be bargained away. RUPA continues the traditional UPA rule that every partner has the power, even if not the right, to withdraw from the partnership at any time. Subsection (b)(6) provides that the partnership agreement may not vary the power to withdraw as a partner under Section 60191), except to require that the notice of withdrawal be in writing. The UPA was silent on this point.

Under subsection (b)(7), the right of a partner to seek court expulsion of another partner under Section 601(5) can not be waived in advance by contract. Section 601(5) refers to judicial expulsion on the grounds that the partner (i) engaged in wrongful conduct that adversely and materially affected the partnership business; (ii) willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners; or (iii) engaged in conduct relating to the partnership business which made it not reasonably practicable to carry on the business in partnership with that partner.

Under subsection (b)(8), the partnership agreement may not vary the right of partners to have the partnership dissolved and its business wound up under Section 801(4), (5), or (6). Section 801(4) provides that the partnership business must be wound upon an event that makes it unlawful to continue the business. Section 801(5) provides for winding up if a court determines that (i) the economic purpose of the partnership is likely to be unreasonably frustrated; (ii) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or (iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement. Section 801(6) accords standing to all transferees of an interest in the partnership to seek judicial dissolution of the partnership (i) upon the expiration of the its term or the completion of its undertaking or (ii) at any time if it is a partnership at will.

Although stating the obvious, subsection (b)(9) provides expressly that the rights of third parties under the Act may not be restricted by an agreement
among the partners to which a third party has not agreed. A non-partner who is a party to an agreement among the partners is, of course, bound. Cf. § 703(c) (creditor joins release).

It should be noted that the rules regarding conversions and mergers under Article 9 are not mandatory. Section 907 states expressly that partnerships may be converted and merged in any other manner provided by law. The effect of compliance with Article 9 is to provide a "safe harbor" assuring the legal validity of such conversions and mergers. Although not listed in Section 103(b) as immune from variation in the partnership agreement, noncompliance with the requirements of Article 9 in effecting a conversion or merger is to deny "safe harbor" validity to the transaction. In this regard, Sections 902(b) and 904(c)(2) require that the conversion or merger of a limited partnership be approved by all of the partners, notwithstanding a contrary provision in the limited partnership agreement. Thus, in effect, the agreement can not vary the voting requirement without sacrificing the benefits of the "safe harbor."

SECTION 104. SUPPLEMENTAL PRINCIPLES OF LAW.

(a) Unless displaced by particular provisions of this [Act], the principles of law and equity supplement this [Act].

(b) If an obligation to pay interest arises under this [Act] and the rate is not specified, the rate is that specified in [applicable statute].

COMMENT

The principles of law and equity supplement RUPA. This broad statement combines the separate rules contained in UPA Sections 4(2), 4(3), and 5. These supplementary principles encompass not only the law of agency and estoppel and the law merchant mentioned in the UPA, but all of the other principles listed in UCC Section 1-103: the law relative to capacity to contract, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause. No substantive change from either the UPA or the UCC is intended.
It was thought unnecessary and potentially confusing to repeat the UPA Section 4(1) admonition that statutes in derogation of the common law are not to be strictly construed. This principle is now so well established that it is not necessary to so state in the Act. No change in the law is intended. See the Comment to RULPA Section 1101.

Subsection (b) is new. As recommended by the UPA Revision Subcommittee of the ABA Committee on Partnerships and Unincorporated Business Organizations, it is based on the definition of "interest" in Section 14-8-2(5) of the Georgia act and establishes the applicable rate of interest in the absence of an agreement among the partners. See the Report of the UPA Revision Subcommittee of the ABA Committee on Partnerships and Unincorporated Business Organizations, reprinted in 43 Bus. Law. 121 (1987) [ABA Report], at 128. Adopting states can select the State's legal rate of interest or other statutory interest rate, such as the rate for judgments.

SECTION 105. EXECUTION, FILING, AND RECORDING OF STATEMENTS.

(a) A statement may be filed in the office of [the Secretary of State]. A certified copy of a statement that is filed in an office in another state may be filed in the office of [the Secretary of State]. Either filing has the effect provided in this [Act] with respect to partnership property located in or transactions that occur in this State.

(b) A certified copy of a statement that has been filed in the office of the [Secretary of State] and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this [Act]. A recorded statement that is not a certified copy of a statement filed in the office of the
(c) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this Act. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(d) A person authorized by this Act to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(f) The Secretary of State may collect a fee for filing or providing a certified copy of a statement. The officer responsible for recording transfers of
real property may collect a fee for recording a statement.

COMMENT

Section 105 is new. It mandates the procedural rules for the execution, filing, and recording of the various "statements" (see Section 101(9)) authorized by RUPA.

No filings are mandatory under RUPA. In all cases, the filing of a statement is optional and voluntary. A system of mandatory filing and disclosure for partnerships, similar to that required for corporations and limited partnerships, was rejected for several reasons. First, RUPA is designed to accommodate the needs of, while being sensitive to the means of, small partnerships with only sketchy or no formal partnership agreements. Furthermore, inadvertent partnerships are also governed by the Act, as the default form of business organization, in which case noncompliance would be the norm.

There is a policy bias implicit in the RUPA filing provisions, however, to encourage the voluntary use of partnership statements. RUPA contains many strong incentives for the partnership or the partners to file statements or for third parties, such as lenders or transferees of partnership property, to compel them to do so.

Only statements which are executed, filed, and, if appropriate (such as the authority to transfer real property), recorded in conformity with Section 105 have the legal consequences accorded statements by RUPA. The requirements of Section 105 cannot be varied in the partnership agreement, except the duty to provide copies of statements to all the partners. See Section 103(b)(1).

In most states today, the filing and recording of statements requires written documents. As technology advances, alternatives suitable for filing and recording may be developed. RUPA itself does not impose any requirement that statements be in writing. It is intended that the form or medium for filing and recording be left to the general law of adopting states.

RUPA provides for a single central filing of all statements. The expectation is that most states will assign to the Secretary of State the responsibility of
maintaining the filing system for partnership statements. All statements should be indexed by partnership name. Consideration was given to requiring local or dual filing, but the success of the UCC's central filing system suggested a single central filing is practicable. Although there are still many small, strictly local partnerships, the partnership form is being used increasingly by firms doing business in multiple locations. On balance, it was felt that the convenience and efficiency of central filing for multi-location partnerships outweigh the convenience of local filing for strictly local partnerships.

Partnerships transacting business in more than one state will, however, be required to file copies of statements in each state since the legal effect of filed statements is limited to property located or transactions occurring within the state. The filing of a certified copy of a statement originally filed in another state is permitted, and indeed encouraged, in order to avoid inconsistencies between statements filed in different states.

Subsection (b), in effect, mandates the use of certified copies of filed statements for local recording in the real estate records by limiting the legal effect of recorded statements under the Act to such copies. The purpose of compelling the use of certified copies for recording is to eliminate the possibility of inconsistencies affecting the title to real property.

Subsection (e) requires that statements filed on behalf of a partnership, that is, the entity, be executed by at least two partners. A partner or other person authorized by the Act to file a statement may execute it individually. To protect the partners and the partnership from unauthorized or improper filings, an individual who executes a statement as a partner must personally declare under penalty of perjury that the statement is accurate.

As a further safeguard, subsection (e) requires that a copy of every statement filed be sent to each partner, although failure to do so does not limit the effectiveness of the statement. Partners may also file a statement of denial under Section 304 and bring suit for damages under Section 406(a) against a partner who breaches a duty to the partnership, including the partner’s fiduciary duties under Section 404.

A filed statement may be amended or cancelled by any person authorized by the Act to file an original
statement. The amendment or cancellation must state the name of the partnership so that it can be properly indexed and found, identify the statement being amended or cancelled, and the substance of the amendment or cancellation. An amendment generally has the same operative effect as an original statement. A cancellation of extraordinary authority terminates such authority. A cancellation of a limitation on authority revives a previous grant of authority. See Section 303(d). The subsequent filing of a statement similar in kind to a statement already of record is treated as an amendment, even if not so denominated. Any substantive conflict between filed statements operates as a cancellation of authority under Section 303.

A copy of every filed statement must be sent to each partner or person named as a partner. This requirement may, however, be eliminated in the partnership agreement. See Section 103(b)(1). Failure to send a copy of a statement to a partner does not limit the effectiveness of the statement as to third persons.

SECTION 106. LAW GOVERNING INTERNAL AFFAIRS. The law of the State in which a partnership has its chief executive office governs the partnership’s internal affairs.

COMMENT

The internal affairs rule is new. Cf. RULPA § 901 (internal affairs governed by laws of state in which limited partnership organized).

RUPA looks to the law of the state in which a partnership’s "chief executive office" is located. This term is drawn from UCC Section 9-103(3)(d). It was chosen in lieu of the state of organization because no filing is necessary to form a general partnership, and thus the situs of its organization is not always clear, unlike a limited partnership which is organized in the state where its certificate is filed.

The term "chief executive office" is not defined in the Act, nor is it defined in the UCC. Paragraph 5 of the UCC Official Comment explains that the place chosen must be one which would normally be associated with the party and can be determined with the least
possible risk of error. This, the UCC concludes, is ordinarily the location of its chief executive office:

"Chief executive office" does not mean the place of incorporation; it means the place from which in fact the debtor manages the main part of his business operations. . . . Doubt may arise as to which is the "chief executive office" of a multi-state enterprise, but it would be rare that there could be more than two possibilities. . . . [The rule] will be simple to apply in most cases. . . .


In the absence of any other clear rule for determining a partnership's legal situs, it seems convenient to use this rule for choice of law purposes as well. The rule is, of course, only a default rule, and the partners may by agreement select the law of any state to govern their internal affairs.

SECTION 107. PARTNERSHIP SUBJECT TO AMENDMENT OR REPEAL OF [ACT]. A partnership governed by this [Act] is subject to any amendment to or repeal of this [Act].

COMMENT

The reservation of power provision is new. It is adapted from Section 1.02 of the Revised Model Business Corporation Act (RMBCA).

As explained in the Official Comment to the RMBCA, such provisions have their genesis in Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat) 518 (1819), which held that the United States Constitution prohibited the application of newly enacted statutes to existing corporations, while suggesting the efficacy of a reservation of power provision. Their purpose is to avoid any possible argument that a legal entity created pursuant to statute has a contractual or vested right in any specific statutory provision and to ensure that the state may in the future modify its enabling statute as it deems appropriate and require existing entities to comply with the statutes as modified. See 1 MBCA Ann. 3d (P-H 1985), at 12.
ARTICLE 2

NATURE OF PARTNERSHIP

Section 201. Partnership As Entity.
Section 202. Existence of Partnership.
Section 203. Partnership Property.
Section 204. When Property Is Partnership Property.

SECTION 201. PARTNERSHIP AS ENTITY. A partnership is an entity.

COMMENT

RUPA unequivocally embraces the entity theory of the partnership. There was widespread criticism of the aggregate theory. See, e.g., M. Eisenberg, An Introduction to Agency and Partnership 36 (1987). The ABA Report recommended increased emphasis on the entity theory. See ABA Report at 124. In light of the UPA's ambivalence on the nature of partnerships, an explicit statement was deemed appropriate as an expression of the net effect of the many changes in RUPA reflecting the entity theory. See the Commissioners' Prefatory Note to the UPA, 6 U.L.A. (Master ed. 1969), at 5-7.

Giving clear expression to the entity nature of a partnership is intended to allay previous concerns stemming from the aggregate theory, such as the necessity of a deed to convey title from the "old" partnership to the "new" partnership every time there is a change of cast among the partners. Under RUPA, the partnership agreement may permit such a change of partners without a dissolution. The result in cases such as Fairway Development Co. v. Title Insurance Co., 621 F. Supp. 120 (N.D. Ohio 1985), which held that the "new" partnership did not have standing to enforce a title insurance policy issued to the "old" partnership, may be avoided.

SECTION 202. CREATION OF PARTNERSHIP.

(a) Except as provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit creates a partnership,
whether or not the persons intend to create a partnership.

(b) An association created under a statute other than this [Act], a predecessor law, or comparable law of another jurisdiction is not a partnership.

(c) In determining whether a partnership is created, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

   (i) of a debt by installments or otherwise;

   (ii) for services as an independent contractor or of wages or other compensation to an employee;

   (iii) of rent;
(iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

(d) Except as provided by Section 308, persons who are not partners as to each other are not partners as to other persons.

(e) A partnership created under this [Act] is a general partnership, and the partners are general partners of the partnership.

COMMENT

Section 202 combines UPA Sections 6 and 7. The traditional UPA Section 6(1) "definition" of a partnership is recast as an operative rule of law. No substantive change in the law is intended. The UPA "definition" has always been understood as an operative rule, as well as a definition. The addition of the phrase, "whether or not the persons intend to create a partnership," merely codifies the universal judicial construction of UPA Section 6(1) that a partnership is created by the association of persons whose intent is to carry on a business as co-owners, regardless of their subjective intention to be "partners." Indeed, they may inadvertently create a partnership despite their expressed subjective intention not to do so. The new language alerts readers to this possibility.
Subsection (b) provides that business associations organized under other statutes are not partnerships. Such statutory associations include corporations, limited partnerships, and limited liability companies. This continues the UPA conception that partnership is the residual business organization, existing only if another form does not.

A limited partnership is not a partnership under this definition. Nevertheless, the provisions of RUPA will continue to govern limited partnerships because RULPA itself, in Section 1105, so requires "in any case not provided for" in RULPA. In light of this section, UPA Section 6(2), which provides that limited partnerships are governed by the UPA, is redundant and has not been carried over to RUPA.

It is not intended that RUPA change any common law rules concerning special types of associations, such as mining partnerships, which in some jurisdictions are not governed by the UPA.

Relationships that are called "joint ventures" are partnerships if they otherwise fit the definition of a partnership. An association is not classified as a partnership, however, simply because it is called a "joint venture."

Subsection (c) provides three rules of construction which apply in determining whether a partnership is created under subsection (a). They are largely derived from UPA Section 7, and to such extent no substantive change is intended. The sharing of profits is recast as a rebuttable presumption of a partnership, a more contemporary construction, rather than as prima facie evidence thereof. The protected categories, in which receipt of a share of the profits is not presumed to create a partnership, apply whether the profit share is a single flat percentage or a ratio which varies, for example, after reaching a dollar floor or different levels of profits.

Like its predecessor, RUPA makes no attempt to answer in every case whether there is a partnership. Whether a relationship is more properly characterized as that of borrower and lender, employer and employee, or landlord and tenant is left to the trier of fact. As under the UPA, a person may function in both partner and nonpartner capacities.

Paragraph (3)(v) adds a new protected category to the list. It shields from the presumption a share of
the profits received in payment of interest or other charges on a loan, "including a direct or indirect present or future ownership in the collateral, or rights to income, proceeds, or increase in value derived from the collateral." The quoted language is taken from Section 211 of the Uniform Land Security Interest Act. The purpose of the new language is to protect shared-appreciation mortgages, contingent interest mortgages, and other equity participation arrangements by clarifying that contingent payments do not automatically convert lending arrangements into partnerships. In particular, the new language gives comfort to shared-appreciation mortgagees.

Similar ambiguities exist for tax purposes. There is authority that contingent arrangements can trigger a finding of partnership. See Farley Realty Corp. v. Commissioner, 279 F.2d 701 (2d Cir. 1960). More recently, however, the Internal Revenue Service has ruled that shared appreciation mortgages do not give the residential lender an equity position. Rev. Rul. 83-51, 1983-1 C.B. 48.

Subsection (d) is taken from UPA Section 7(1). It means that only those persons who are partners between themselves are liable as partners to third parties for the debts of the partnership, except for partnership debts incurred by purported partners under Section 308.

Subsection (e) states declaratively that partnerships created under RUPA are general partnerships and that the partners are general partners.

SECTION 203. PARTNERSHIP PROPERTY. Property transferred to or otherwise acquired by a partnership is property of the partnership and not of the partners individually.

COMMENT

All property transferred to or acquired by the partnership becomes partnership property and belongs to the partnership as an entity, rather than to the individual partners. This expresses simply and powerfully the substantive result of UPA Sections 8(1) and 25.
Section 203 does not provide any guidance concerning when property is "acquired by" the partnership, nor does UPA Section 8(1). Professors Bromberg and Ribstein have criticized this section as a "feeble attempt" at clarifying the rules regarding determination of ownership. See BROMBERG & RIBSTEIN, PARTNERSHIP (1988) [Bromberg & Ribstein], at 3:3. The problem of when property is acquired by a partnership is dealt with in Section 204.

The UPA also provides that partnership property is not subject to exemptions, allowances, or rights of a partner's spouse, heirs, or next of kin. UPA §§ 25(2)(c), (e). These provisions have been deleted as unnecessary. No substantive change is intended. Such exemptions and rights inure to the property of the partners, and not to partnership property.

SECTION 204. WHEN PROPERTY IS PARTNERSHIP PROPERTY.

(a) Property is partnership property if acquired in the name of:

(1) the partnership; or

(2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) the partnership in its name; or

(2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.
(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person’s capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person’s capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

COMMENT

Section 204 sets forth the rules for determining when property is acquired by the partnership and hence becomes partnership property. It is based on UPA Section 8(3), influenced by the recent Alabama and Georgia modifications. See Ala. Code § 10-8-70; Ga. Code Ann. § 14-8-8. The rules govern the acquisition of personal as well as real property. See § 101(7). This reflects settled law that personal property may be held in the partnership name.

Subsection (a) governs when property is "partnership property," and subsection (b) clarifies when property is acquired "in the name of the partnership." The concept of record title is emphasized, although the term itself is not used. Titled personal property is covered.

Property becomes partnership property if acquired (1) in the name of the partnership or (2) in the name of one or more of the partners with an indication in the instrument transferring title of either (i) their capacity as partners or (ii) of the existence of a partnership.
partnership, even if the name of the partnership is not indicated. Property acquired "in the name of the partnership" includes property acquired in the name of one or more partners in their capacity as partners, but only if the name of the partnership is indicated in the instrument transferring title.

Property transferred to a partner is partnership property, even if the name of the partnership is not indicated, provided the instrument transferring title indicates either (i) the partner's capacity as a partner or (ii) the existence of a partnership. This is consonant with the entity theory and resolves the troublesome issue of a conveyance to fewer than all the partners but which nevertheless indicates their partnership status.

Ultimately, it is the intention of the partners which controls whether property belongs to the partnership or to one or more of the partners in their individual capacities, at least as among the partners themselves. RUPA sets forth two presumptions which apply when the partners have failed to express their intent. Both are rebuttable.

Under subsection (c), property purchased with partnership funds is presumed to be partnership property, notwithstanding the name in which title is held. The presumption is intended to apply if partnership credit is used rather than partnership cash or property. Unlike the rule in subsection (b), under which property is deemed to be partnership property if the partnership’s name or the partner’s capacity as a partner is disclosed in the instrument of conveyance, subsection (c) raises only a presumption that the property is partnership property if it is purchased with partnership assets.

This presumption is also subject to an important caveat. Under Section 302(b), partnership property held in the name of individual partners, without an indication of their capacity as partners or of the existence of a partnership, may be transferred by the partners in whose name title is held free of any claims of the partnership to a purchaser without notice that it is partnership property.

Under subsection (d), property acquired in the name of one or more of the partners, without an indication of their capacity as partners and without use of partnership funds or credit, is presumed to be the partners’ separate property, even if used for
partnership purposes. In effect, it is presumed in such case that only the use of the property is contributed to the partnership.

Generally, under RUPA, partners and third parties dealing with partnerships will be able to rely on the written record to determine whether property is owned by the partnership. The exception is property purchased with partnership funds without any reference to the partnership in the title documents. The inference concerning the partners' intent from the use of partnership funds outweighs any inference from the state of the title, subject to the overriding reliance interest in the case of a purchaser without notice of the partnership's interest. This allocation of risk should encourage the partnership to eliminate doubt about ownership by putting title in the partnership.

RUPA still affords some necessary judicial flexibility. As Bromberg & Ribstein state at 3:4:

[N]o statute can provide precise guidance in this area without leading to unfair results in some cases. The question is whether it is possible to achieve greater overall predictability without unduly diminishing the role of situational equities.

UPA Section 8(4) provides, "A transfer to a partnership in the partnership name, even without words of inheritance, passes the entire estate or interest of the grantor unless a contrary intent appears." It has been omitted from RUPA as unnecessary because modern conveyancing law deems all transfers to pass the entire estate or interest of the grantor unless a contrary intent appears.
ARTICLE 3

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

Section 301. Partner Agent of Partnership.
Section 302. Transfer of Partnership Property.
Section 303. Statement of Partnership Authority.
Section 304. Statement of Denial.
Section 305. Partnership Liable for Partner’s Actionable Conduct.
Section 306. Partner’s Liability.
Section 307. Action Against Partnership and Partners.
Section 308. Purported Partner.
Section 309. Liability of Incoming Partner.

SECTION 301. PARTNER AGENT OF PARTNERSHIP. Subject to the effect of a statement of partnership authority under Section 303:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the usual way the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner has no authority to act for the partnership in the particular matter and the person with whom the partner is dealing knows or has received a notification that the partner lacks authority.

(2) An act of a partner which is not apparently for carrying on in the usual way the partnership business or business of the kind carried on by the
partnership binds the partnership only if the act was authorized by the other partners.

COMMENT

Section 301 sets forth a partner’s power, as an agent of the firm, to bind the partnership entity to third parties. The rights of the partners among themselves, including the right to restrict a partner’s authority, are governed by the partnership agreement and by Section 401.

The agency rules set forth in Section 301 are subject to an important qualification. They may be affected by the filing or recording of a statement of partnership authority. The legal effect of filing or recording a statement of partnership authority is set forth in Section 303.

In large part, Section 301(1) retains the principles reflected in UPA Section 9(1). The section deals primarily with a partner’s apparent power to bind the partnership to third parties, but by implication it also confers actual authority on each partner to the extent the partners by agreement do not provide otherwise. See Bromberg & Ribstein, at 4:4.

Section 301(1) effects two changes from UPA Section 9(1). First, it clarifies that a partner’s apparent authority includes acts for carrying on in the usual way "business of the kind carried on by the partnership," not just the business of the particular partnership in question. The UPA was ambiguous on this point, but many cases gave it an expanded construction, in accordance with the so-called English rule. See Burns v. Gonzalez, 439 S.W.2d 128 (Tex. Civ. App. 1969); Crane & Bromberg, Partnership 276-77 (1968)(Crane & Bromberg).

The other change from the UPA concerns the allocation of risk of a partner’s lack of authority. RUPA draws the line somewhat differently than does the UPA.

Under UPA Section 9(1) and (4), only a person with knowledge of a restriction on a partner’s authority is bound by it. Section 301(1) provides that a person who has received a notification of a partner’s lack of authority is also bound. The meaning of "receives a notification" is explained in Section 102(d). Thus, the partnership may protect itself from unauthorized acts by
giving a notification of a restriction on a partner's authority to a person dealing with the partner. Such a notification is effective upon delivery, whether or not it actually comes to the other person's attention. To this extent, the risk of lack of authority is shifted to those dealing with partners.

On the other hand, as used in the UPA, the term "knowledge" embodies the concept of constructive notice. As used in RUPA, "knowledge" is limited to actual knowledge. See § 102(a). Thus, RUPA does not expose persons dealing with a partner to the greater risk of being bound by a restriction based on their purported reason to know of the partner's lack of authority from all the facts they did know. Compare § 102(b)(3) (notice).

With one exception, this result is not affected even if the partnership files a statement of partnership authority containing a limitation on a partner's authority. Section 303(f) makes clear that a person dealing with a partner is not deemed to know of such a limitation merely because it is contained in a filed statement of authority. Under Section 303(e), however, all persons are deemed to know of a limitation on the authority of a partner to transfer real property contained in a recorded statement. Thus, a recorded limitation on authority concerning real property constitutes constructive knowledge of the limitation to the whole world.

Section 301(2) is drawn directly from UPA Section 9(2), with the conforming reference to "business of the kind carried on by the partnership." It makes clear that the partnership is bound by a partner's actual authority, even if the partner has no apparent authority. Section 404(j) requires the unanimous consent of the partners for such an extraordinary grant of authority outside the ordinary course of business, unless the partnership agreement provides otherwise. Likewise, under general agency principles, the partners can subsequently ratify a partner's unauthorized act. See Section 104(a).

UPA Section 9(3) contains a list of five extraordinary acts that require unanimous consent of the partners before the partnership is bound. RUPA omits this section. This leaves it to the courts to decide the outer limits of the agency power of partners. Most of the acts listed in UPA Section 9(3) may very well remain outside the apparent authority of partners, but elimination of the statutory rule will afford more
judicial flexibility. See Crane & Bromberg, at 296. In particular, the restriction on submitting a partnership claim to arbitration seems archaic.

Section 301(1) fully reflects the principle embodied in UPA Section 9(4).

SECTION 302. TRANSFER OF PARTNERSHIP PROPERTY.

(a) Subject to the effect of a statement of partnership authority under Section 303:

(1) Partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) A partnership may recover property transferred under this subsection if it proves that execution of the instrument of transfer did not bind the partnership under Section 301, unless the property was transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gave value without having notice that the
person who executed the instrument of initial transfer lacked authority to bind the partnership.

(b) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred free of claims of the partnership or the partners by the persons in whose name the property is held to a transferee who gives value without having notice that it is partnership property.

(c) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

COMMENT

Section 302 replaces UPA Section 10 and provides who may transfer partnership property. The language used is adapted from Section 14-8-10 of the new Georgia statute.

Subsection (a) deals with partnership property held in the name of (1) the partnership or (2) one or more of the partners with an indication (i) of their capacity as partners or (ii) of the existence of a partnership. Subsection (b) deals with partnership property held in the name of one or more of the partners without any such indication. Like Section 203, these rules are subject to change by the filing or recording of a statement of partnership authority under Section 303. The rules are intended to foster reliance on record title.
UPA Section 10 covers only real property. As recommended by the ABA Report at 138, Section 302 also governs the transfer of partnership personal property acquired by instrument and held in the name of the partnership or one or more of the partners.

Under subsection (a)(3), the transfer of partnership property by a partner without authority may be avoided by the partnership if the partnership is not bound by the execution of the instrument of transfer. Under Section 301, the partnership is bound by a transfer in the usual course of business, unless the transferee actually knows or has received a notification of the partner's lack of authority. The reference to Section 301, rather than Section 301(1), is intended to clarify that a partner's actual authority is not revoked by Section 302. Compare UPA § 10(1) (refers to partner's authority under Section 9(1)). See Bromberg & Ribstein, at 4:58.

The burden of proof is on the partnership to prove both the partner's lack of authority and the transferee's knowledge or notification thereof. This is justified because the partnership is generally in a better position to produce such evidence. Moreover, the partnership may protect itself against unauthorized transfers by ensuring that partnership property is held in the name of the partnership and that a statement of partnership authority is of record specifying any limitations on the partners' authority to convey partnership property. Under Section 303(e), transferees of real property held in the partnership name are conclusively bound by such limitations. On the other hand, transferees can protect themselves by insisting that the partnership record a statement specifying who is authorized to transfer partnership property. Under Section 303(d), transferees for value, without actual knowledge to the contrary, may rely on such grant of authority.

Under subsection (a)(3), even if the transfer to the initial transferee could be avoided, the partnership may not recover the property from a subsequent purchaser or other transferee for value unless it also proves that such transferee had notice of the partner's lack of authority. Since notice includes reason to know, as well as actual knowledge, a remote purchaser may have a duty to inquire based on known facts. See § 102(b). The term "value," as used in this context, is synonymous with "valuable consideration" and means any consideration sufficient to support a simple contract.
Subsection (b) replaces UPA Section 10(3) and provides that partners who hold partnership property in their own name, without an indication in the record of their capacity as partners or of the existence of a partnership, may transfer good title to a transferee for value without notice that it is partnership property. To recover the property under this subsection, the partnership has the burden of proving that the transferee had notice of the partnership's interest in the property, as well as the transferee's knowledge that the partner lacked authority.

Subsection (c) is new. The UPA does not have a provision dealing with the situation in which all of the partners' interests in the partnership are held by one person, such as a surviving partner or a purchaser of all the other partners' interests. The subsection provides for a clear claim of record title, even though the partnership no longer exists as a technical matter.

UPA Section 10(2) provides that, where title to real property is in the partnership name, a conveyance by a partner in her own name transfers the partnership's equitable interest in the property. It has been deleted as was done in Georgia and Florida and recommended in the ABA Report, at 138. In this situation, the conveyance is clearly outside the chain of title and so should not pass title or any interest in the property. UPA Section 10(2) dilutes, albeit slightly, the effect of record-title and is, therefore, inconsistent with RUPA's broad policy of fostering reliance on the record. Bromberg & Ribstein note, at 4:58, that deletion of this section does not take away any rights the grantee outside the chain of title may have against the partnership arising out of an authorized transfer, such as an action for damages.

UPA Sections 10(4) and (5) have also been deleted. These situations are now adequately covered by Section 302(a).

SECTION 303. STATEMENT OF PARTNERSHIP AUTHORITY.

(a) A partnership may file a statement of partnership authority, which:

(1) must include:

(i) the name of the partnership;
(ii) the street address of its chief executive office and of one office in this State, if there is one;

(iii) the names and mailing addresses of all the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (b); and

(iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed pursuant to Section 105(c) and states the name of the partnership but does not contain all of the other information required by subsection (a), the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e).

(d) Except as provided in subsection (g), a filed statement of partnership authority supplements the
authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer
real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as provided in subsection (e) and Sections 704 and 806, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the [Secretary of State].

COMMENT

Section 303 is new. It provides for an optional statement of partnership authority specifying the names of the partners authorized to execute instruments transferring real property held in the partnership name; it may also grant supplementary authority or limit the authority of partners to enter into other transactions on behalf of the partnership. The execution, filing, and recording of statements is governed by Section 105.

The ABA Report, at 139, recommended that partnerships be required to file a statement of authority. RUPA follows instead the lead of Georgia and California which make filing optional. See Cal. Stat. § 15010.5; Ga. Code Ann. § 14-8-10A. The filing of a statement of partnership authority may be deemed to satisfy the disclosure required by a state’s fictitious name statute, if the state so chooses.

Section 105 provides for the central filing of statements, rather than local filing. However, to bind third parties in connection with the transfer of real

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property, a statement of partnership authority must also be filed locally with the land records.

The most important goal of the statement of authority is to facilitate the transfer of real property held in the partnership name. A statement must specify the names of the partners authorized to execute an instrument transferring such property.

Under subsection (d)(2), a recorded grant of authority to transfer real property held in the partnership name is conclusive in favor of a transferee for value without actual knowledge to the contrary. Only real property held in the partnership name is affected by a recorded statement. A recorded statement has no effect on the partners' authority to transfer partnership real property which is held other than in the partnership name. Such property is, by definition, outside the chain of title and thus would not be disclosed by a title search. See § 204. To be effective, a statement recorded with the land records must be a certified copy of the original statement filed with the secretary of state. See § 105(b).

Subsection (d)(2)'s presumption of authority operates only so long as and to the extent that a limitation on a partner's authority is not contained in another recorded statement. This is intended to condition reliance on the record to situations where there is no conflict among recorded statements, amendments, or denials of authority. See Section 304. If the record is in conflict regarding a partner's authority, transferees must go outside the record to determine the partners' actual authority. This rule is modified slightly in the case of a cancellation of a limitation on a partner's authority, which revives the previous grant of authority.

Under subsection (e), third parties are deemed to know of a recorded limitation on the authority of a partner to transfer real property held in the partnership name. Since transferees are bound under Section 301 by knowledge of a limitation on a partner's authority, they are bound by such a recorded limitation. Of course, a transferee with actual knowledge of a limitation on a partner's authority is bound under Section 301, whether or not there is a recorded statement of limitation.

A statement of partnership authority may have effect beyond the transfer of real property held in the partnership name. Under subsection (a)(2), a statement
of authority may contain any other matter the partnership chooses, including a grant of authority, or a limitation on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership. Since Section 301 confers authority on all partners to act for the partnership in ordinary matters, the real import of such a statement is to grant extraordinary authority, or to limit the ordinary authority, of some or all of the partners.

The effect given to such a statement is different than that accorded a statement regarding the transfer of real property. Under subsection (d)(1), a filed grant of authority is binding on the partnership, in favor of a person who gives value without actual knowledge to the contrary, unless limited by another filed statement. This is the same rule as for statements involving real property under subsection 301(d)(2). There is, however, no counterpart to subsection (e) regarding a filed limitation of authority. Section 301 already provides as a general rule that a partner’s lack of authority is binding on third parties who know the partner lacks authority. Thus, a limitation on a partner’s authority to transfer personal property or to enter into other transactions on behalf of the partnership, contained in a filed statement of partnership authority, is effective only against a nonpartner who knows or has received a notification of it. Subsection (f) makes clear that the filing of a limitation of authority does not operate as constructive knowledge of a partner’s lack of authority, as does a recorded limitation of a partner’s authority to transfer real property held in the partnership name, except as expressly provided with respect to a statement of dissociation or a statement of dissolution. See Sections 704(c) and 806(c) (constructive notice 90 days after filing).

It should be emphasized that Section 303 concerns the authority of partners to bind the partnership to third persons. As among the partners, the authority of a partner to take any action is governed by the partnership agreement, or by the provisions of RUPA governing the relations among partners, and is not affected by the filing or recording of a statement of partnership authority.

Although the statement of partnership authority is optional, the exercise of the option to file a statement of partnership authority imposes a further disclosure obligation on the partnership. Under subsection (a)(1), a filed statement must include the street address of its chief executive office and of an office in the state (if
any), as well as the names and mailing addresses of all of the partners or, alternatively, of an agent appointed and maintained by the partnership for the purpose of maintaining such a list. If an agent is appointed, subsection (b) provides that the agent shall maintain a list of all of the partners and make it available to any person on request for good cause shown. Under subsection (c), the failure to make all of the required disclosures does not affect the statement's operative effect, however.

Under subsection (f), a statement of authority, including a statement containing a limitation of authority, is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed.

Section 308(c) makes clear that a person does not become a partner solely because she is named in a statement of partnership authority filed by another person.

SECTION 304. STATEMENT OF DENIAL. A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to Section 303(b) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority to the extent provided in Section 303(d) and (e).

COMMENT

Section 304 is new and complements Section 303. It provides partners (and persons named as partners) an opportunity to deny any fact asserted in a statement of partnership authority, including denial of a person's status as a partner or of another person's authority as a partner. A statement of denial must be executed, filed, and recorded pursuant to the requirements of Section 105.
Section 304 does not address the consequences of a denial of partnership. An opportunity for a denial of record allows partners and other persons making the denial to protect themselves from a third party arguing that an adverse inference should be drawn from a failure to deny, notwithstanding Section 308(c).

A statement of denial operates as a limitation on a partner’s authority to the extent provided in Section 303. Section 303(d) provides that a filed or recorded statement of partnership authority is conclusive, in favor of purchasers without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not contained in another filed or recorded statement. A filed or recorded statement of denial operates as such a limitation on authority, thereby precluding reliance on an inconsistent grant of authority.

Under Section 303(e), a recorded statement of denial of a partner’s authority to transfer partnership real property held in the partnership name constitutes constructive knowledge of such a limitation.

SECTION 305. PARTNERSHIP LIABLE FOR PARTNER’S ACTIONABLE CONDUCT.

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of its business, a partnership receives money or property of a person not a partner which is misapplied by a partner while it is in the custody of the partnership, the partnership is liable for the loss.
COMMENT

Section 305(a) is derived from UPA Section 13. The scope of the section has been expanded by the deletion of the words, "not being a partner in the partnership." This is intended to permit a partner to sue the partnership on a tort or other theory during the term of the partnership, rather than being limited to the remedies of dissolution and an accounting. This is in accord with the ABA Report, at 142. See also Crane, Liability of Unincorporated Association for Tortious Injury to a Member, 16 Vand. L. Rev. 319, 324-25 (1963).

The section has been broadened to cover no-fault torts by the addition of the term, "or other actionable conduct," as suggested in the ABA Report, at 142.

The partnership is liable for the actionable conduct or omission of a partner acting in the ordinary course of its business or "with the authority of the partnership." This is intended to include a partner's apparent, as well as actual, authority, thereby bringing within Section 305(a) the situation covered in UPA Section 14(a).

The phrase, "to the same extent as the partner so acting or omitting to act," has been eliminated to prevent a partnership from asserting the immunity of a partner. This is consistent with the general agency rule that a principal is not entitled to its agent's immunities. See Ribstein, A Mid-Term Assessment of the Project to Revise the Uniform Partnership Act, 46 Bus. Law. 111, 133 (1990). The deletion is not intended to limit a partnership's contractual rights.

Section 305(b) is drawn from UPA Section 14(b). It imposes strict liability on the partnership for the misapplication of money or property received in the course of its business.

SECTION 306. PARTNER'S LIABILITY. All partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.
Section 306 changes the UPA Section 15 rule and imposes joint and several liability on partners for all partnership obligations. About ten states already provide for such joint and several liability, and the ABA Report, at 143, recommends the change be adopted. The joint and several liability under RUPA differs from the classic model. See Section 307.

SECTION 307. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(1) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
(2) an involuntary case under Title 11 of the United States Code has been commenced against the partnership and has not been dismissed within 60 days after commencement, or the partnership has commenced a voluntary case under Title 11 of the United States Code and the case has not been dismissed;

(3) the partner has agreed that the creditor need not exhaust partnership assets;

(4) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 308.

COMMENT

Section 307 is new. Subsection (a) provides that a partnership may sue and be sued in the partnership name. This entity approach was recommended by the ABA Report, at 133-34, and is designed to simplify suits by and against a partnership.
At common law, a partnership, not being a legal entity, could not sue or be sued in the firm name. The UPA itself is silent on this point, so in the absence of another enabling statute, it is generally necessary to join all the partners in an action against the partnership. See Richardson, Creditors' Rights and the Partnership, 40 Ky. L.J. 243 (1951).

Subsection (b) provides that suit may be brought against the partnership and any or all of the partners in the same action or in separate actions. It is intended to clarify that the partners need not be named in an action against the partnership. In particular, in an action against a partnership, it is not necessary to name individually at least one partner in addition to the partnership. The ABA Report noted, at 144, that this will simplify and reduce the cost of litigation, especially in cases of small claims where there are known to be significant partnership assets.

Subsection (c) provides that a judgment against the partnership is not, standing alone, a judgment against the partners, and it cannot be satisfied from a partner's personal assets unless there is a judgment against the partner. This will require, at the least, that partners be individually named and served to subject their personal assets to the judgment, while recognizing the partnership as an entity to the extent of partnership assets.

RUPA leaves it to the law of judgments, as did the UPA, to determine the collateral effects to be accorded a prior judgment for or against the partnership in a subsequent action against a partner individually. See Section 60 of the Second Restatement of Judgments (1982) and the Comments thereto.

Subsection (d) requires partnership creditors to exhaust the partnership's assets before levying on a partner's individual property. This rule respects the concept of the partnership as an entity and makes partners more in the nature of guarantors than principal debtors on every partnership debt. It is already the law in some states. See Crane & Bromberg, at 342. The ABA Report, at 143, favors such a rule as more consistent with today's general business expectations.

As a general rule, a final judgment against a partner cannot be enforced by a creditor against the partner's separate assets unless a writ of execution against the partnership has been returned unsatisfied. Under subsection (d), a creditor may also proceed
directly against the partner's assets if (i) the partnership is a debtor in bankruptcy; (ii) the liability is imposed on the partner independently of the partnership; or (iii) the partner has consented. There is also a judicial override provision in subsection (d)(4). A court may authorize execution against the partner's assets on the grounds (i) that the partnership's assets are clearly insufficient; (ii) that exhaustion of the partnership's assets would be excessively burdensome; or (iii) that it is otherwise equitable to do so.

Although subsection (d) is silent with respect to pre-judgment remedies, the intent is that partnership assets should be exhausted before partners' assets are attached or garnished. The law of pre-judgment remedies is adequate to embody this principle.

Subsection (e) clarifies that actions against the partnership under Section 308, involving representations by partners or purported partners, are subject to Section 307.

SECTION 308. PURPORTED PARTNER.

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the
claimant. If partnership liability results, the purported partner is liable as if the purported partner were a partner. If no partnership liability results, the purported partner is liable jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not a partner in a partnership merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership
authority to indicate the partner's dissociation from the partnership.

COMMENT

Section 308 continues the basic principles of partnership by estoppel from UPA Section 16, now more accurately entitled "Purported Partner." Subsection (a) continues to distinguish between representations made to specific persons and those made in a public manner. See Painter, Partnership by Estoppel, 16 Vand. L. Rev. 327 (1963). The meaning of UPA Section 16(1)(b) is clarified, as recommended by the ABA Report, at 145.

Subsection (b) emphasizes that the persons being protected by Section 308 are those who enter into transactions in reliance upon a representation. If all of the partners of an existing partnership consent to the representation, a partnership obligation results. Apart from Section 308, the firm may be bound in other situations under general principles of apparent authority or ratification.

If a partnership liability results under Section 308, the creditor must exhaust the partnership's assets before seeking to satisfy the claim from the partners. See Section 307.

Subsections (c) and (d) are new and deal with potential negative inferences to be drawn from a failure to correct inaccurate or outdated statements which have been filed. Subsection (c) makes clear that an otherwise innocent person is not liable for failing to deny her partnership status as asserted by a third person in a statement of partnership authority. Under subsection (d), a dissociated partner does not continue as a partner solely because a statement of dissociation is not filed.

SECTION 309. LIABILITY OF INCOMING PARTNER. A person admitted as a partner into a partnership is liable for all obligations of the partnership incurred before the person's admission as if the person were a partner when the obligations were incurred, but the
liability may be satisfied only out of partnership property.

COMMENT

This section continues the scheme of UPA Sections 17 and 41(7). It provides a clear and simple rule concerning the rights of partnership creditors against a new partner. In effect, a new partner has no personal liability to existing creditors of the partnership, and only the new partner’s investment in the firm is at risk for the satisfaction of such old debts. The rule reflects an entity theory as to the rights of creditors to partnership assets and an aggregate theory as to their rights to the new partner’s separate assets.
SECTION 401. PARTNER'S RIGHTS AND DUTIES.

(a) A partnership shall establish an account for each partner. The partnership shall credit the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits. The partnership shall charge the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) A partnership shall credit each partner's account with an equal share of the partnership profits. A partnership shall charge each partner with a share of the partnership losses, whether capital or operating, in proportion to the partner's share of the profits.

(c) A partnership shall indemnify each partner for payments reasonably made and liabilities reasonably
incurred by the partner in the ordinary and proper conduct of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall repay a partner who, in aid of the partnership, makes a payment or advance beyond the amount of capital the partner agreed to contribute.

(e) A payment made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership. Interest accrues from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an
amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under Section 301.

COMMENT

Section 401 is drawn substantially from UPA Section 18. It establishes many of the default rules that govern the relations among partners. All of these rules are, however, subject to contrary agreement of the partners as provided in Section 103.

Subsection (a) provides that the partnership shall establish an account for each partner which must be credited with the partner's contributions and share of the partnership profits and charged with distributions to the partner and the partner's share of partnership losses. These rules mandate rudimentary partnership capital accounts as the basis of the partnership's accounting system unless the partners agree otherwise. For the rules regarding the closing of the partners' capital accounts upon the dissolution and winding up of the partnership business, see Section 808.

Subsection (b) provides that the partnership shall credit each partner's account with an equal share of the partnership profits and shall charge each partner with a share of the partnership losses, whether capital or operating, in proportion to the partner's share of the profits. Thus, under this default rule, partners share profits per capita and not in proportion to capital contribution as in the corporate model. If it is agreed to share profits other than equally, losses will be shared similarly to profits, absent agreement to do otherwise. This rule, carried over from the UPA, is predicated on the assumption that partners would likely agree to share losses on the same basis as profits, but may forget to say so. Of course, by agreement they may share losses on a different basis than profits.

This rule applies, as does UPA Section 18(a), where one or more partners contribute no capital, but there is considerable authority to the contrary, based on the ground that the contributor of capital contributes its use merely, and it should not be presumed that the other partners intended not only to risk receiving nothing as compensation for services, but also to assume a duty of indemnifying another against
capital losses. Today, however, a partnership in which some partners contribute no capital is not unusual, even where substantial capital is employed.

It may seem unfair that the contributor of services, who contributes little or no capital, should be obligated to contribute toward the capital loss of the large contributor who contributed no services. In entering a partnership with such a capital structure, the partners should foresee that application of the usual rules may bring about unusual results and take advantage of their power to vary the default rules by agreement. On the other hand, as a practical matter the working partner's obligation to contribute anything beyond her original investment may be illusory. The partner who contributes little or no capital may be without resources to share losses and is, in such case, execution proof.

Subsection (b) provides that the partnership shall "charge each partner's account" with a share of the losses, rather than the UPA formulation that each partner shall "contribute" to losses. The change is intended to avoid obligating a partner to contribute to losses prior to withdrawal or liquidation, unless the partners so agree. See Bromberg & Ribstein at 6:14. In effect, a negative capital account represents a debt to the partnership unless the partnership agreement provides to the contrary.

Subsection (c) is drawn from UPA Section 18(b) and provides that the partnership shall indemnify partners for payments made and liabilities incurred in the partnership business. Indemnification is an obligation of the partnership. Indemnification may create a loss toward which the partners must contribute. See Bromberg & Ribstein, at 6:23-24. Although the right to indemnification is usually enforced in the settlement of accounts among partners upon dissolution and winding up of the partnership business, the right accrues when the liability is incurred and thus, in an appropriate case, may be enforced during the term of the partnership. Id. at 6:27.

A partner who is held liable to a third party for simple negligence in the conduct of the partnership business may be entitled to indemnification, even though under Section 404(d) there is no fiduciary duty of ordinary care. The right to indemnification for liabilities incurred in the partnership business is an independent right.
Subsections (d) and (e) are derived from UPA Section 18(c). They provide that an advance of funds beyond the amount of a partner's agreed capital contribution is to be treated as a loan to the partnership.

Under subsection (f), each partner has equal rights in the management and conduct of the business. This section is based on UPA Section 18(e) which has been interpreted broadly to mean that, absent contrary agreement, each partner has a continuing right to be informed about the partnership business. See generally Hillman, Power Shared and Power Denied: A Look At Participatory Rights in The Management of General Partnerships, 1984 U. Ill. L. Rev. 865, 887.

Subsection (g) provides simply that partners may use or possess partnership property only for partnership purposes. This is the edited remains of UPA Section 25(2)(a), which deals in detail with the incidents of tenancy in partnership. Such tenancy is abolished as a consequence of the entity theory of partnerships.

Subsection (h) continues the UPA Section 18(f) rule that a partner is not entitled to remuneration for services performed, except in winding up the partnership. The deletion of the reference to a "surviving" partner in this exception means that any partner winding up the business may be entitled to compensation, not just a partner winding up after the death of another partner. The exception is not intended to apply in the hypothetical winding up that takes place if there is a buyout under Article 7.

Subsection (i) continues the substance of UPA Section 18(g) that no person can become a partner without the consent of all the partners.

Subsection (j) continues with one important clarification the UPA Section 18(h) scheme of allocating management authority among the partners. In the absence of an agreement to the contrary, matters arising in the ordinary course of the business may be decided by a majority of the partners. Amendments to the partnership agreement and matters outside the ordinary course of the partnership business require unanimous consent of all of the partners. The text of the UPA is silent regarding extraordinary matters, although by construction most courts require the consent of all partners for such matters.
It is not intended that subsection (j) embrace a claim for an objection to a partnership decision that is not discovered until after the fact. There is no cause of action based on such after-the-fact second-guessing.

Subsection (k) is new and was added to remind readers that Section 301 governs partners' agency power to bind the partnership to third persons, while Section 401 governs partners' rights among themselves.

SECTION 402. DISTRIBUTIONS IN KIND. A partner has no right to receive, and may not be required to accept, a distribution in kind.

COMMENT

Section 402 provides that a partner has no right to demand and receive a distribution in kind and may not be required to take a distribution in kind. This continues the "in kind" rule of UPA Section 38(1). The new language is suggested by RULPA Section 605.

This section is complemented by Section 808(a) which provides that, in winding up the partnership business on dissolution, any surplus after the payment of all partnership obligations must be applied to pay in cash the net amount distributable to each partner.

SECTION 403. PARTNER'S RIGHT TO INFORMATION.

(a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary
business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership, on demand, shall furnish to a partner, and the legal representative of a deceased partner or partner under legal disability, to the extent just and reasonable, complete and accurate information concerning the partnership.

COMMENT

Subsection (a) provides that the partnership books and records, if any, shall be kept at its chief executive office. It continues the UPA Section 19 rule, modified to include partnership records other than its "books," i.e., financial records, as recommended in the ABA Report, at 149. The concept of "chief executive office" comes from UCC Section 9-103(3)(d). See discussion in the Comment to Section 106.

No list of books and records is enumerated as mandatory, such as that found in RULPA Section 105. As pointed out in the ABA Report, such a "laundry list" is inappropriate for general partnerships, which are often informal or even inadvertent. Indeed, RUPA reflects a rejection of any requirement that books be kept at all.

In general, a partnership should keep those books and records necessary to enable the partners to determine their share of the profits and losses, as well as their rights on withdrawal. An action for an accounting provides an adequate remedy in the event inadequate records are kept. The partnership should also maintain any books and records required by state or federal taxing or other governmental authorities.

Any requirement in UPA Section 19 that the partnership keep books is oblique at best, since it states merely where the books shall be kept, not that they shall be kept. See Crane & Bromberg, at 383 n.13. There is authority that a partner who does undertake to keep books must do so accurately and adequately. Id. at 384. Under RUPA, there is no liability to either partners or third parties for the failure to keep partnership books.
Under subsection (b), partners are entitled to access to the partnership books and records. Former partners are expressly given a similar right, although limited to the books and records pertaining to the period during which they were partners. The line between partners and former partners is not a bright one for this purpose, however, and should be drawn in light of the legitimate interests of a dissociated partner in the partnership. For example, a withdrawing partner's liability is ongoing for old liabilities, and will normally be extended to new liabilities for at least 90 days, or the partner's dissociation may lead to the dissolution and winding up of the business. It is intended that a dissociated partner be accorded access to partnership books and records as reasonably necessary to protect her legitimate interests during the period her rights and liabilities are being wound down.

As recommended in the ABA Report, at 150, the right of access is limited to ordinary business hours, and the right to inspect and copy by agent or attorney is made explicit. The partnership may impose a reasonable charge for furnishing copies of documents. Accord, RULPA § 105(b).

The right to inspect and copy is not conditioned on the partner's purpose or motive. Compare RMBCA §§ 16.02(c)(1) (shareholder's demand must be in good faith and for a proper purpose), (c)(3) (shareholder may inspect only records directly connected with purpose). As noted in the ABA Report, at 150, a partner's unlimited personal liability justifies an unqualified right of access to the partnership books and records. Any abuse of the right to inspect and copy would constitute a breach of fiduciary duty for which the other partners would have a remedy.

Under Section 103(b)(2), a partner's right of access to partnership books and records may not be unreasonably restricted by the partnership agreement. Thus, an agreement limiting a partner's right to inspect and copy partnership books and records is subject to judicial review. This is intended to preserve partners' core information rights despite unequal bargaining power.

Subsection (c) is based on UPA Section 20. It provides that partners must be furnished, on demand, complete and accurate information concerning the partnership to the extent just and reasonable. This requirement should be read in light of Section 401(f) which gives all partners equal rights in the management
and conduct of the partnership business, absent contrary agreement. This right to manage has been construed to require that every partner be provided on an ongoing basis with information concerning the partnership business. See Section Section 401(f) and Comment.

Under subsection (c), as under UPA Section 20, the information right arises only on demand; such information need not be volunteered. RUPA eschews burdening partners with an affirmative disclosure obligation like that recently established in Georgia. Under some circumstances, however, a disclosure duty may arise. See Section 404(e) and Comment.

The subsection (c) disclosure obligation is also limited to just and reasonable requests. This is intended to give partners and judges a basis for refusing burdensome and unreasonable demands for information.

SECTION 404. GENERAL STANDARDS OF PARTNER'S CONDUCT.

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in this section.

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use or appropriation by the partner of partnership property or opportunity without the consent of the other partners;

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business, as or on behalf of a party having
an interest adverse to the partnership without the consent of the other partners; and

(3) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership without the consent of the other partners.

(c) A partner's duty of loyalty may not be eliminated by agreement, but the partners by agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(d) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(e) A partner shall discharge the duties to the partnership and the other partners under this [Act] or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing. The obligation of good faith and fair dealing may not be eliminated by agreement, but the partners by agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.
(f) A partner does not violate a duty or obligation under this [Act] or under the partnership agreement merely because the partner's conduct furthers the partner's own interest. A partner may lend money to and transact other business with the partnership. The rights and obligations of a partner who lends money to or transacts business with the partnership are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

COMMENT

1. Section 404 is substantially new. It is derived from UPA Section 21. The new title, "General Standards of Partner's Conduct," is drawn from its RMBCA counterpart, Section 8.30.

Section 404 begins by stating that the only fiduciary duties a partner owes to the partnership and the other partners are the duties of loyalty and care set forth in the Act. These duties may not be waived or eliminated entirely in the partnership agreement, but they may be modified. See Sections 103(b)(3-5) and 404(c) and (e) and Comments 2 and 3.

Section 404 continues the term "fiduciary" from the UPA. Arguably, the term "fiduciary" is inappropriate when used to describe the duties of a partner because a partner may legitimately pursue her own self-interest and not solely that of her fellow partners, as must a true trustee. Nevertheless, partners have long been characterized as fiduciaries. See, e.g., Meinhard v. Salmon, 249 N.Y. 458, 463, 164 N.E. 545, 546 (1928) (Cardozo, J.). Indeed, the law of partnership reflects the broader law of principal and
agent, under which every agent is a fiduciary, even if the agent's compensation is based on performance.

2. Section 404(b) provides three specific rules which comprise a partner's duty of loyalty. These rules comprise the entire duty of loyalty and are exclusive. In each case, the other partners can consent to conduct otherwise proscribed by the rule. To be effective, their consent must be predicated on full disclosure of the conflict of interest itself, as well as of all material facts regarding the transaction to be approved. In short, the consent must be informed, although the word "informed" was not used in the text of the Act.

Subsection (b)(1) is based on UPA Section 21(1) and continues the rule that a partnership asset usurped by a partner is held in trust for the partnership. The language has been expanded to require a partner to account for profits derived from the misappropriation of a partnership opportunity. Under the trust theory, the partnership's claim is greater than that of an ordinary creditor. Thus, the partnership can claim as its own, to the exclusion of the partner's personal creditors, any money or property in the partner's hands that can be traced to the partnership.

UPA Section 21(1) imposes the duty on partners to account for profits and benefits in all transactions connected with "the formation, conduct, or liquidation of the partnership." Reference to the "formation" of the partnership has been eliminated by RUPA because of concern that the duty of loyalty could be inappropriately extended to the pre-formation period when the parties are really negotiating at arm's length. Compare Herring v. Offutt, 295 A.2d 876 (Ct. App. Md. 1972), with Phoenix Mutual Life Ins. Co. v. Shady Grove Plaza Limited Partnership, 734 F. Supp. 1181 (D. Md. 1990), aff'd, 937 F.2d 603 (4th Cir. 1991). Once a partnership is agreed to, each partner becomes a fiduciary in the "conduct" of the business. Pre-formation negotiations are, of course, subject to the general contract duty to deal honestly and without fraud.

Upon a partner's dissociation, Section 603(b)(3) limits the application of the duty to account for personal profits to those derived from matters arising or events occurring before the dissociation. Thus, after withdrawal, a partner is free to appropriate to her own benefit any new business opportunity thereafter coming to her attention, even if the partnership continues.
Subsection (b)(2) provides that a partner must refrain from dealing with the partnership as or on behalf of a party having an adverse interest without the consent of the other partners. This rule is derived from Section 389 of the Restatement (Second) of Agency. The Comment to the Restatement explains that the rule is not based upon the harm caused to the principal, but upon avoiding a conflict of opposing interests in the minds of agents whose duty it is to act for the benefit of their principals. After a partner's dissociation, this rule is also limited in application by Section 603(b)(3).

Section 404(b)(3) provides that a partner must refrain from competing with the partnership without the consent of the other partners. This language is derived from Section 393 of the Restatement (Second) of Agency and is an application of the agent's general duty to act solely on the principal's behalf.

The duty not to compete applies only to the "conduct" of the partnership business; it does not extend to winding up the business, as do the other loyalty rules. Thus, a partner is free to compete immediately upon an event of dissolution under Section 301. A partner who dissociates without resulting in a winding up of the business is also free to compete, because Section 603(b)(2) provides that the duty not to compete terminates upon dissociation. A dissociated partner is not, however, free to use confidential partnership information after dissociation. See the Comment to Section 393 of the Restatement. Moreover, independently of the duty of loyalty, trade secret law also may apply. See the Uniform Trade Secrets Act.

Under Section 103(b)(3), the partnership agreement may not "eliminate" the duty of loyalty. Section 404(c) expressly empowers the partners, however, to identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

There has always been a tension regarding the extent to which a partner's fiduciary duty of loyalty can be varied by agreement. On the one hand, it is clear that the remaining partners can "consent" to a particular conflicting interest transaction, after the fact, provided there is full disclosure. On the other hand, courts have been loathe to enforce agreements broadly waiving in advance a partner's fiduciary duty, especially where there is unequal bargaining power, information, or sophistication. For this reason, a very
broad provision in a partnership agreement in effect negating any duty of loyalty (e.g., a provision giving a managing partner complete discretion to manage the business with no liability except for acts and omissions that constitute wilful misconduct) will not likely be enforced. See, Labovitz v. Dolan, 545 N.E.2d 304 (Ill. App. 1989).

RUPA attempts to provide a standard which partnerships can rely upon in drafting exculpatory agreements and which courts will respect in enforcing them. It is not necessary that the agreement be restricted to a particular transaction. This would mean bargaining over every deal, which is inefficient. The agreement may be drafted in terms of types or categories of activities or transactions, but it should be reasonably specific. Context may be significant. Ultimately, the courts must decide the outer limits of validity of such agreements. It is intended that the risk of judicial refusal to enforce manifestly unreasonable exculpatory clauses will discourage sharp practices while accommodating the legitimate needs of the parties in structuring their relationship.

A provision in a real estate partnership agreement authorizing a partner who was a real estate agent to retain commissions on property sold by that partner in which the partnership had no reasonable expectancy would be an example of a "type or category" of activity that should be enforceable as not manifestly unreasonable under the Act.

3. Subsection (d) is new and establishes the duty of care which partners owe to the partnership and to the other partners. There is no statutory duty of care under the UPA, although a common law duty is recognized by some courts. See, e.g., Rosenthal v. Rosenthal, 543 A.2d 348, 352 (Me. 1988) (duty of care limited to acting in a manner that does not constitute gross negligence or wilful misconduct). See generally Note, Fiduciary Duties of Partners, 48 Iowa L. Rev. 902, 904-05 (1963).

The standard of care imposed by RUPA is that of gross negligence. This is the standard used in many partnership agreements today. Section 103(b)(4) provides that the duty of care may not be eliminated entirely by agreement, but the standard may be reasonably reduced.

For example, partnership agreements frequently contain provisions releasing a partner from liability for actions taken in good faith, in accordance with the
partnership agreement and in the honest belief that the actions have been taken in the best interests of the partnership and indemnifying the partner against any claim, demand or liability incurred in connection with the business of the partnership, provided the partner acted in a good faith belief that she had authority to act and was not grossly negligent or guilty of intentional misconduct. Many partnership agreements reach this same result by listing various activities and stating that the performance of these activities is deemed not to constitute gross negligence or wilful misconduct. These types of provisions are intended to come within the modifications authorized by Section 103(b)(4).

Absolving partners of intentional misconduct is probably unreasonable. As with contractual standards of loyalty, determining the outer limit in reducing the standard of care is left to the courts. The standard may, of course, be increased by agreement to one of ordinary care.

4. Subsection (e) is also new. It provides that partners have an obligation of good faith and fair dealing in the discharge of all their duties, including those arising under the Act, such as their fiduciary duties of loyalty and care, and those arising under the partnership agreement. The exercise of any rights by a partner is also subject to the obligation of good faith and fair dealing. The obligation runs to the partnership and to the other partners in all matters related to the conduct and winding up of the partnership business.

The obligation of good faith and fair dealing is a contract concept, imposed on the partners by virtue of the partnership agreement. It is not a fiduciary duty arising out of the partners' special relationship. Nor is it a separate and independent obligation. It is an ancillary obligation which is dependent on the existence of another duty arising under the partnership agreement or the Act.

The meaning of "good faith and fair dealing" is not firmly fixed under present law. "Good faith" clearly suggests a subjective element, while "fair dealing" implies an objective component. It was decided to leave the term undefined in the Act and allow the courts to develop its meaning based on the experience of real cases. Moreover, some commentators believe that good faith is more properly understood by what it excludes than by what it includes. See Summers, "Good
Good faith, as judges generally use the term in matters contractual, is best understood as an "excluder" -- a phrase with no general meaning or meanings of its own. Instead, it functions to rule out many different forms of bad faith. It is hard to get this point across to persons used to thinking that every word must have one or more general meanings of its own -- must be either univocal or ambiguous.

In this connection, the UCC definition of "good faith" is honesty in fact and, in the case of a merchant, the observance of reasonable commercial standards of fair dealing in the trade. See UCC §§ 1-201(19), 2-103(b). This definition was rejected as too narrow.

In some situations the obligation of good faith includes a disclosure component. Depending on the circumstances, a partner may have an affirmative disclosure obligation that supplements the Section 403 duty to render information "on demand." For example, the disclosure obligation may continue even after consent is given to a transaction that involves a conflict of interest.

Under Section 103(b)(5), the obligation of good faith and fair dealing may not be eliminated by agreement. Section 404(e), however, expressly authorizes the partners by agreement to determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable. This language is based on UCC Section 1-102(3).

5. Subsection (f) is new and deals expressly with a very basic issue on which the UPA is silent. It provides that a partner's conduct is not deemed to be improper simply because it serves the partner's own individual interest. This admonition has particular application to the duty of loyalty and the obligation of good faith and fair dealing. It underscores the partner's rights as an owner and principal in the enterprise, which must always be balanced against her duties and obligations as an agent and fiduciary.

Subsection (f) further clarifies that a partner may lend money to and transact other business with the partnership and, in so doing, has the same rights and
obligations as a nonpartner. This language is drawn from RULPA Section 107. The rights and obligations of a partner doing business with the partnership as an outsider are expressly made subject to the usual laws governing such transactions. This encompasses those laws limiting or qualifying the rights and remedies of inside creditors, such as fraudulent transfer law, equitable subordination, and the law of avoidable preferences, as well as general debtor-creditor law. This clarifies that subsection (e) is not intended to displace such laws, and thus they are preserved under Section 104.

It was unclear under the UPA whether a partner could properly purchase the assets of the partnership, for the partner's own account, at a foreclosure sale or upon the liquidation of the partnership. Such purchases are within subsection (e)'s broad approval. It is intended that a partner may purchase partnership assets at a foreclosure sale, whether the partner is the mortgagee or the mortgagee is an unrelated third party. Similarly, a partner may purchase partnership property at a tax sale. The obligation of good faith requires disclosure of the partner's interest in the transaction, however.

6. Subsection (g) provides that the prescribed standards of conduct apply equally to a person engaged in winding up the partnership business as the personal or legal representative of the last surviving partner, as if the person were a partner. This is derived from UPA Section 21(2), but now embraces the duty of care, as well as the duty of loyalty.

SECTION 405. PARTNER'S LIABILITY TO PARTNERSHIP. A partner is liable to the partnership for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

COMMENT

Section 405 is new and provides that a partner is liable to the partnership for any breach of the partnership agreement or other wrongful conduct. This includes any breach of a partner's fiduciary or other statutory duties to the partnership. Section 406 provides the remedies for the enforcement of such liabilities.
SECTION 406. REMEDIES OF PARTNERSHIP AND PARTNERS.

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting as to partnership business, to:

(1) enforce a right under the partnership agreement;

(2) enforce a right under this [Act], including:

   (i) the partner's rights under Sections 401, 403, and 404;

   (ii) the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to Section 701 or enforce any other right under Article 6 or 7; or

   (iii) the partner's right to compel a dissolution and winding up of the partnership business under Section 801 or enforce any other right under Article 8; or

(3) enforce the rights and otherwise protect the interests of the partner, including rights and
interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

COMMENT

Subsection (a) is new and reflects the entity theory. It provides that the partnership itself may maintain an action against a partner for any breach of the partnership agreement or for the violation of any duty owed to the partnership, such as a breach of fiduciary duty. Section 405, which operates in conjunction with Section 406(a), provides that the partners are liable to the partnership for any breach of the partnership agreement or other wrongful conduct.

Subsection (b) is the successor to UPA Section 22, but is changed significantly. It reflects a new policy choice that partners should have access to the courts during the term of the partnership to resolve claims against the partnership and the other partners, leaving broad discretion in the courts to fashion appropriate remedies. This change reflects the increased willingness courts have shown over the past 75 years to grant relief without the requirement of an accounting. For a discussion of the so-called "exclusivity rule" and the many exceptions to it, see Bromberg & Ribstein, at 6:98-110. Since partners are not passive investors like limited partners, RUPA does not authorize derivative actions, as does RULPA Section 1001.

Under subsection (b), a partner may bring a direct suit against the partnership or another partner for almost any cause of action arising out of the conduct of the partnership business. This was recommended in the ABA Report, at 152, to eliminate the present procedural barriers to suits between partners filed independently of an accounting action. In addition to a formal account, the court may grant any other appropriate legal or equitable remedy.
Generally, partners may contract away their Section 406 remedies. They may not, however, eliminate entirely the remedies for breach of those duties which are mandatory under Section 103. See Comment.

Subsection (c) replaces UPA Section 43 and provides that other (i.e., non-partnership) law governs the accrual of a cause of action for which subsection (b) provides a remedy. The statute of limitations on such claims is also governed by other law, and claims barred by a statute of limitations are not revived by reason of the partner's right to an accounting upon dissolution. Because an accounting is an equitable proceeding, it may also be barred by laches where there is an undue delay in bringing the action. Under general law, the limitations periods may be tolled by a partner's fraud.

At common law, an accounting was generally not available before dissolution. This was changed by UPA Section 22 which specifies certain circumstances in which an accounting action is available without requiring a partner to dissolve the partnership. Section 406 goes far beyond the UPA rule. It provides that partners may maintain a variety of actions, including an action for an accounting, during the term of the partnership, as well as a final action for an accounting upon dissolution and winding up. However, such causes of action accrue, and are subject to time limitations, as provided by general law. If not timely pursued, such actions become time barred and are not revived by the right to a final accounting, as they were under the UPA. The effect of these rules is to compel partners to litigate their claims during the life of the partnership or lose them, rather than wait until dissolution to raise otherwise stale claims.

SECTION 407. CONTINUATION OF PARTNERSHIP BEYOND DEFINITE TERM OR PARTICULAR UNDERTAKING.

(a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the
expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the business will not be wound up.

COMMENT

Section 407 continues UPA Section 23, with minor substantive changes. Subsection (a) provides that, if a term partnership is continued without an express agreement beyond the expiration of its term or the completion of the undertaking, the partners' rights and duties remain the same as they were, so far as is consistent with a partnership at will. This rule applies to any partnership other than a partnership at will. See Section 101(5).

Subsection (b) provides that if the partnership is continued by the partners without any settlement or liquidation of the business, it is presumed that the partners have agreed not to wind up the business. The presumption is rebuttable. As a partnership at will, the partnership may be dissolved under Section 801 at any time thereafter.
ARTICLE 5

TRANSFEREES AND CREDITORS OF PARTNER

Section 501. Partner's Interest in Partnership Property Not Transferable.
Section 502. Partner's Transferable Interest in Partnership.
Section 503. Transfer of Partner's Transferable Interest.
Section 504. Partner's Transferable Interest Subject to Charging Order.

SECTION 501. PARTNER'S INTEREST IN PARTNERSHIP PROPERTY NOT TRANSFERABLE. A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

COMMENT

Section 501 provides that a partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred, either voluntarily or involuntarily. This abolishes the UPA Section 25(1) concept of tenants in partnership and reflects the adoption of the entity theory. Partnership property is owned by the entity and not by the individual partners. See also Section 203 which provides that property transferred to or otherwise acquired by the partnership is property of the partnership and not of the partners individually.

RUPA also deletes the references in UPA Sections 24 and 25 to a partner's "right in specific partnership property," although these rights are largely defined away by the detailed rules of UPA Section 25 itself. Thus, it is clear that a partner who misappropriates partnership property is guilty of embezzlement the same as a shareholder-manager who misappropriates corporate property.

RUPA's explicit adoption of the entity theory of property should not prejudice optional adjustments to basis under Section 754 of the Internal Revenue Code. Such adjustments permit a partnership to elect that
certain transfers of partnership interests and certain
distributions be treated according to an aggregate
rather than an entity model. At present, this election
is available as a matter of statute and is not subject
to the discretion of the Internal Revenue Service. Its
availability does not depend upon the dominant theory of
property under state law.

Adoption of the entity theory also has the effect
of protecting partnership property from execution or
other process by a partner's personal creditors. These
creditors may seek a charging order under Section 504 to
reach the partner's transferable interest in the
partnership. This continues the result under UPA

RUPA does not interfere with a partner's exemption
claim in nonpartnership property. As under the UPA,
this tends to intensify disputes over whether specific
property belongs to the partner or to the firm. A
partner's spouse, heirs or next of kin are not entitled
to allowances or other rights in partnership property.
This continues the result under UPA Section 25(2)(e).
See Bromberg & Ribstein, at 3:82.

SECTION 502. PARTNER'S TRANSFERABLE INTEREST IN
PARTNERSHIP. The only transferable interest of a
partner in the partnership is the partner's interest in
distributions. The interest is personal property.

COMMENT

Section 502 continues the UPA Section 26 concept
that a partner's only transferable interest in the
partnership is the partner's interest in
"distributions." This means the only interest which a
partner may transfer is her right to receive future
distributions of money or other property from the
partnership. See Section 101(3). The partner's
transferable interest is deemed to be personal property,
regardless of the nature of the underlying partnership
assets. A transferee of a partner's transferable
interest also has the right to seek a judicial
liquidation of the partnership business. See Section
503(b)(3).
SECTION 503. TRANSFER OF PARTNER'S TRANSFERABLE INTEREST.

(a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(1) is permissible;

(2) does not by itself cause a dissolution and winding up of the partnership business; and

(3) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning or an account of partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

(1) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) to receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(3) to seek under Section 801(6) a judicial determination that it is equitable to wind up the partnership business.
(c) In a dissolution and winding up, a transferee is entitled to an accounting only from the date of the last account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(e) Until receipt of notice of a transfer, a partnership has no duty to give effect to the transferee's rights under this section.

COMMENT

Section 503 is derived from UPA Section 27. Subsection (a)(1) states explicitly that a partner has the right to transfer her transferable interest in the partnership. The term "transfer" is used throughout RUPA in lieu of the term "assignment." See Section 101(10).

Partners may by agreement restrict the right to transfer their partnership interests, and such restrictions are generally enforceable under Section 103. A transfer in violation of such an agreement is a breach of contract as among the partners, but is usually effective under general law as to a third party without notice of the restriction. The UCC may, however, override the partnership agreement with respect to a restriction barring partners from pledging their partnership interests as security.

The UCC governs any transaction (regardless of its form) which is intended to create a security interest in personal property, including "general intangibles." UCC § 9-102(1)(a). A partner's transferable interest in the partnership is a "general intangible" (not an "account"). UCC § 9-106. The person obligated on a general intangible is an "account debtor." UCC § 9-105(1)(a). Thus, the partnership becomes an "account debtor" if a partner grants a security interest in her partnership interest. An agreement between an account debtor and an assignee is ineffective if it prohibits the creation of a security interest in a general intangible for money due or to become due or requires
the account debtor's consent to such security interest. UCC § 9-318(4).

This means that a partnership agreement prohibiting the creation of a security interest in a partner's partnership interest, or requiring the partnership's consent to such security interest, is unenforceable. The rights of an assignee of a partnership interest are, however, subject to all of the other terms of the partnership agreement and any defense or claim arising therefrom. UCC § 9-318(1)(a).

Subsection (a)(2) continues the UPA Section 27(1) rule that an assignment of a partner's interest in the partnership does not of itself cause a winding up of the partnership business. Under Section 601(4)(ii), however, a partner who has transferred substantially all of her partnership interest may be expelled by the other partners.

Subsection (a)(3), which is also derived from UPA Section 27(1), provides that a transferee is not, as against the other partners, entitled (i) to participate in the management or conduct of the partnership business; (ii) to inspect the partnership books or records; or (iii) to require any information concerning or an account of partnership transactions.

The rights of a transferee are set forth in subsection (b). Under subsection (b)(1), which is derived from UPA Section 27(1), a transferee is entitled to receive, in accordance with the terms of the assignment, any distributions to which the transferor would otherwise have been entitled under the partnership agreement before dissolution. After dissolution, the transferee is also entitled to receive, under subsection (b)(2), the net amount which would otherwise have been distributed to the transferor upon the winding up of the business.

Subsection (b)(3) confers standing on a transferee to seek a judicial dissolution and winding up of the partnership business as provided in Section 801(6), thus continuing the rule of UPA Section 32(2).

Section 504(b) accords the rights of a transferee to the purchaser at a sale foreclosing a charging order. The same rule should apply to creditors or other purchasers who acquire partnership interests by pursuing UCC remedies or statutory liens under federal or state law.
Subsection (c) is based on UPA Section 27(2). It limits a transferee's right to an accounting to the period since the date of the last account agreed to by all of the partners.

Subsection (d) is new. It makes clear that the partner whose interest is transferred retains all of the rights and duties of a partner, other than the right to receive distributions. This means that the transferor remains personally liable for all partnership obligations, unless and until she withdraws as a partner, is expelled under Section 601(4)(ii), or is otherwise dissociated under Section 601.

Subsection (e) is new and provides that the partnership has no duty to give effect to the transferee's rights until the partnership receives notice of the transfer. This is consistent with UCC Section 9-318(3), which provides that an "account debtor" is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. It further provides that the assignee, on request, must furnish reasonable proof of the assignment.

Other rules that apply in the case of transfers include Section 601(4)(ii) (expulsion of partner who has transferred substantially all of partnership interest); Section 801(2)(ii) (other partners may unanimously agree to a winding up); and Section 801(6) (transferee has standing to seek judicial winding up).

SECTION 504. PARTNER'S TRANSFERABLE INTEREST SUBJECT TO CHARGING ORDER.

(a) On application by a judgment creditor of a partner or partner's transferee, a court having jurisdiction may charge the transferable interest of the debtor partner or transferee to satisfy the judgment. The court may appoint a receiver of the debtor's share of the distributions due or to become due to the debtor in respect of the partnership and make all other orders,
directions, accounts, and inquiries the debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time and upon conditions it considers appropriate. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) by the judgment debtor;

(2) with property other than partnership property, by one or more of the other partners; or

(3) with partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This [Act] does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

COMMENT

Section 504 continues the UPA Section 28 charging order as the proper remedy by which a judgment creditor
of a partner may reach the debtor's transferable interest in a partnership to satisfy the judgment. Subsection (a) makes the charging order available to the judgment creditor of a transferee of a partnership interest. Under Section 503(b), the transferable interest of a partner or transferee is limited to the partner's right to receive distributions from the partnership and to seek judicial liquidation of the partnership. The court may appoint a receiver of the debtor's share of the distributions due or to become due and make all other orders which may be required.

Subsection (b) is new and codifies the case law under the UPA holding that a charging order constitutes a lien on the debtor's transferable interest. The lien may be foreclosed by the court at any time, and the purchaser at the foreclosure sale has the Section 503(b) rights of a transferee. For a general discussion of the charging order remedy, see Bromberg & Ribstein, at 3:69.

Subsection (c) continues the UPA Section 28(2) right of the debtor or other partners to redeem the partnership interest before the foreclosure sale. Redemption by the partnership (i.e., with partnership property) requires the consent of all the remaining partners. Neither the UPA nor RUPA provide a statutory procedural framework for the redemption. As explained by Bromberg & Ribstein, at 3:74:

The court probably has general authority under the last clause of U.P.A. § 28(1) to value the interest and permit redemption at the value. If the partners redeem the interest for the amount of the debt, and this is less than the value fixed by the court, the court may treat this as a loan to the debtor partner or order that the redeeming partners hold the interest in trust for the debtor partner. . . . The nondebtor partners (either before or after foreclosure) can remove the uncertainty created by the creditor's presence by dissolving the firm . . . and buying the assets on liquidation.

Subsection (d) provides that nothing in RUPA deprives a partner of her rights under the state's exemption laws. This is essentially the same as UPA Section 28(3).

Subsection (e) provides that the charging order is the judgment creditor's exclusive remedy. Although the UPA nowhere says that a charging order is the exclusive process for a partner's individual creditor, the courts have generally so interpreted it. See Bromberg &
Ribstein, at 3:69. The ABA Report, at 158, recommended that the charging order remedy be made exclusive.

Notwithstanding subsection (e), there may be an exception for the enforcement of family support orders. Some states have unique statutory procedures for the enforcement of support orders. In Florida, for example, a court may issue an "income deduction order" requiring any person or entity providing "income" to the obligor of a support order to remit to the obligee or a depository, as directed by the court, a specified portion of the income. Fla. Stat. § 61.1301 (1991). "Income" is broadly defined to include any form of payment to the obligor, including wages, salary, compensation as an independent contractor, dividends, interest, or other payment, regardless of source. Fla. Stat. § 61.046(4) (1991). This definition includes distributions payable to an obligor partner. A charging order under RUPA would still be necessary to reach the obligor's entire partnership interest, however. See generally Weinberger, Making Partners Pay Child Support: The Charging Order; 27 Hous. L. Rev. 297 (1990).
ARTICLE 6

PARTNER'S DISSOCIATION

Section 601. Events Causing Partner's Dissociation.
Section 602. Partner's Wrongful Dissociation.
Section 603. Effect of Partner's Dissociation.

SECTION 601. EVENTS CAUSING PARTNER'S DISSOCIATION.
A partner is dissociated from a partnership upon:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(i) it is unlawful to carry on the partnership business with that partner;

(ii) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(iii) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the
equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) a partnership that is a partner has been dissolved and its business is being wound up;

(5) on application by the partnership or another partner, the partner's expulsion by judicial determination because:

(i) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(ii) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 404; or

(iii) the partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) the partner's:

(i) becoming a debtor in bankruptcy;

(ii) executing an assignment for the benefit of creditors;
(iii) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(iv) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a partner who is an individual:

(i) the partner's death;

(ii) the appointment of a guardian or general conservator for the partner; or

(iii) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the
estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) termination of a partner who is not an individual, partnership, corporation, trust, or estate.

COMMENT

RUPA dramatically changes the law governing partnership breakups and dissolution. An entirely new concept, "dissociation," is used in lieu of the UPA term "dissolution" to denote the change in the relationship caused by a partner's ceasing to be associated in the carrying on of the business. More significantly, the entity theory of partnership provides a conceptual means of continuing the firm itself despite a partner's withdrawal from the firm.

Under RUPA, the dissociation of a partner does not necessarily cause a dissolution and winding up of the business of the partnership. Section 801 identifies the situations in which the dissociation of a partner causes a winding up of the business. Section 701 provides that in all other situations there is a buyout of the partner's interest in the partnership, rather than a windup of the partnership business. In these situations, the partnership entity continues with the remaining partners, unaffected by the partner's dissociation.

A dissociated partner remains a partner for some purposes and still has some residual rights, duties, powers, and liabilities. Although Section 601 determines at what point in time a partner is dissociated from the partnership, the consequences of the partner's dissociation do not all occur at the same time. Thus, it may be more useful to think of a dissociated partner as a partner for some purposes, but as a former partner for others. These depend on whether or not the partnership continues or is wound up and are spelled out in Articles 6, 7 and 8.

Section 601 enumerates all of the events that cause a partner's dissociation. Section 601 is similar in approach to RULPA Section 402, which lists the events resulting in a general partner's withdrawal from a limited partnership.
Section 601(1) provides that a partner is dissociated from a partnership when it receives notice of the partner's express will to withdraw as a partner, unless a later date is specified in the notice. This continues the present rule that a partner has the power to withdraw at will, even if not the right. See UPA Section 31(2). Although Section 601 speaks generally in terms of dissociation, the term "withdraw" is appropriate for Section 601(1) situations.

This rule has been criticized as being too harsh on the other partners when one partner decides to leave prematurely. See, e.g., Hillman, Indissoluble Partnerships, 37 U. Fla. L. Rev. 691, 731 (1985). No change was recommended in the ABA Report, and the UPA rule is retained.

The power to withdraw as a partner is immutable. Under section 103(b)(4), this power may not be varied in the partnership agreement, except to require that the notice be in writing. If a future date is specified in the notice, other partners may dissociate before that date; the receipt of notice of a future date does not bind the others to remain as partners until that date. See also Section 801(2)(i).

RUPA continues the UPA "express will" concept, around which a considerable body of case law has developed. See Bromberg & Ribstein, at 7:21. Section 601(1) clarifies existing law by providing that an expression of will to dissociate must be received by the partnership to be effective.

Written notice is not required. Many partnerships are informal. Since no writing is required to create a partnership in the first place, it was felt unnecessarily formalistic, and a trap for the unwary, to require a writing to end one. For many reasons, it is good practice to give written notice, and the partnership agreement may require it. If a written notification is given, Section 102(d) clarifies when it is deemed received.

Section 601(2) provides expressly that a partner is dissociated upon an event agreed to in the partnership agreement as causing dissociation. There is no such provision in the UPA, and the ABA Report, at 164, recommended it be added.

Section 601(3) provides that a partner may be expelled by the other partners pursuant to a power of expulsion contained in the partnership agreement. This
continues the basic rule of UPA Section 31(1)(d), which is explained by Bromberg & Ribstein, at 7:28:

It has been held that the expelling partners need not prove that the expulsion was in good faith or for good cause shown, and that the duty of good faith does not require that expulsion be conditioned on any particular procedures, such as notice, a specification of charges, or an opportunity to be heard.

No change in substance is intended. The obligation of good faith under Section 404(d) requires no more than the prior law.

Section 601(4) empowers the partners, by unanimous vote, to expel a partner for specified causes, even if not so authorized in the partnership agreement. This rule applies to term partnerships, as well as partnerships at will. Under Section 103(a), such power may be waived or modified in the partnership agreement.

Subsection (4)(i) continues the rule in UPA Section 31(3). A partner may be expelled if it is unlawful to carry on the business with her. Section 801(4), on the other hand, provides that the partnership itself must be dissolved and the business wound up if such business is substantially unlawful, unless cured.

Subsection (4)(ii) provides that a partner who has transferred substantially all of her transferable interest in the partnership may be expelled. This is derived from UPA Section 31(1)(c). To avoid the presence of an unwelcome transferee, the remaining partners may go ahead and dissolve the partnership under Section 801(2)(ii), after first expelling the transferor partner, if necessary. A transfer of a partner's entire interest may, in some circumstance, evidence the transferor's intention to withdraw under Section 601(1).

Subsection (4)(iii) provides for the expulsion of a corporate partner if it has filed a certificate of dissolution, its charter has been revoked, or its right to conduct business has been suspended, unless cured within 90 days after notice. This provision is inspired by RULPA Section 402(9), although it is not self-executing. The cure proviso is important because charter revocation is very common in some states and partner status should not end for a technical noncompliance with corporate law. Withdrawal of a voluntarily filed notice of dissolution constitutes a cure.
Subsection (4)(iv) is the partnership analogue of paragraph (iii) and is suggested by RULPA Section 402(8). It provides that a partnership that is a partner may be expelled if it has been dissolved and its business is being wound up. The right of expulsion is not triggered by the event of dissolution, but by the commencement of the winding up process.

Section 601(5) empowers a court to expel a partner pursuant to its determination that the partner has engaged in specified misconduct. The enumerated grounds for judicial expulsion are based on the UPA Section 32(1) grounds for judicial dissolution. The application for expulsion may be brought by the partnership or any partner. The phrase "judicial determination" is intended to include an arbitration award, as well as any final court order or decree.

Subsection (5)(i) provides for the partner's expulsion if the court finds that the partner has engaged in wrongful conduct that adversely and materially affected the partnership business. This language is based on UPA Section 32(1)(c).

Subsection (5)(ii) provides for expulsion if the court determines that the partner wilfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or to the other partners under Section 404. This would include a partner's breach of fiduciary duty. This paragraph, together with paragraph (iii), carry forward the substance of UPA Section 32(1)(d).

Subsection (5)(iii) provides for judicial expulsion of a partner who engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner. Such misconduct makes the partner's dissociation wrongful under Section 602(a)(ii) and may also support a judicial decree of dissolution under Section 801(5)(ii).

Section 601(6) provides that a partner is dissociated upon becoming a debtor in bankruptcy or upon taking or suffering other action evidencing the partner's insolvency or financial irresponsibility.

Subsection (6)(i) continues UPA Section 31(5), which provides for dissolution upon a partner's bankruptcy. There is some doubt as to whether UPA Section 31(1) is limited to so-called "straight bankruptcy" under chapter 7 or includes other bankruptcy
relief, such as chapter 11. The UPA is silent about an involuntary petition against a partner.

"Debtor in bankruptcy" is defined in Section 101(2) to mean a person who is the subject of an order for relief under the Bankruptcy Code. Thus, under RUPA, it includes a person who files a voluntary petition, or against whom relief is ordered in an involuntary case, under any chapter of the Bankruptcy Code.

Initially, upon the filing of the bankruptcy petition, the debtor partner's transferable interest in the partnership will pass to the bankruptcy trustee as property of the estate under section 541(a)(1) of the Bankruptcy Code, notwithstanding any restrictions on transfer provided in the partnership agreement. In most chapter 7 cases, this will result in the eventual buyout of the partner's interest.

The application of various provisions of the federal Bankruptcy Code to Section 601(6)(i) is unclear. In particular, there is disagreement as to the validity of UPA Section 31(5), and thus its RUPA counterpart, under Sections 365(e)(1) and 541(c)(1) of the Bankruptcy Code. These sections generally invalidate so-called ipso facto laws which cause a forfeiture of the debtor's contract rights or property because of the bankruptcy filing. Since RUPA Section 601(6)(i) provides for a partner's dissociation by operation of law upon becoming a debtor in bankruptcy, it may be invalid under the Supremacy Clause. See, e.g., In the Matter of Phillips, 966 F.2d 926 (5th Cir. 1992); In re Cardinal Industries, Inc., 105 B.R. 385 (Bankr. S.D. Ohio 1989), 116 B.R. 964 (Bankr. S.D. Ohio 1990); In re Corky Foods Corp., 85 B.R. 903 (Bankr. S.D. Fla. 1988); In re Catron, No. 91-25827-T (Bankr. E.D. Va. 1992).

RUPA reflects what is good policy as a matter of state partnership law. The Conference will continue to coordinate its efforts with those involved in bankruptcy law reform with respect to any conflicts which may develop. See generally, Kaster & Cymbler, The Impact of a General Partner's Bankruptcy Upon the Remaining Partners, 21 R. Prop., Prob. & Trust J. 539 (1986).

Subsection (6)(ii) is new and provides for dissociation upon a general assignment for the benefit of a partner's creditors. The UPA says nothing about an assignment for the benefit of creditors or the appointment of a trustee, receiver, or liquidator. Subsections (6)(iii) and (iv) cover the latter and are based substantially on RULPA Sections 402(4) and (5).
Section 601(7) provides for the dissociation of a partner who is an individual person upon the partner's death or incapacitation. Subsection (7)(i) is based on UPA Section 31(4) and provides for dissociation upon the partner's death. Death does not, however, cause a dissolution of the partnership. Normally, the decedent partner's transferable interest in the partnership passes to her estate and will be bought out under Article 7. This clarifies the law in some states, but may reflect a change in others. See Bromberg & Ribstein, at 7:100.

Subsection (7)(ii) replaces UPA Section 32(1)(a) and provides for dissociation upon the appointment of a guardian or general conservator for partner who is an individual person. The appointment itself operates as the event of dissociation, and no further order of the court is necessary.

Subsection (7)(iii) is based on UPA Section 32(1)(b) and provides for dissociation upon a judicial determination that an individual partner has in any other way become incapable of performing her duties under the partnership agreement. The intent is to include physical incapacity.

Section 601(8) is new and provides for the dissociation of a partner that is a trust, or is acting as a partner by virtue of being a trustee of a trust, upon the distribution by the trust of its entire transferable interest in the partnership, but not merely upon the substitution of a successor trustee. It is not uncommon for a business trust to be a partner, and the provision is inspired by RULPA Section 402(7).

Section 601(9) is new and provides for the dissociation of a partner that is an estate, or is acting as a partner by virtue of being a personal representative of an estate, upon the distribution of the estate's entire transferable interest in the partnership, but not merely the substitution of a successor personal representative. It is base on RULPA Section 402(10), although estates are rarely admitted as partners. Under Section 601(7), a partner is dissociated upon death, and the estate normally becomes a transferee.

Section 601(10) is new and provides that a partner which is not an individual, partnership, corporation, trust, or estate is dissociated upon its termination. It is the residual "death" analogue for unusual partner entities.
SECTION 602. PARTNER'S WRONGFUL DISSOCIATION.

(a) A partner's dissociation is wrongful only if:

(1) it is in breach of an express provision of the partnership agreement; or

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows the dissociation of another partner and results in a right to dissolve the partnership under Section 801(2)(i);

(ii) the partner is expelled by judicial decree under Section 601(5); or

(iii) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(b) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other liability of the partner to the partnership or to the other partners.

COMMENT

Section 602 provides that a partner's dissociation is wrongful only if it results from one of the events listed in subsection (a). The significance of a wrongful dissociation is that it may give rise to damages under subsection (b) and, if it results in the
dissolution of the partnership, the wrongfully dissociating partner is not entitled to participate in winding up the business under Section 804.

Under subsection (a), a partner's dissociation is wrongful if (1) it is in breach of an express provision of the partnership agreement or (2), in a term partnership, before the expiration of the term or the completion of the undertaking (i) the partner voluntarily chooses to withdraw by express will, unless the withdrawal follows the wrongful or other dissociation of another partner and results in a right to dissolve the partnership under Section 801(2)(i); (ii) the partner is expelled for misconduct under Section 601(5); or (iii) a partner that is an entity (other than a trust or estate) is expelled or otherwise dissociated because its dissolution or termination was willful. Since Section 602 is merely a default rule, the partnership agreement may eliminate or expand the dissociations which are wrongful or modify the effects of wrongful dissociation.

The exception in subsection (a)(2)(i) is intended to protect a partner who withdraws from a term partnership after another partner's premature departure under certain circumstances. Section 801(2)(i) allows a partner to dissolve a term partnership prematurely if another partner, perhaps a key partner, has died, declared bankruptcy, been expelled for misconduct, or otherwise wrongfully dissociated before the expiration of the term. Thus, under Section 602(a)(2)(i), the exercise of this right of dissolution is rendered "non-wrongful" and does not expose the partner exercising the right to damages under Section 602(b). The exception does not cover a partner who withdraws prematurely from a term partnership for other good reason, such as another partner's misconduct. In the latter case, a partner could, however, apply to a court under Section 601(5) to have the offending partner expelled and then dissolve the partnership or the partners could, by unanimous vote, dissolve the partnership under Section 801(2)(ii). See generally Hillman, Misconduct as a Basis for Excluding or Expelling a Partner: Effecting Commercial Divorce and Securing Custody of the Business, 78 Nw. L. Rev. 527 (1983).

Subsection (b) provides that a wrongfully dissociating partner is liable to the partnership and to the other partners for any damages caused by the wrongful nature of the dissociation. Such liability is in addition to any other liability of the partner to the partnership or to the other partners. For example, the
partner would be liable for any damage caused by her breach of the partnership agreement or other misconduct. The partnership might also incur substantial expenses resulting from a partner's premature withdrawal from a term partnership, such as replacing the partner's expertise or obtaining new financing.

Section 701(c) provides that any damages for wrongful dissociation may be offset against the amount of the buyout price due under Section 701(a), and Section 701(h) provides that a partner who wrongfully dissociates before the expiration of a term partnership is not entitled to payment of the buyout price for her partnership interest until the term expires.

SECTION 603. EFFECT OF PARTNER'S DISSOCIATION.

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, Article 8 applies; otherwise, Article 7 applies.

(b) Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as provided in Section 804;

(2) the partner's duty of loyalty under Section 404(b)(3) terminates; and

(3) the partner's duty of loyalty under Section 404(b)(1) and (2) and duty of care under Section 404(d) continue only with regard to matters arising or events occurring before the dissociation.

COMMENT

Section 603(a) is a "switching" provision. It provides that, after a partner's dissociation, the partner's interest in the partnership must be purchased pursuant to the buyout rules in Article 7 unless there is a dissolution and winding up of the partnership.
business under Article 8. Thus, a partner's dissociation will always result in either a buyout of the dissociated partner's interest or a dissolution and winding up of the business.

Section 603(b) is new and deals with some of the internal effects of a partner's dissociation. Subsection (b)(1) makes it clear that one of the consequences of a partner's dissociation is the immediate loss of her right to participate in the management of the business, unless it results in a dissolution and winding up of the business. In such case, Section 804(a) provides that all of the partners who have not wrongfully dissociated may participate in winding up the business.

In some cases, it will not be known immediately whether or not the business is to be wound up as a result of the partner's dissociation. In such cases, the dissociating partner's right to participate in management may be suspended temporarily and then restored if winding up ensues.

This will ordinarily be the case upon a partner's dissociation by express will to withdraw from a partnership at will under Section 601(1). Although such withdrawal gives rise to a right to have the business wound up, the dissolution is deferred for 90 days by operation of Section 802(a). However, the partner's dissociation under Section 601 results in the immediate loss of management rights for 90 days or until the earlier decision is made to wind up the business. This result is made explicit in Section 802(c)(1).

Subsections (b)(2) and (3) modify a partner's fiduciary duties upon dissociation. With respect to the duty of loyalty, the Section 404(b)(3) duty not to compete terminates upon dissociation, and the dissociated partner is free immediately to engage in a competitive business, without any further consent. With respect to the partner's remaining loyalty duties under Section 404(b) and duty of care under Section 404(d), there is a continuing duty after dissociation, but it is limited to matters which arose or events which occurred before the partner dissociated. For example, a partner who leaves a brokerage firm may immediately compete with the firm for new clients, but must exercise care in completing on-going client transactions and must account to the firm for any fees received from such old clients.
ARTICLE 7

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

Section 701. Purchase of Dissociated Partner's Interest.
Section 702. Dissociated Partner's Power to Bind Partnership.
Section 703. Dissociated Partner's Liability to Other Persons.
Section 704. Statement of Dissociation.
Section 705. Continued Use of Partnership Name.

SECTION 701. PURCHASE OF DISSOCIATED PARTNER'S INTEREST.

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under Section 801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under Section 808(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. In either case, the selling price of the partnership assets must be determined on the
basis of the amount that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell, and with knowledge of all relevant facts. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under Section 602(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner against all partnership liabilities incurred before the dissociation, except liabilities then unknown to the partnership, and against all partnership liabilities incurred after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 702. For purposes of this subsection, a liability not known to a partner other than the dissociated partner is not known to the partnership.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates
to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) If a deferred payment is authorized under subsection (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) must be accompanied by the following:

(1) a statement of partnership assets and liabilities as of the date of dissociation;

(2) the latest available partnership balance sheet and income statement, if any;

(3) an explanation of how the estimated amount of the payment was calculated; and

(4) written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any
portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to Section 406(b)(2)(ii), to determine the buyout price of that partner's interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be
value" were not used because they are often considered terms of art having a special gloss depending on the context, such as in tax or corporate law. "Buyout price" is a new term, without any judicial baggage. It is intended that the term be developed as an independent concept appropriate to the partnership buyout situation, while drawing on valuation principles developed elsewhere.

Under subsection (b), the buyout price is the amount that would have been distributable to the dissociating partner under Section 808(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of liquidation value or going concern value without the departing partner. In either case, the hypothetical selling price must be the price which a willing and informed buyer would pay a willing seller, with neither being under any compulsion to deal. Since the price is based on the value of the business at the time of dissociation, and the partnership has the use of the dissociating partner's interest until payment, the partnership must pay interest on the amount due. Section 104(b) provides that interest shall be at the legal rate unless otherwise provided in the partnership agreement.

UPA Section 38(2)(c)(II) provides that the goodwill of the business not be considered in valuing the dissociating partner's interest. The UPA rule has been persuasively criticized as serving no useful purpose. See Hillman, Misconduct As A Basis for Excluding or Expelling a Partner: Effecting Commercial Divorce and Securing Custody of the Business, 78 Nw. U.L. Rev. 527, 552-55 (1983). As recommended in the ABA Report, at 175, the forfeiture of goodwill rule is implicitly rejected by RUPA.

The Section 701 rules are merely default rules. The partners may, in the partnership agreement, fix the method or formula for determining the buyout price and all of the other terms and conditions of the buyout right. Indeed, the very right to a buyout itself may be modified, although a total forfeiture provision would probably not be enforceable. See § 104(a).

Subsection (c) provides that the partnership may offset against the buyout price all other amounts owing from the dissociated partner to the partnership, whether or not presently due, including any damages for wrongful dissociation under Section 602(b). This has the effect of accelerating payment of amounts not yet due from the departing partner to the partnership, such as a long-
term loan. Where appropriate, such amounts not yet due should be discounted to present value. Amounts owing by the partnership to the dissociating partner are not entitled to offset. Thus, a departing partner who has made a long-term loan to the partnership must wait for repayment unless the terms of the loan agreement provide for acceleration upon dissociation.

Subsection (d) provides that the partnership must indemnify a dissociated partner against all partnership liabilities incurred before the dissociation, except liabilities then unknown to the partnership, and against all partnership liabilities incurred after the dissociation, except those incurred under Section 702 by the partner herself.

This is a change from the UPA Section 38 rule, which provides that a departing partner is to be indemnified against all present or future partnership liabilities. For a discussion of the need to clarify the UPA rule, see Hillman, 78 Nw. U.L. Rev. at 556-57.

Under RUPA, the partnership has every incentive to insist that all known liabilities be taken into account in determining the buyout price. The dissociating partner might prefer to ignore contingent liabilities in favor of a higher buyout price and take her chances on them materializing. The "known" liabilities rule, however, contemplates that all contingent or uncertain liabilities can and will be recognized in the valuation of the withdrawing partner's account, using estimates and probabilities. Requiring indemnification of all known liabilities merely presumes that the partnership did, as it had every incentive to do, take all such liabilities into account in determining the buyout price.

Use of the negative, "except liabilities then unknown to the partnership," is intended to put the burden of proof on the partnership, which is in the best position to know of contingent or yet unasserted liabilities, to show such liabilities were not known at the time of dissociation. For this purpose, a liability is unknown to the partnership unless it is known by a partner other than the dissociated partner.

Subsection (e) provides that, if no agreement for the purchase of the dissociated partner's interest is reached within 120 days after the dissociated partner's written demand for payment, the partnership must pay, or cause to be paid, in cash the amount it estimates to be the buyout price, adjusted for any offsets allowed and
accrued interest. Thus, the dissociating partner will receive in cash within 120 days of her dissociation the undisputed minimum value of her partnership interest. At this point, the only further dispute to be resolved is whether, as presumably she claims, the buyout price should be greater. As provided in subsection (i), she may thereafter bring suit to have the amount of the buyout price determined by the court.

The "cause to be paid" language of subsection (a) is repeated here to permit either the partnership or one or more of the continuing partners to tender payment of the estimated amount due.

Subsection (f) provides that, when deferred payment is authorized in the case of a wrongfully dissociating partner, a written offer stating the amount the partnership estimates to be the purchase price should be tendered within the 120-day period, even though actual payment of the amount may be deferred -- possibly for many years. The dissociated partner is entitled to know at the time of dissociation what amount the remaining partners think is due, including the estimated amount of any damages alleged caused by the partner's wrongful dissociation which may be offset against the buyout price.

Subsection (g) is based in part on the dissenters' rights provisions of RMBCA Section 13.25(b). It provides that the payment of the estimated price (or tender of a written offer under subsection (f)) by the partnership must be accompanied by (1) a statement of the partnership's assets and liabilities as of the date of the partner's dissociation; (2) the latest available balance sheet and income statement, if the partnership maintains such financial statements; (3) an explanation of how the estimated amount of the payment was calculated; and (4) a written notice that the payment will be in full satisfaction of the partnership's buyout obligation unless the dissociated partner commences an action to determine the price within 120 days of the notice.

These disclosures should serve to identify and narrow substantially the items of dispute between the dissociated partner and the partnership over the valuation of her partnership interest. They will also serve to pin down the parties as to their claims of partnership assets and values and as to the existence and amount of all known liabilities. See Comment to subsection (d). Lastly, it will force the remaining partners to consider thoughtfully the difficult and
important questions as to the appropriate method of valuation under the circumstances, and in particular, whether they should use going concern or liquidation value. Simply getting all this information out on the table in a timely fashion should increase the likelihood of an amicable resolution of the parties' differences within the 120-day period before the dissociated partner must bring suit.

Subsection (h) provides that a partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking need not be paid any portion of the value of her interest before the expiration of the term or completion of the undertaking, unless she establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. In all other cases, there must be an immediate payment in cash. Wrongful dissociation is defined in Section 602.

Subsection (i) provides that a dissociated partner may maintain an action against the partnership to determine the buyout price, any offsets, or other terms of the purchase obligation. The action must be commenced within 120 days after the partnership tenders payment of the amount it estimates to be due or, if deferred payment is authorized, its written offer. This provision creates a 120-day "cooling off" period that does not exist under the UPA. It also allows the parties an opportunity to negotiate their differences after disclosure by the partnership of its financial statements and other required information.

If the partnership fails to tender payment of the estimated amount due (or a written offer, if deferred payment is authorized), the dissociated partner has one year after her written demand for payment in which to commence suit.

If the parties fail to reach agreement, the court must determine the buyout price of the partner's interest, any offsets, including damages for wrongful dissociation, and the amount of interest accrued. It may also determine the security for payment and other terms of the obligation if payment is deferred.

Under subsection (i), attorney's fees and other costs may be assessed against any party found to have acted arbitrarily, vexatiously, or not in good faith, including the partnership's failure to tender payment of
the estimated price or to make the required disclosures. This provision is based in part on RMBCA Section 13.31(b). It does not authorize the court to award attorneys fees and costs for other instances of bad faith.

SECTION 702. DISSOCIATED PARTNER'S POWER TO BIND AND LIABILITY TO PARTNERSHIP.

(a) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Article 9, is bound by an act of the dissociated partner which would have bound the partnership under Section 301 before dissociation only if the other party to the transaction:

(i) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(ii) did not have notice of the partner's dissociation; and

(iii) is not deemed to have had knowledge under Section 303(e) or notice under Section 704(c).

(b) A dissociated partner is liable to the partnership for any loss caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a).
COMMENT

Section 702 deals with a dissociated partner's lingering apparent authority to bind the partnership in ordinary course partnership transactions, and the partner's liability to the partnership for any loss caused thereby. It also applies to partners who withdraw incident to a merger under Article 9. See Section 905(e).

A dissociated partner has no actual authority to act for the partnership. See Section 603(b)(1). Nevertheless, in order to protect innocent third parties, Section 702(a) provides that the partnership remains bound, for two years after a partner's dissociation, by such partner's acts which would, before her dissociation, have bound the partnership under Section 301 if, and only if, the other party to the transaction did not have notice of the partner's dissociation and reasonably believed that she was still a partner. The partnership is not bound, however, if the other party is deemed to have had knowledge of the dissociation under Section 303(e) or to have had notice thereof under Section 704(c).

Under Section 301, every partner has apparent agency power to bind the partnership by any act for carrying on the partnership business in the usual way, unless the other party knows that the partner has no actual authority to act for the partnership or has received a notification of the partner's lack of authority. Section 702(a) continues this general rule, subject to three modifications. Thus, as a result of a dissociated partner's lingering apparent authority, she may bind the partnership for up to two years after her dissociation.

After a partner's dissociation, the general rule is modified, first, by requiring the other party to show reasonable reliance on the partner's status as a partner. Section 301 has no explicit reliance requirement, although the partnership is bound only if the partner purports to act on its behalf. Thus, the other party will normally be aware of the partnership and presumably the partner's status a such.

The second modification is that, under Section 702(a), the partnership is not bound if the third party has notice of the partner's dissociation, while under the general rule of Section 301 the partnership is bound unless the third party knows of the partner's lack of authority. Under Section 102, a person has "notice" of
a fact if she knows or has reason to know it exists from all the facts which are known to her or she has received a notification of it. Thus, the partnership may protect itself by sending a notification of the dissociation to a third party, and a third party may, in any event, have a duty to inquire further based on what is known. This provides the partnership with greater protection from the unauthorized acts of a dissociated partner than from those of partners generally.

The third modification under Section 702(a) involves the effect of a statement of dissociation. Section 704(c) provides that, for the purposes of Section 702 and 703(b), third parties are deemed to have notice of a partner's dissociation 90 days after the filing of a statement of dissociation. Thus, the filing of a statement operates as constructive notice of the dissociated partner's lack of authority after 90 days, conclusively terminating the dissociated partner's Section 702 apparent authority.

With respect to a dissociated partner's authority to transfer partnership real property, Section 303(e) provides that third parties are deemed to have knowledge of a limitation on a partner's authority to transfer real property held in the partnership name upon the proper recording of a statement containing such a limitation. Section 704(b) provides that a statement of dissociation operates as a limitation on the dissociated partner's authority for the purposes of Section 303(e). Thus, the recording of a statement of dissociation is constructive knowledge of a dissociated partner's lack of authority to transfer real property held in the partnership name, effective immediately upon recording.

Under RUPA, therefore, a partnership may, by filing a statement of dissociation, conclusively limit to 90 days a dissociated partner's lingering agency power. Moreover, under Section 703(b), a dissociated partner's lingering liability for post-dissociation partnership liabilities may be limited to 90 days by filing a statement of dissociation. These incentives should encourage both partnerships and dissociating partners to file statements routinely. Those transacting substantial business with partnerships can protect themselves from the risk of dealing with dissociated partners, or relying on their credit, by checking the partnership records at least every 90 days.

Section 702(b) is a corollary to subsection (a) and provides that a dissociated partner is liable to the
partnership for any loss resulting from an obligation improperly incurred by the partner under subsection (a). In effect, the dissociated partner must indemnify the partnership for any loss, meaning a loss net of any gain from the transaction. The dissociated partner is also personally liable to the third party for the unauthorized obligation.

SECTION 703. DISSOCIATED PARTNER'S LIABILITY TO OTHER PERSONS.

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided in subsection (b).

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9, within two years after the partner's dissociation, only if the other party to the transaction:

(1) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(2) did not have notice of the partner's dissociation; and

(3) is not deemed to have had knowledge under Section 303(e) or notice under Section 704(c).
(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

COMMENT

Section 703(a) is based on UPA Section 36(1) and continues the basic rule that the departure of a partner does not of itself discharge the partner's liability to third parties for any partnership obligation incurred before dissociation. The word "obligation" is used instead of "liability" and is intended to include broadly both tort and contract liability incurred before dissociation. The second sentence states affirmatively that a dissociating partner is not liable for any partnership obligation incurred after dissociation except as expressly provided in subsection (b).

Section 703(b) is new and deals with the problem of protecting third parties who extend credit to the partnership after a partner's dissociation, believing that she is still a partner. It provides that the dissociated partner remains liable as a partner, in transactions entered into by the partnership within two years after her departure, if the other party does not have notice of the partner's dissociation and reasonably believes when entering the transaction that the dissociated partner is still a partner. The dissociated partner is not personally liable, however, if the other party is deemed to know of her dissociation under Section 303(e) or to have notice thereof under Section 704(c).

Section 703(b) operates similarly to Section 702(a) in that it requires reliance on the departed partner's continued partnership status, as well as lack
of notice. Under Section 704(c), a statement of dissociation again operates conclusively as constructive notice 90 days after filing for the purposes of Section 703(b) and as constructive knowledge when recorded for the purposes of Section 303(e).

Section 703(c) continues the rule of UPA Section 36(2) that a departing partner can bargain for a contractual release of her personal liability for a partnership obligation, but it requires the consent of both the creditor and the remaining partners.

Section 703(d) continues the rule of UPA Section 36(3) that a dissociated partner is released from liability for a partnership obligation if the creditor, with notice of the partner's departure, agrees to a material alteration in the nature or time of payment, without such partner's consent. This rule covers all partner dissociations and is not limited, as is the UPA rule, to situations in which a third party "agrees to assume the existing obligations of a dissolved partnership."

In general under RUPA, as a result of the adoption of the entity theory, relationships between a partnership and its creditors are not affected by the dissociation of a partner or by the addition of a new partner, unless otherwise agreed. Therefore, there is not the same need under RUPA for an elaborate provision deeming the new partnership to assume the liabilities of the old partnership, as is the case under the UPA. See UPA Section 41.

The rule in UPA Section 36(4) is eliminated to reflect the deletion of the "jingle rule" which provides that separate debts have first claim on separate property. RUPA deletes this "dual priority" rule to conform to the new Bankruptcy Code. See Comment to Section 808.

SECTION 704. STATEMENT OF DISSOCIATION.

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.
(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of Section 303(d) and (e).

(c) For the purposes of Sections 702 and 703(b), a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

COMMENT

Section 704 is new and provides for a statement of dissociation and its effects. Subsection (a) authorizes either a dissociated partner or the partnership to file a statement of dissociation. Like other RUPA filings, the statement of dissociation is voluntary. However, both the partnership and the departing partner have an incentive to file, and it is anticipated that such filings will become routine upon a partner's dissociation. The execution, filing, and recording of the statement is governed by Section 105.

Filing or recording a statement of dissociation has threefold significance:

(1) It is a statement of limitation on the dissociated partner's authority to the extent provided in Sections 303(d) and (e). Under Section 303(d), a filed or recorded limitation on the authority of a partner destroys the conclusive effect of a prior grant of authority to the extent it contradicts the prior grant. Under Section 303(e), nonpartners are conclusively bound by a recorded limitation on the authority of a partner to transfer real property held in the partnership name.

(2) Ninety days after the statement is filed, nonpartners are deemed to have notice of the dissociation and thus conclusively bound for purposes of cutting off the partner's apparent authority under Sections 301 and 702.

(3) Ninety days after the statement is filed, third parties are conclusively bound for purposes of cutting off the dissociated partner's continuing liability under Section 703(b) for transactions entered into by the partnership after dissociation.
SECTION 705.  CONTINUED USE OF PARTNERSHIP NAME.

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

COMMENT

Section 705 is an edited version of UPA Section 41(10) and provides that a dissociated partner is not liable for the debts of the continuing business simply because of continued use of the partnership name or the dissociated partner's name as a part thereof. This prevents forcing the business to forego the goodwill associated with its name.
ARTICLE 8
WINDING UP PARTNERSHIP BUSINESS

Section 801. Events Causing Dissolution and Winding Up of Partnership Business.
Section 802. Dissolution Deferred 90 Days.
Section 803. Partnership Continues After Dissolution.
Section 804. Right to Wind Up Partnership Business.
Section 805. Partner's Power to Bind Partnership After Dissolution.
Section 806. Statement of Dissolution.
Section 807. Partner's Liability to Other Partners After Dissolution.
Section 808. Settlement of Accounts Among Partners.

SECTION 801. EVENTS CAUSING DISSOLUTION AND WINDING UP OF PARTNERSHIP BUSINESS. A partnership is dissolved, and its business must be wound up, only upon:

(1) except as provided in Section 802, receipt by a partnership at will of notice from a partner, other than a partner who is dissociated under Section 601(2) through (10), of that partner's express will to withdraw as a partner, or upon any later date specified in the notice;

(2) in a partnership for a definite term or particular undertaking:

(1) except as provided in Section 802, within 90 days after a partner's wrongful dissociation under Section 602 or a partner's dissociation by death or otherwise under Section 601(6) through (10), receipt by the partnership of notice from another partner of that partner's express will to withdraw as a partner;
(ii) the express will of all of the partners;

or

(iii) the expiration of the term or the completion of the undertaking, unless all of the partners agree to continue the business, in which case the partnership agreement is deemed amended retroactively to provide that the expiration or completion does not result in the dissolution and winding up of the partnership business;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business, unless all of the partners agree to continue the business, in which case the partnership agreement is deemed amended retroactively to provide that the event does not result in the dissolution and winding up of the partnership business;

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) on application by a partner, a judicial determination that:

(i) the economic purpose of the partnership is likely to be unreasonably frustrated;
(ii) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) on application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(i) if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer, after the expiration of the term or completion of the undertaking; or

(ii) if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer, at any time.

COMMENT

Under the UPA, there is a dissolution every time someone leaves a partnership. This reflects the aggregate nature of the partnership under the UPA. Even if the business of the partnership is continued by some of the partners, it is technically a new partnership. This dissolution of the old partnership and creation of a new partnership causes many unnecessary problems which lend to partnerships' instability.

Reform began under RULPA, which provides that limited partnerships dissolve far less readily than
partnerships under the UPA. A limited partnership does not dissolve on the withdrawal of a limited partner, nor does it necessarily dissolve on the withdrawal of a general partner. See RULPA Section 801(4).

The ABA Report, beginning at 125, recommends sixty-six specific changes to the dissolution provisions, many of which are designed to prevent a technical dissolution or its consequences. The move to the entity theory is driven in large part by the need to overcome these dissolution problems.

Under RUPA, not every dissociation will cause a dissolution of the partnership. Only certain departures trigger a dissolution. The basic rule is that a partnership is dissolved, and its business must be wound up, only upon the occurrence of one of the events listed in Section 801. All other dissociations will result in a buyout of the partner's economic interest under Article 7 and a continuation of the partnership entity and business by the remaining partners. For example, if a partner withdraws in violation of the partnership agreement, her only right is to be bought out under Article 7. In a partnership at will, on the other hand, the departing partner has the right to have the partnership dissolved and its business wound up. With only a few exceptions, the provisions of Section 801 are merely default rules and may by agreement be varied or eliminated entirely as grounds for dissolution.

The term "dissolution" itself is not defined in Section 101. Under RUPA, dissolution is merely the commencement of the winding up process. The partnership continues for the limited purpose of winding up the business. In effect, this means that the scope of the partnership business contracts to completing work in process and taking such other actions as is necessary to wind up the business. Winding up the partnership business entails selling its assets, paying its liabilities, and distributing the net balance, if any, to the partners in cash according to their interests. The partnership entity continues, and the partners are associated in the winding up of the business until it is completed. When the winding up is complete, the partnership entity is terminated.

Section 801(1) provides that a partnership at will is dissolved and its business must be wound up upon receipt by the partnership of notice from a partner (not otherwise dissociated) of the partner's express will to withdraw as a partner, unless a later effective date is specified in the notice. A "partnership at will" is one
which has neither a definite term nor a particular undertaking. See Section 101(5).

This continues two basic rules which have been the law for more than 75 years. First, it continues the UPA rule that any member of an at-will partnership has the right to force a liquidation. Second, by negative implication, it continues the rule that the partners who wish to continue a term partnership can not be forced to liquidate the business by a partner who leaves early. Under Section 601(1), a partner has the power to withdraw at any time, even in violation of the partnership agreement. However, the remaining partners have a right to buy out a partner who departs early in violation of the partnership agreement.

These UPA rules are gleaned from the separate provisions governing dissolution and its consequences, UPA Sections 31 and 38. Under UPA Section 31(1)(b), dissolution is caused by the express will of any partner when no definite term or particular undertaking is specified. UPA Section 38(1) provides generally that upon dissolution any partner has a right to have the business wound up, unless the dissolution is wrongful. This is a default rule and applies only in the absence of an agreement affording the other partners a right to continue the business.

UPA Section 31(2) provides for dissolution of a term partnership by the express will of any partner at any time in contravention of the partnership agreement. In this case, however, UPA Section 38(2)(b) provides that the nonbreaching partners may by unanimous consent continue the business. If the business is continued, they must buy out the breaching partner.

Section 801(1) raises a very basic policy question. Should the default rule be that a dissociating partner in an at-will partnership has the right to have the business wound up, as provided in the UPA, or merely the right to be bought out, leaving to the remaining partners the decision of whether to wind up?

The traditional rule has its drawbacks, and the ABA Report, at 162, recommended abrogating it in favor of allowing the remaining partners to continue the business, relegating the withdrawing partner to a buyout. This rule is conceptually more consistent with the entity theory and enhances stability. Ordinarily, the remaining partners will wish to continue the business, it is asserted, and the traditional rule
frustrates the will of the majority of partners if they wish to continue the partnership business. Finally, it is contended, the Article 7 valuation mechanism will produce a buyout price that is fair, without affording the departing partner excessive leverage in the negotiations.

On the other hand, there are strong policy arguments in favor of a liquidation right. Foremost is a belief that only the actual sale of the partnership assets and payment of all partnership obligations assures the withdrawing partner of a fair price for her partnership interest and a final satisfaction of all partnership obligations or, if the firm is insolvent, a determination of the amount of her personal liability for the remaining obligations. A buyout, even if court supervised, is merely an educated guess as to the value of the partnership business, and the remaining partners' indemnification may not prove adequate to hold her harmless against liability for the firm's existing obligations (for which she has, in effect, already contributed by the calculation of the buyout price), as well as her lingering exposure to liability for future partnership obligations. See Section 703(b).

There are additional reasons for retaining the traditional rule. Some feel that partners, especially those in small, often casual, arrangements for whom the default rules are designed, are more likely to believe the firm will break up if anyone leaves. Others fear that the Article 7 buyout price will be inadequate, and thus contend that the departing partner needs the leverage of a liquidation right to even the playing field when negotiating with the remaining partners. Still others believe that, on withdrawal, a partner at will should be entitled to have partnership liabilities, for which she is personally liable, paid off -- or the deficiency fixed. Finally, but very significantly, the right of a departing partner to have the business wound up is only a default rule, and the partners may always, by prior agreement, limit withdrawing partners to a buyout. Larger partnerships are the ones for which a buyout is most appropriate, and they have the sophistication and resources to draft around the problem.

No one, of course, wants the business wound up if the remaining partners wish to continue and the departing partner is willing to agree to a buyout. This problem is addressed by Section 802. It provides that, after a partner's dissociation under Section 601(1), there is a 90-day "cooling off" period before
dissolution and the commencement of the winding up process. The purpose of deferring the dissolution is to afford the remaining partners an opportunity, if they so choose, to negotiate with the dissociating partner in order to avoid the dissolution and ensuing liquidation. If successful, such discussions would likely result in a buyout of the dissociating partner instead of winding up the business. See Comment to Section 802.

Section 801(2) provides several ways in which a term partnership may be dissolved before the expiration of the term. Subsection (2)(i) provides that, after a partner's wrongful dissociation under Section 602, or a partner's dissociation by death or otherwise under Section 601(6) to (10), any other partner may have the partnership business wound up. The other Section 601 dissociations giving rise to a subsection (2)(i) right to dissolution are: (6) the partner's bankruptcy; (7) the partner's death or incapacity; (8) the distribution by a trust-partner of its entire partnership interest; (9) the distribution by an estate-partner of its entire partnership interest; and (10) the termination of an entity-partner.

The partner afforded the right of dissolution under subsection (2)(i) is not the one who first dissociates, and the right must be exercised by the second partner within 90 days after the first partner's dissociation. The reason for giving the remaining partners this option is that the dissociating partner may, in their opinion, have been crucial to the firm's success, and requiring them to remain for the balance of the term without a key player is not what they bargained for.

Dissolution under subsection (2)(i) is also subject to a 90-day waiting period under Section 802 after the second partner gives notice of her will that the partnership be dissolved. Thus, technical dissolution may not occur for 180 days after the first partner's wrongful dissociation, death, or other requisite dissociation.

Subsection (2)(i) continues, in effect, the rule in UPA Section 38(2)(b) requiring unanimity for the exercise of the continuation right after a wrongful dissociation. It changes present law by imposing a 90-day limit on the exercise of the liquidation right.

Under Section 601(6)(i), there is a dissociation whenever a partner becomes a debtor in bankruptcy. Adding bankruptcy to subsection (2)(i) avoids the
necessity of buying out every partner who becomes a
declar in bankruptcy by giving the other partners the
option to liquidate the partnership.

Subsection (2)(i) also applies upon the death of a
partner in a term partnership, giving every other
partner the right to have the business wound up. If no
other partner elects to have the business wound up, the
decedent partner's transferable interest in the
partnership passes to her estate and must be bought out
under Article 7. See Comment to Section 601(7)(i).

Section 801(2)(ii) provides that a term
partnership may be dissolved and wound up at any time by
the express will of all the partners. This is merely an
expression of the general rule that the partnership
agreement may override the statutory default rules and
that the partnership agreement, like any contract, can
be amended at any time by unanimous consent.

UPA Section 31(1)(c) provides that a term
partnership may be wound up by the express will of all
the partners if a partner's transferable interest has
been assigned pursuant to Section 503 or charged for a
partner's separate debts under Section 504. This rule
reflects the belief that the remaining partners may find
transferees very intrusive. This provision has been
deleted, however, because the liquidation is easily
accomplished under Section 801(2)(ii) by first expelling
the transferor partner under Section 601(4)(ii).

Section 801(2)(iii) is based on UPA Section
31(1)(a) and provides for winding up a term partnership
upon the expiration of the term or the completion of the
undertaking. It also gives the partners an "out" if
they agree unanimously not to wind up the business.

To avoid an arguably technical dissolution in such
case, the partnership agreement is deemed amended
retroactively to provide that the expiration of its
stated term does not result in dissolution. This is
drawn from Section 14.04(e) of the Revised Model
Business Corporation Act, which gives retroactive effect
to a revocation of dissolution.

Section 407(a) is a related provision which
provides that, if the partners simply continue the
business after the partnership term or undertaking
without any formal agreement, it will be treated as a
partnership at will.
Section 801(3) provides for dissolution upon the occurrence of an event specified in the partnership agreement as resulting in the winding up of the partnership business, unless all the partners agree to continue the business. The retroactive effect provision parallels Section 801(2)(iii).

Section 801(4) continues the basic rule in UPA Section 31(3) and provides for dissolution if it is unlawful to continue the business of the partnership, unless cured. The "all or substantially all" proviso is intended to avoid dissolution for insubstantial or innocent regulatory violations. If the illegality is cured within 90 days after notice to the partnership, it is effective retroactively for purposes of this section. See generally Bromberg & Ribstein, at 7:45-47. The requirement that an illegal business be wound up cannot be varied in the partnership agreement. See Section 103(b)(8).

Section 801(5) provides for judicial dissolution on application by a partner and is based in part on UPA Section 32(1). A court may order dissolution upon its determination that: (i) the economic purpose of the partnership is likely to be unreasonably frustrated; (ii) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or (iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement. The partnership agreement cannot vary the court's power to wind up the partnership under Section 801(5). See Section 103(b)(8).

As recommended by the ABA Report, at 166-67, RUPA deletes UPA Section 32(1)(e) which provides for dissolution when the business can only be carried on at a loss. Georgia did likewise. The concern is that it might result in a dissolution contrary to the partners' expectations in a start-up or tax shelter situation when "book" or "tax" losses do not signify business failure. Truly poor financial performance may justify dissolution under subsection (5)(i) a frustration of the partnership's economic purpose.

Section 801(6) provides for judicial dissolution on application by a transferee of a partner's transferable interest in the partnership, including the purchaser of a partner's interest upon foreclosure of a charging order. It is based on UPA Section 32(2) and authorizes dissolution upon a judicial determination
that it is equitable to wind up the partnership business (i) after the expiration of the partnership term or completion of the undertaking or (ii) at any time, if the partnership was at will at the time of the transfer or when the charging order was issued. The rights of a transferee under this section cannot be varied in the partnership agreement. See Section 103(b)(8).

UPA Section 39 grants ancillary remedies to a person who rescinds her participation in a partnership because it was fraudulently induced, including the right to a lien on surplus partnership property for the amount of the person's interest in the partnership. RUPA has no counterpart provision to UPA Section 39, and it is left to the general law of rescission to determine the rights of a person fraudulently induced to invest in a partnership. See Section 104(a).

SECTION 802. DISSOLUTION DEFERRED 90 DAYS.

(a) Except as provided in subsection (b), a partnership of more than two persons is not dissolved until 90 days after receipt by the partnership of notice from a partner under Section 801(1) or (2)(i), and its business may be continued until that date as if no notice were received. Before that date, the partner who gave the notice may waive the right to have the partnership business wound up. If there is no waiver before that date, the partnership is dissolved and its business must be wound up.

(b) A partnership may be dissolved at any time during the 90-day period, and its business wound up, by the express will of at least half of the other partners.

(c) After receipt by the partnership of notice from a partner under Section 801(1) or (2)(i), the partner who gave the notice:
(1) has no rights in the management and conduct of the partnership business if it is continued under subsection (a), but may participate in winding up the business under Section 804 if the partnership is dissolved on or before the expiration of the 90-day period pursuant to subsection (a) or (b);

(2) is liable for obligations incurred during the period only to the extent a dissociated partner would be liable under Section 702(b) or 703(b), but is not liable for contributions for, and must be indemnified by the other partners against, any partnership liability incurred by another partner to the extent the liability is not appropriate for winding up the partnership business; and

(3) must be credited with the partner's share of any profits earned during the period and may be charged with the partner's share of any losses incurred but only to the extent of profits credited for the period.

COMMENT

Section 802 is new. In two situations, it defers for 90 days a partner's right under Section 801 to have the partnership dissolved and its business wound up (unless there are only two partners). The provisions of Section 802 can be varied or eliminated entirely in the partnership agreement. See Section 103(a).

The section is modelled after RULPA Section 801(4). It provides that a limited partnership is dissolved upon the withdrawal of a sole general partner unless, within 90 days, the limited partners appoint
Section 601 and being bought out under Article 7, rather than liquidating under Article 8. If, after 90 days, the business is dissolved and wound up, her usual rights and duties as a partner are reinstated.

Generally, every partner (unless wrongfully dissociated) is entitled under Section 804 to participate in winding up the partnership's affairs. Section 802(c)(1), on the other hand, provides that the dissociating partner has no rights in the management and conduct of the business if it is continued without winding up during the 90-day period. In effect, the withdrawing partner may be locked out of management for 90 days, even if she is the deep pocket partner, while the remaining partners continue to run the business. Thereafter, if the partnership is dissolved, the partner's management rights are restored, and she may participate fully in winding up the business.

Section 802(c)(2) attempts to restore this seeming imbalance by insulating the dissociating partner from liability to the remaining partners for any obligations incurred during the 90-day period to the extent they are not appropriate for winding up the business, and the remaining partners must indemnify her against any liability she may have to third parties for such obligations. The concept of obligations not appropriate for winding up is well developed under UPA Section 35(1)(a) and continued under RUPA Section 805(1). The dissociating partner is also liable to the partnership under Section 702(b) for any loss arising out of a partnership obligation which she improperly incurs under Section 702(a) during the 90-day period.

The dissociating partner remains personally liable to third parties, however, for partnership obligations incurred during the 90 days to the same extent as a dissociated partner generally under Section 703(b). This covers transactions entered into by the partnership during the 90-day period where the other party reasonably believed that she was still a partner and did not have notice of her dissociation.

If and when a buyout is agreed to, the rights and liabilities of the dissociating partner are governed by Article 7. Under Section 703(b), the dissociating partner is potentially liable for partnership transactions for two years, but she may cut off her liability after 90 days by filing a statement of dissociation. See Section 704(b).
(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 808, settle disputes by mediation or arbitration, and perform other necessary acts.

COMMENT

Section 804(a) is drawn from UPA Section 37. It provides that the partners who have not wrongfully dissociated may participate in winding up the partnership business. Wrongful dissociation is defined in Section 602. On application of any partner, a court may for good cause judicially supervise the winding up.

Section 804(b) continues the rule of UPA Section 25(2)(d) that the legal representative of the last surviving partner may wind up the business. It makes clear that the representative of the last surviving partner will not be forced to go to court for authority to wind up the business. On the other hand, the legal representative of a deceased partner, other than the last surviving partner, has only the rights of a transferee of the deceased partner's transferable interest. See Comment to Section 601(7).

Section 806(c) is new and provides further guidance on the powers of a person who is winding up the business. It is based on Delaware Laws, Title 6, Section 17-803. The powers enumerated are not intended to be exclusive. A partner's fiduciary duties of care and loyalty under Section 404 extend to winding up the business, except as modified by Section 603(b).
As recommended in the ABA Report, at 168, Section 806(c) expressly authorizes the preservation of the partnership's business or property as a going concern for a reasonable time. Some courts have reached this result without benefit of statutory authority. See, e.g., Paciaroni v. Crane, 408 A.2d 946 (Del. Ch. 1979).

The authorization of mediation and arbitration implements Conference policy to encourage alternative dispute resolution.

SECTION 805. PARTNER'S POWER TO BIND PARTNERSHIP AFTER DISSOLUTION. Subject to Section 806, a partnership is bound by a partner's act after dissolution that:

(1) is appropriate for winding up the partnership business; or

(2) would have bound the partnership under Section 301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

COMMENT

Section 805 is the successor to UPA Sections 33(2) and 35, which wind down the authority of partners to bind the partnership to third persons.

Section 805 provides that partners have the authority to bind the partnership after dissolution in transactions that are appropriate for winding-up the partnership business. It further provides that partners also have the power to bind the partnership in transactions that would have bound the partnership under Section 301 before dissolution, including transactions inconsistent with winding up, if the other party does not have notice of the dissolution.

Subsection (1) confers actual post-dissolution authority on the partners, subject to any agreed restrictions on their authority. Subsection (2), on the other hand, deals with the post-dissolution apparent authority of the partners. This balances the interests of the partners to end their mutual agency against the
interests of outside creditors who have no notice of dissolution. Even if the partnership is not bound under Section 805, the faithless partner who purports to act for the partnership after dissolution may be liable individually to an innocent third party under the law of agency. See Section 330 of the Second Restatement of Agency (agent liable for misrepresentation of authority), applicable as provided in Section 104(a).

RUPA abolishes the special UPA rules limiting the apparent authority of partners after dissolution in favor of the general principles of apparent authority under Section 301, subject to the effect of a filed statement of dissolution under Section 806. This enhances the protection of innocent third parties and imposes liability on the partnership and the partners who, after all, choose their fellow partner-agents and are in the best position to protect others by providing notice of the dissolution.

The special protection previously provided by UPA Section 35(1)(b)(I) to former creditors and the lesser special protection provided by UPA Section 35(1)(b)(II) to other parties who knew of the partnership before dissolution have been abolished. This implements the ABA Report recommendation, at 170. RUPA eschews these cumbersome notice provisions in favor of a filed statement of dissolution, as provided in Section 806.

Also deleted are the special rules found in UPA Sections 35(2) and 35(3). These, too, are inconsistent with RUPA's policy of adhering more closely to the general agency rule of Section 301.

Section 805 should be contrasted with Section 702, which winds down the power of a partner being bought out. The power of a dissociating partner is now limited to transactions entered into within two years after the partner's dissociation. Section 805 has no time limitation. However, the apparent authority of partners in both situations is now subject to the filing of a statement of dissociation or dissolution, as the case may be, which operates to cut off such authority after 90 days.

**SECTION 806. STATEMENT OF DISSOLUTION.**

(a) After dissolution, a partner who has not wrongfully dissociated may file a statement of
dissolution stating the name of the partnership and that
the partnership has dissolved and is winding up its
business.

(b) A statement of dissolution cancels a filed
statement of partnership authority for the purposes of
Section 303(d) and is a limitation on authority for the
purposes of Section 303(e).

(c) For the purposes of Sections 301 and 805, a
person not a partner is deemed to have notice of the
dissolution and the limitation on the partners'
authority as a result of the statement of dissolution 90
days after it is filed.

(d) After filing and, if appropriate, recording a
statement of dissolution, a dissolved partnership may
file and, if appropriate, record a statement of
partnership authority which will operate with respect to
a person not a partner as provided in Section 303(d) and
(e) in any transaction, whether or not the transaction
is appropriate for winding up the partnership business.

COMMENT

Section 806 is new. Subsection (a) provides that, after an event of dissolution, any partner who has not
wrongfully dissociated may file a statement of
dissolution on behalf of the partnership. The
execution, filing, and recording of the statement is
governed by Section 105. The legal consequences of
filing a statement of dissolution are similar to those
of a statement of dissociation under Section 704.
The filing and recording of a statement of dissolution
is optional. However, the incentives are sufficient
that it is anticipated filing will become routine.
Subsection (b) provides that a statement of dissolution cancels a filed statement of partnership authority for the purposes of Section 303(d), thereby terminating any extraordinary grant of authority contained in such statement.

A statement of dissolution also operates as a limitation on authority for the purposes of Section 303(e). This section provides that third parties are deemed to know of a limitation on the authority of a partner to transfer real property held in the partnership name when a certified copy of the statement containing the limitation is recorded with the real estate records. In effect, a statement of dissolution limits the authority of all partners to acts which are appropriate for winding up the business. Third parties are thus at risk and, if in doubt, must inquire of the partnership whether a contemplated transaction is appropriate for winding up.

Subsection (c) operates in conjunction with Sections 301 and 805 to wind down partners' apparent authority after dissolution. It provides that, for purposes of those sections, 90 days after the filing of a statement of dissolution nonpartners are deemed to have notice of the dissolution and the corresponding limitation on the authority of all partners. Sections 301 and 805 provide that a partner's lack of authority is binding on persons with notice thereof. Thus, after 90 days the statement of dissolution operates as constructive notice conclusively limiting the apparent authority of partners to transactions which are appropriate for winding up the business.

Subsection (d) provides that, after filing and, if appropriate, recording a statement of dissolution, the partnership may file and record a new statement of partnership authority which will operate as provided in Section 303(d). This means that a grant of authority contained in the statement is conclusive and may be relied upon by a person who gives value without knowledge to the contrary, whether or not the transaction is appropriate for winding up the partnership business. This makes the partners' record authority conclusive after dissolution, and precludes going behind the record to inquire into whether or not the transaction was appropriate for winding up.
SECTION 807. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER DISSOLUTION.

(a) Except as provided in subsection (b) and Section 802(c)(2), after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 805.

(b) A partner who, with knowledge of the winding up, incurs a partnership liability under Section 805(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any loss caused to the partnership arising from the liability.

COMMENT

Section 807 is the successor to UPA Sections 33(1) and 34, which govern the rights of partners among themselves with respect to post-dissolution liability.

Subsection (a) provides that, except as provided in subsection (b) and Section 802(c)(2), after dissolution each partner is liable to her co-partners by way of contribution for her share of any partnership liability incurred under Section 805. The latter section includes not only obligations that are appropriate for winding up the business, but also obligations that are inappropriate if within the partner's apparent authority.

Subsection (a) draws no distinction as to the cause of the dissolution. Thus, as among the partners, their liability treated alike in all events of dissolution, except when the dissolution is deferred under Section 802. This is a change from UPA Section 33(1), which distinguishes among different causes of dissolution, and was recommended in the ABA Report, at 169.

Subsection (b) creates an exception to the general rule in subsection (a). It provides that a partner who, with knowledge of the winding up nevertheless incurs a
liability which is binding on the partnership by an act that is inappropriate for winding up the business, is liable to the partnership for any loss caused thereby.

Section 807 is merely a default rule and may be varied in the partnership agreement. See Section 103(a).

SECTION 808. SETTLEMENT OF ACCOUNTS AMONG PARTNERS.

(a) In winding up a partnership's business, the assets of the partnership must be applied to discharge its obligations to creditors, including partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b).

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to that partner's positive balance. A partner shall contribute to the partnership an amount equal to that partner's negative balance.

(c) To the extent not taken into account in settling the accounts among partners pursuant to subsection (b), each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership
obligations. If a partner fails to contribute, the other partners shall contribute, in the proportions in which the partners share partnership losses, the additional amount necessary to satisfy the partnership obligations. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations.

(d) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(e) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

COMMENT

Section 808 provides the default rules for the settlement of accounts among the partners in winding up the business. It is derived in part from UPA Sections 38(1) and 40.

Subsection (a) continues the rule in UPA Section 38(1) that, in winding up the business, the partnership assets must first be applied to discharge partnership liabilities to creditors. Any surplus must be applied to pay in cash the net amount due the partners under subsection (b) by way of a liquidating distribution.

This continues the "in cash" rule of UPA Section 38(1) and is consistent with Section 402 which provides that a partner has no right to receive, and may not be required to accept, a distribution in kind, unless
otherwise agreed. In-kind distributions are not permitted or required because of difficult valuation problems and because the "in cash" rule gives more bargaining power to a minority partner. Moreover, if the partners are in disagreement over whether to distribute the assets in kind, it suggests they are not getting along and should not be compelled to accept a cotenancy with respect to the partnership assets upon termination.

Under subsection (a), the partnership must apply its assets to discharge the obligations of partners who are creditors on a parity with other creditors. In effect, this abolishes the priority rules in UPA Section 40(b) and (c) which subordinate the payment of inside debt to outside debt. Both RUPA and the RMBCA do likewise. See RULPA Section 804 and RMBCA Sections 6.40(f) and 14.05(a). Ultimately, however, a partner whose "debt" has been repaid by the partnership is personally liable, as a partner, for any outside debt remaining unsatisfied, unlike a limited partner or corporate shareholder.

Subsection (b) provides that each partner is entitled to a settlement of all partnership accounts upon winding up. It also establishes the default rules for closing out the partners' capital accounts. First, the profits and losses resulting from the liquidation of the partnership assets must be credited or charged to the partners' accounts, according to their respective shares of profits and losses. Then, the partnership must make a final liquidating distribution to those partners with a positive capital account balance. Any partner with a negative capital account balance must contribute to the partnership an amount equal to the negative balance. However, the partners may agree that a negative capital account does not reflect a debt to the partnership and need not be repaid in settling the partners' accounts.

RUPA eliminates the distinction in UPA Section 40(b) between the liability to a partner for her interest in profits and the liability to a partner for her interest in capital. Instead, Section 808(b) speaks simply of the right of a partner to a liquidating distribution. This implements the logic of Sections 401(a) and 502, which is that contributions to capital and shares in profits and losses combine to determine the right to distributions. By agreement, the partners may continue the UPA distinction and share "operating" losses differently than "capital" losses.
Subsection (c) provides that, to the extent not taken into account in settling the partners' accounts, each partner must contribute, in the proportion in which she shares losses, the amount necessary to satisfy partnership obligations. This section continues the rule in UPA Section 40(d). Ordinarily, the settlement of accounts under subsection (b) will lead to the same result. Subsection (c) clarifies that the duty to contribute exists independently of the accounting system used by the partnership. It also covers the situation of a partnership liability arising after the closing of the partnership books.

Subsection (c) also continues the UPA rule that solvent partners must share proportionately in the shortfall caused by insolvent partners who fail to contribute. A partner is entitled to recover from the other partners any contributions in excess of her share of the partnership's liabilities. This continues the rule in UPA Section 40(f).

Under subsection (d), the estate of a deceased partner is liable for the partner's obligation to contribute to partnership losses.

Subsection (e) provides that an assignee for the benefit of creditors of the partnership or of a partner (or other court appointed creditor representative) may enforce any partner's obligation to contribute to the partnership. This continues the rule in UPA Section 40(e).

Section 808 in effect abolishes the "dual priority" or "jingle" rule of UPA Sections 40(h) and (i), as recommended by the ABA Report, at 177-78. These sections gave partnership creditors priority as to partnership property and separate creditors priority as to separate property. The jingle rule has already been repealed by preemption by the Bankruptcy Code, at least as to chapter 7 partnership liquidation proceedings. Under Section 723(c) of the Bankruptcy Code, and under RUPA, partnership creditors share prorata with the partners' individual creditors in the assets of the partners' estates.
ARTICLE 9
CONVERSIONS AND MERGERS

Section 901. Conversion of Partnership to Limited Partnership.
Section 902. Conversion of Limited Partnership to Partnership.
Section 903. Effect of Conversion; Entity Unchanged.
Section 904. Merger of Partnerships.
Section 905. Effect of Merger.
Section 906. Statement of Merger.
Section 907. Nonexclusive.

SECTION 901. CONVERSION OF PARTNERSHIP TO LIMITED PARTNERSHIP.

(a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership which satisfies the requirements of [Section ____ of the State Limited Partnership Act] and includes:

(1) a statement that the partnership was converted to a limited partnership from a partnership;

(2) its former name; and

(3) a statement of the number of votes cast by the partners for and against the conversion and, if the
vote is less than unanimous, the number or percentage
required to approve the conversion under the partnership
agreement.

(d) The conversion takes effect when the
certificate of limited partnership is filed or at any
later date specified in the certificate.

(e) A partner who becomes a limited partner as a
result of the conversion remains liable as a partner for
an obligation incurred by the partnership before the
conversion takes effect. If the other party to a
transaction with the limited partnership reasonably
believes when entering the transaction that the limited
partner is a general partner, the partner is liable for
an obligation incurred by the limited partnership within
90 days after the conversion takes effect. The
partner's liability for all other obligations of the
limited partnership incurred after the conversion takes
effect is that of a limited partner as provided in the
[State Limited Partnership Act].

COMMENT

Article 9 is new. Although the UPA is entirely
silent with respect to the conversion or merger of
partnerships, and the validity of such transactions may
be open to some doubt, they are almost routine today.

A few states already have statutes authorizing
partnership conversions or mergers. See Va. Code 1950,
§ 50-73.11:1 (conversion to limited partnership); West's
Ann. Cal. Corp. Code, §§ 15678, 15679 (merger of limited
partnerships); O.C.G.A. § 14-9-206.1 (same); 6 Del. C.
1953, § 17-211 (cross entity mergers).
As Section 907 makes clear, the requirements of Article 9 are not mandatory, and a partnership may convert or merge in any other manner provided by law. Article 9 is merely a "safe harbor." If the requirements of the article are followed, the conversion or merger is legally valid. Since most states have no other established procedure for the conversion or merger of partnerships, it is likely that the Article 9 procedures will be used in virtually all cases.

Section 901(a) authorizes the conversion of a "partnership" to a limited partnership. Section 202(b) limits the definition of "partnership" to one created under RUPA. Section 202(e) states that a "partnership" created under RUPA is a general partnership, and the partners are general partners. Where a limited partnership is contemplated, Article 9 uses the term "limited partnership."

Subsection (b) provides that the terms and conditions of the conversion must be approved by all the partners, unless the partnership agreement specifies otherwise for a conversion.

Subsection (c) provides that, after approval, the partnership must file a certificate of limited partnership which satisfies the requirements of the limited partnership act, and in addition includes the requisite information concerning the conversion.

Subsection (d) provides that the conversion takes effect when the certificate is filed, unless a later effective date is specified.

Subsection (e) establishes the partners' liabilities following a conversion. A partner who becomes a limited partner as a result of the conversion remains fully liable as a general partner for any obligation arising before the effective date of the conversion. Third parties who transact business with the converted partnership unaware of a partner's new status as a limited partner are protected for 90 days after the conversion. Since RULPA Section 201(a) requires the certificate of limited partnership to name all of the general partners, and under RUPA Section 901(c) the certificate must also include notice of the conversion, parties transacting business with the converted partnership can protect themselves by checking the record. A limited partner can avoid the lingering 90-day exposure as a general partner by giving actual notice of her limited partner status to those transacting business with the partnership.
Article 9 does not restrict the provisions authorizing conversions and mergers to domestic partnerships. Since no filing is required for the creation of a partnership under RUPA, it is often unclear where a partnership is domiciled. Moreover, a partnership doing business in the state satisfies the definition of a partnership created under this Act since it is an association of two or more co-owners carrying on a business for profit. Even a partnership clearly domiciled in another state could easily amend its partnership agreement to provide that its internal affairs are to be governed by the laws of the designated jurisdiction. No harm or other mischief is likely to result from extending to foreign partnerships the right to convert or merge under local law.

SECTION 902. CONVERSION OF LIMITED PARTNERSHIP TO PARTNERSHIP.

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership pursuant to [Section ___ of the State Limited Partnership Act].

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect.
The limited partner is liable as a partner for an
obligation of the partnership incurred after the
conversion takes effect.

COMMENT

Section 902(a) authorizes the conversion of a
limited partnership to a general partnership.

Subsection (b) provides that the conversion must
be approved by all of the partners, even if the
partnership agreement provides to the contrary. This is
intended to include all of the limited partners, as well
as the general partners. The purpose of this
requirement is to protect a limited partner from
exposure to personal liability as a general partner
without her clear and knowing consent. Despite a
provision to the contrary in the partnership agreement,
such a conversion may never have been contemplated by
the limited partner when she invested in the
partnership.

Subsection (c) provides that, after approval of
the conversion, the converted partnership must cancel
its certificate of limited partnership pursuant to RULPA
Section 203.

Subsection (d) provides that the conversion takes
effect when the certificate of limited partnership is
cancelled.

Subsection (e) provides that a limited partner who
becomes a general partner is liable as a general partner
for all obligations incurred after the effective date of
the conversion, but remains only limitedly liable for
obligations incurred before the conversion.

SECTION 903. EFFECT OF CONVERSION; ENTITY UNCHANGED.

(a) A partnership or limited partnership that has
been converted pursuant to this article is for all
purposes the same entity that existed before the
conversion.

(b) When a conversion takes effect:
(1) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

(2) all obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(3) an action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

COMMENT

Section 903 sets forth the effect of a conversion on the partnership. Subsection (a) makes emphatic that the converted partnership is for all purposes the same entity as before the conversion. This preserves the many benefits of the entity nature of partnerships.

Subsection (b) provides that upon conversion: (1) all partnership property remains vested in the converted entity; (2) all obligations remain the obligations of the converted entity; and (3) all pending legal actions may be continued as if the conversion had not occurred. The term "entity" as used in Article 9 refers to either or both general and limited partnerships as the context requires.

Under subsection (b)(1), title to partnership property remains vested in the converted partnership. As a matter of general property law, title vests without further act or deed and without reversion or impairment.

SECTION 904. MERGER OF PARTNERSHIPS.

(a) Pursuant to a plan of merger approved as provided in subsection (c), a partnership may be merged with one or more partnerships or limited partnerships.

(b) The plan of merger must set forth:
(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(3) whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(4) the terms and conditions of the merger;

(5) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

(6) the street address of the surviving entity's chief executive office.

(c) The plan of merger must be approved:

(1) in the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(2) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the State or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically
applicable law, by all the partners, notwithstanding a provision to the contrary in the partnership agreement.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:

(1) the approval of the plan of merger by all parties to the merger, as provided in subsection (c);

(2) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(3) any effective date specified in the plan of merger.

COMMENT

Section 904 provides a "safe harbor" for the merger of a general partnership and one or more general or limited partnerships. The surviving entity may be either a general or a limited partnership.

The plan of merger must set forth the information required by subsection (b), including the status of each partner and the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity.

Subsection (c) provides that the plan of merger must be approved: (1) by all the partners of a general partnership, unless the partnership agreement specifically provides otherwise for mergers; and (2) by all the partners of a limited partnership, including both general and limited partners, notwithstanding a contrary provision in the partnership agreement, unless specifically authorized by the law of the jurisdiction in which the limited partnership is organized. Like Section 902(b), this is to protect limited partners from exposure to liability as general partners without their clear and knowing consent.
Subsection (d) provides that the plan of merger may be amended or abandoned at any time before the merger takes effect, if the plan so provides.

Subsection (e) provides that the merger takes effect on the later of: (1) approval by all parties to the merger; (2) filing of all required documents; or (3) the effective date specified in the plan. The surviving entity should file promptly all notices and documents relating to the merger required by all applicable statutes governing the entities that are parties to the merger, including articles of merger or the amendment or cancellation of a statement of partnership authority or certificate of limited partnership.

SECTION 905. EFFECT OF MERGER.

(a) When a merger takes effect:

(1) every partnership or limited partnership that is a party to the merger other than the surviving entity ceases to exist;

(2) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(b) The [Secretary of State] of this State is the agent for service of process in an action or proceeding
against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the [Secretary of State] of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the [Secretary of State] shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(c) A partner of the surviving partnership or limited partnership is liable for:

(1) all obligations of a party to the merger for which the partner was personally liable before the merger;

(2) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(3) all obligations of the surviving entity incurred after the merger takes effect.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations.
to the surviving entity, in the manner provided in Section 808(c) as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under Section 701. The surviving entity is bound under Section 702 by an act of a partner dissociated under this subsection, and the partner is liable under Section 703 for transactions entered into by the surviving entity after the merger takes effect.

COMMENT

Section 905 states the effect of a merger on the partnerships which are parties to the merger and on the individual partners.

Subsection (a) provides that when the merger takes effect: (1) every partnership that is a party to the merger other than the surviving entity ceases to exist; (2) all property owned by the parties to the merger vests in the surviving entity; (3) all obligations of every party to the merger become the obligations of the surviving entity; and (4) all legal actions pending against a party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party. Title to partnership property vests in the surviving entity without further act or deed and without reversion or impairment.

Subsection (b) makes the secretary of state the agent for service of process in any action against the surviving entity, if it is a foreign entity, to enforce an obligation of a domestic partnership that is a party to the merger. The purpose of this rule is to make it more convenient for local creditors to sue a foreign surviving entity when the credit was extended to a
domestic partnership which has disappeared as a result of the merger.

Subsection (c) provides that a general partner of the surviving entity is liable for: (1) all obligations for which the partner was personally liable before the merger; (2) all other obligations of the surviving entity incurred before the merger by a party to the merger, but such obligations may be satisfied only out of the surviving entity's partnership property; and (3) all obligations incurred by the surviving entity after the merger.

This scheme of liability is similar to that of an incoming partner under Section 309. Only the surviving partnership itself is liable for all obligations, including obligations incurred by every constituent party before the merger. The general partners of the surviving entity are not personally liable for all obligations of the surviving entity, only those incurred before the merger by the partnership of which they were a partner and those incurred by the surviving entity after the merger. The partners are liable for other obligations of the surviving entity only to the extent of their partnership interests.

Subsection (d) requires partners to contribute the amount necessary to satisfy all obligations for which they were personally liable before the merger, if such obligations are not satisfied out of the partnership property of the surviving entity, in the same manner provided in Section 808(c) upon dissolution.

Subsection (e) provides for the dissociation of a partner of a party to the merger who does not become a partner in the surviving entity. The surviving entity must buy out such partner's interest in the partnership under Section 701. The partner's agency power is wound down pursuant to Section 702, and the partner is subject to lingering liability for two years under Section 703. However, the dissociated partner can limit to 90 days her exposure to liability under Section 703 by filing a statement of dissociation under Section 704.

SECTION 906. STATEMENT OF MERGER.

(a) After a merger, the surviving partnership or limited partnership may file a statement that one or
more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnership were merged;

(3) the street address of the surviving entity's chief executive office and of an office in this State, if any; and

(4) whether the surviving entity is a partnership or a limited partnership.

(c) Except as provided in subsection (d), for the purposes of Section 302, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For the purposes of Section 302, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.
A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to Section 105(c), stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b), operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (c) and (d).

**COMMENT**

Section 906(a) provides that the surviving entity may file a statement of merger. The execution, filing, and recording of the statement are governed by Section 105.

Subsection (b) requires the statement to contain the name of each party to the merger, the name and address of the surviving entity, and whether it is a general or limited partnership.

Subsection (c) provides that, for the purpose of the Section 302 rules regarding the transfer of partnership property, all personal and intangible property which before the merger was held in the name of a party to the merger becomes, upon the filing of the statement of merger with the secretary of state, property held in the name of the surviving entity.

Subsection (d) provides a similar rule for real property, except that it does not become property held in the name of the surviving entity until a certified copy of the statement of merger is recorded in the office for recording transfers of that real property under local law.

Subsection (e) is a savings provision in the event a statement of merger fails to contain all of the information required by subsection (b). The statement will have the operative effect provided in subsections (c) and (d) if it is executed and declared to be
accurate pursuant to Section 105(e) and correctly states
the name of the party to the merger in whose name the
property was held before the merger, so that it would be
found by someone searching the record. Compare Section
303(c)(statement of partnership authority).

SECTION 907. NONEXCLUSIVE. This article is not
exclusive. Partnerships or limited partnerships may be
converted or merged in any other manner provided by law.

COMMENT

Section 907 provides that Article 9 is not
exclusive. It is merely a "safe harbor." Partnerships
may be converted or merged in any other manner provided
by law. The limited partnership acts of several states
authorize the conversion of a general partnership into a
limited partnership or the merger of a limited
partnership with a general partnership. See the Comment
to Section 901. These procedures may be followed in
lieu of Article 9.
ARTICLE 10
MISCELLANEOUS PROVISIONS

Section 1001. Uniformity of Application and Construction.
Section 1002. Short Title.
Section 1003. Severability.
Section 1004. Effective Date.
Section 1005. Repeals.
Section 1006. Application to Existing Relationships.

SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

COMMENT
The purpose of this section is to foster uniformity of judicial interpretation among adopting states.

SECTION 1002. SHORT TITLE. This [Act] may be cited as the Uniform Partnership Act (1992).

COMMENT
The short title is the Uniform Partnership Act (1992).

SECTION 1003. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision
or application, and to this end the provisions of this
[Act] are severable.

COMMENT

The provisions of the Act are intended to be
severable and the invalidity of one provision does not
affect the validity of other provisions which can be
given independent effect.

SECTION 1004. EFFECTIVE DATE. This [Act] takes
effect . . . . . . . . . . . .

COMMENT

The effective date of the Act established by an
adopting state has operative effects under Section 1006.

SECTION 1005. REPEALS. The following acts and parts
of acts are repealed: [the State Partnership Act as
amended and in effect immediately before the adoption of
this Act].

COMMENT

This section repeals the adopting state's present
Partnership Act.

SECTION 1006. APPLICATION TO EXISTING RELATIONSHIPS.

(a) Except as otherwise provided in this section,
this [Act] applies to all partnerships in existence on
its effective date that were formed under [the State
Partnership Act] or any predecessor law providing for
the formation, operation, and liquidation of
partnerships.
(b) Section 802 does not apply to a partnership in existence on the effective date of this [Act] unless the partners agree otherwise.

(c) This [Act] does not impair the obligations of a contract existing on the effective date of this [Act] or affect an action or proceeding commenced or right accrued before the effective date of this [Act].

(d) A judgment against a partnership or a partner in an action commenced before the effective date of this [Act] may be enforced in the same manner as a judgment rendered before the effective date of this [Act].

COMMENT

Section 1006(a) provides that RUPA applies to all existing partnerships formed under the UPA or any other predecessor general partnership law, including the common law, except as provided in subsection (b). This implements the recommendation of the ABA Report, at 183.

Subsection (b) provides that Section 802 does not apply to existing partnerships unless the partnership "opts in" by agreement of the partners. Section 802 changes significantly the default rule regarding the right of a partner at will to cause the dissolution of the partnership by imposing a 90-day waiting period. This is an entirely new rule, which the partners of existing partnerships could not have anticipated and over which they did not have an opportunity to bargain at the time of entering the partnership. Thus, to avoid unfairly surprising a partner by the loss of her UPA right to have the partnership dissolved immediately, without the temporary suspension of her management rights, the application of Section 802 is excepted from the operation of Section 1006(a).

Subsection (c) provides, first, that the Act does not impair the obligations of an existing contract. To the extent that this reflects the constitutional imperative of the Contracts Clause, it is both unnecessary and overly cautious. Contemporary authority has restricted the application of the Contracts Clause
to the impairment of contracts to which the state is a party. It does not apply to state laws regulating private parties. To the extent that the section reflects a policy restriction on the application of the Act, it is limited to protecting the obligations of existing partnership agreements between the partners, not the entire set of UPA default rules which are often characterized as an implied contract. To the extent that the partners of an existing partnership would prefer to be governed by a particular UPA rule, rather than the corresponding RUPA rule, they may amend their partnership agreement to so provide, except for the few mandatory rules which cannot be varied under Section 103(b).

Subsection (c) also provides that the Act does not affect an action or proceeding commenced, or any substantive right accrued, before the Act's effective date. Prior law will continue to apply in any pending litigation and to any cause of action which has accrued before the Act takes effect.

Subsection (d) provides that a judgment against a partner or the partnership obtained in an action commenced before the Act's effective date may be enforced in the same manner as a judgment rendered under the prior law. Under Section 307(d), a judgment against a partner based on a claim against the partnership may not be enforced against the partner's separate property unless the partnership assets have been exhausted. The UPA is silent on this point, and the law of some states does not require the exhaustion of partnership assets before levying on the partners' separate property. In these states, a creditor may enforce a judgment obtained before the Act's effective date against the partner's assets without first exhausting the partnership's assets.
Revised Uniform Partnership Act ("RUPA"), as Adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) August 1992

This report ("Report") is submitted by the Subcommittee on RUPA (the "Subcommittee") of the Committee on Partnerships and Unincorporated Business Organizations (the "Committee") of the American Bar Association's Section on Business Law (the "Section"). The Report contains the Subcommittee's position on RUPA and has been prepared for the Committee in connection with the Committee's deliberations whether to recommend RUPA to the Section's Council, which will make a recommendation concerning RUPA to the ABA's House of Delegates.

Recommendation. The Subcommittee believes that RUPA should represent an important step in the development of partnership law. However, because of the numerous and significant shortcomings of RUPA, as described in detail below, the Subcommittee recommends that the ABA position should be that adoption of RUPA in its present form should not be considered by any jurisdiction. Rather, NCCUSL should solicit and consider comments, such as those contained in this Report and in other expected commentary on RUPA, and revise RUPA based upon that commentary prior to encouraging state adoption of a revised RUPA.

Background of RUPA. The NCCUSL Drafting Committee on RUPA (the "Drafting Committee") was appointed in large part in response to a report on the Uniform Partnership Act ("UPA") published in The Business Lawyer (hereinafter the "ABA White Paper"). In the ABA White Paper, some 150 recommendations for changes to UPA were made.

The Drafting Committee was appointed in 1988 and has met several times each year since, usually for two or three days at each meeting. It encouraged direct participation from certain practitioners and ABA representatives. In addition, the Drafting Committee received, deliberated on and often adopted commentary submitted by the Subcommittee and others. A "mid-term" draft RUPA was widely distributed in 1990 and received significant
commentary. At its 1991 meeting, the entire Conference attempted a "first reading" of RUPA but only reviewed its first two and one-half Articles. Finally, in August 1992, in extended sessions supplemented by late night reaction meetings of the Drafting Committee, the entire NCCUSL adopted RUPA in its present form.²

**Background of the Subcommittee.** The Subcommittee was formed in February 1990 to provide ongoing commentary to the Drafting Committee as RUPA progressed. It has met seven times, generally each meeting being a two-day session. A total of eleven Comment Papers were generated between February 1990 and July 24, 1992, totalling over 80 pages and covering virtually all aspects and sections of RUPA. The guiding principles for the Subcommittee’s deliberations and recommendations were set forth in a Policy Statement dated May 30, 1991, which was delivered to the Drafting Committee and which explained the Subcommittee's perception of the objectives which should be sought in RUPA.

**Standards for Subcommittee Recommendation.** In arriving at the recommendation set forth herein, the Subcommittee discussed the standards by which it should judge RUPA in determining whether RUPA should be recommended as an Act to be adopted by the states. Ultimately, our conclusion was that RUPA should be weighed against UPA. In this regard, we note that UPA, although needing improvement and modernization as pointed out in the ABA White Paper, does work reasonably well as a statute with relatively few major problems inherent in the statute itself. Moreover, it has the benefit of some 80 years of generally uniform case law in almost all jurisdictions, plus a reasonably large body of secondary authority filling in the gaps and smoothing out most of the problems. Against this uniformly adopted statute with a large volume of interpretive material, does RUPA provide such material improvement that abandonment of uniformity and the interpretive material is warranted? We concluded that RUPA as currently drafted is not such a material improvement. In that regard, our conclusion was driven by two fundamental questions: will RUPA enhance the predictability of specific partnership relationships for transaction lawyers attempting to structure such relationships; and will RUPA foster litigation arising out of the statute itself and partnership agreements drafted pursuant to the statute? We concluded that predictability would be diminished if RUPA were to be adopted in its present form, and that opportunities for litigation would be increased.

**Analysis of RUPA.** The Subcommittee appreciates that the Drafting Committee was receptive to much of the Subcommittee's commentary and recommendations. Nevertheless, the Subcommittee believes that the end product represented by RUPA

² On October 15, 1992, the Chair of the Subcommittee received a further revised RUPA containing dozens of changes made by the NCCUSL "Style Committee"; these changes, which include rewrites of entire paragraphs, have not been reviewed by any group outside of the Style Committee.
remains unacceptably flawed. Notwithstanding the efforts of the Drafting Committee during the past four years, various pressures and constraints to which the Drafting Committee was subjected prevented creation of a revised act materially better than UPA. The Subcommittee is aware of the pressures on the Drafting Committee to produce a final act in 1992. Those pressures emanated both from financial limitations of NCCUSL and the participating Commissioners' own time constraints. It should be noted that, at the request of the Subcommittee, the Section Council provided partial funding for one extra weekend meeting of the Drafting Committee. Substantial changes were made to the draft RUPA during that extra session which was the final Drafting Committee meeting prior to the NCCUSL Annual Convention. In addition, the Drafting Committee apparently perceived the need to achieve political compromise with regard to certain fundamental policy issues, particularly in the final proceedings in August 1992. These pressures alone, and the unfortunate compromises resulting therefrom, demonstrate the need for objective and deliberate study and critique of RUPA as the basis for a further revision which could produce a RUPA sufficiently better than UPA to justify adoption.

Major Achievements in RUPA. While we are unable to recommend RUPA in its present form, we note several significant contributions to partnership law contained in RUPA that should be incorporated in any RUPA ultimately recommended for adoption. In the Subcommittee's judgment, the most important of these are:

1. **Statements of Partnership Authority, Disassociation, Dissolution, etc.** RUPA would provide a system of filed statements as official record notice concerning various important aspects of partnerships.

2. **Clarification of "Entity" Concept.** RUPA would eliminate the longstanding debate over whether a partnership is an entity by unambiguously stating that it is an entity.

3. **"Technical Dissolutions."** RUPA makes an important advance in providing that a change in the relationship among and between partners does not always result in a dissolution of the partnership.

4. **Mergers.** RUPA would provide a statutory mechanism for merger of two or more partnerships.

5. **Partnership Property.** RUPA has made significant steps in clarifying the abstruse UPA provisions relating to partnership property.

Problems in RUPA. The Subcommittee has prepared a detailed analysis of RUPA which is attached to this Report as Exhibit A. While the Subcommittee does not purport to have provided a complete analysis, we have compiled some eighty specific comments in that exhibit. Matters that the Subcommittee wishes to highlight are set forth immediately below. The first four of these items are considered of such importance that,
without correction, each would stand as a barrier to achieving the level of support
necessary for the Subcommittee to recommend RUPA for adoption in any jurisdiction.

1. Section 404 deals with general standards of a partner's conduct,
including fiduciary duties. The Section was radically changed in response to an
emotional letter delivered to the floor of the NCCUSL meeting in August. No one has
had sufficient opportunity to study the changes in depth. Moreover, we believe these
rules are of such fundamental importance that they demand review and deliberation by
outside commentators. Our principal continuing concerns are: (1) the prohibition against
contracting partners being able to waive certain duties in a written contract; (2) the
assertion of the concept of an "obligation of good faith and fair dealing" as an
independent duty as opposed to a standard of conduct interpretation; and (3) internal
inconsistencies in the drafting of the section.

2. Sections 601(1) and 103(b)(6), taken together, make any written
agreement restricting a partner's right to withdraw from a partnership unenforceable.
The effect of these two subsections taken together may be to eliminate the ability of the
partnership to recover damages from a partner who withdraws in violation of the
partners' clear business agreement, as expressed in a written partnership agreement.

3. Sections 801 and 802 -- RUPA does not change the rule that any one
partner can at any time cause dissolution and the winding-up of the business of a
partnership (see Section 801). It is the fundamental task of virtually every partnership
agreement to correct the current law. Section 801 thus maintains as the default rule the
very problem that arguably would constitute malpractice if attorneys did not address and
correct it in virtually every written partnership agreement. Moreover, Section 801 has
spawned Section 802, which attempts, without any real success, to blunt the damage that
this default rule does if left in RUPA. Section 802 contains rules that would almost
certainly never be included in a partnership agreement. Thus, Section 802 reinforces our
belief that the default rule in Section 801 should be continuation of the partnership, which
is what the vast majority of practitioners would draft into well-crafted partnership
agreements.

4. Subsections (a) and (c) of Section 1006 -- the Transition Rules, seem
to be in direct conflict with each other, because the partnership agreement is itself a
contract. Moreover, the attempt to impose the non-waivable provisions of RUPA on
existing partnerships is problematic from a constitutional standpoint. The subject of
transition rules must be further studied to avoid fostering extensive litigation in
jurisdictions that adopt RUPA.

5. The cumulative effect of the problems we have discussed in RUPA,
including those listed above and the items mentioned below and in the Exhibit, is such
that RUPA does not provide a benefit which would outweigh the detriment of destroying
uniformity and abandoning the 80 years of case law built up under UPA.
6. RUPA has deleted reference to applicability of RUPA to the limited partnership form of entity. NCCUSL, therefore, has definitely attempted one step of delinkage of the Partnership Act from the Limited Partnership Act, but has not addressed either substantive linkage issues or the gaps in the law that would exist if neither UPA nor RUPA applies to fill the gaps in the limited partnership law as it now exists. NCCUSL has, without study, blindly approved linkage.

7. The Subcommittee has previously expressed its concern that the final RUPA should be such as to continue the history of uniformity in partnership laws. While we have grasped the reality that promulgation of RUPA will most likely destroy the almost complete uniformity that now exists with UPA, we still believe that it is important to promulgate a RUPA that will achieve uniformity throughout the states at least as to the core provisions of the Act. We believe that the number of problems existing in RUPA, especially the fundamental concerns addressed in Items 1-4 above, will prevent RUPA from being adopted uniformly among the states as to core matters.

8. There has been insufficient opportunity on the part of non-NCCUSL affiliated individuals to comment concerning RUPA, especially the RUPA that was approved in August 1992 with material changes adopted after and in reaction to floor discussion at the NCCUSL meeting. Our experience, and the experience of the Drafting Committee, has been discovery of significant internal inconsistencies, and even major flaws, in newly drafted provisions each time a material change has been made to the Act. It would be inconceivable, considering the significant changes attempted in August of 1992, that the same problems do not carry over into the present RUPA draft.

9. We seriously question the proposed provisions related to the establishment of "accounts," and, in particular, the question of whether Section 401 imposes an affirmative duty with resulting potential liabilities for failure to maintain "accounts." We note that Section 808, using the "accounts" as the mechanism of allocating assets and liabilities on dissolution and winding up, changes one of the few areas of the UPA (Section 40, generally), which worked well, and which the courts had no problem understanding and consistently applying.

10. RUPA proposes a number of state filings, such as the Statement of Partnership Authority and the Statement of Partnership Dissolution. To the best of our knowledge, these provisions have not been reviewed with any of the state officials who might be required to accept filings under RUPA to ensure that a system has been designed which can be substantially and uniformly implemented by the appropriate state offices.

11. We take considerable issue with the valuation approach expressed in Section 701. Our main concerns continue to be with the attempt to define in a statute applicable to a myriad of economic situations, the process and the standards by which a court is directed to determine the fair value of a dissociated partner’s interest. Here we perceive an example of over-legislation, which will cause litigation concerning the
meaning of the statute prior to the litigation necessary to resolve the basic issue (fair value of the interest).

12. In general, the Committee is concerned with the quality of the drafting of RUPA. We observe in this regard that the Drafting Committee, often in response to requests from the floor at the NCCUSL proceeding in August, decided to rely on "official commentary" to resolve an ambiguity or question that was raised pertaining to a particular section of RUPA. The official commentary has not been prepared, and this limited our ability to review RUPA. However, even if the commentary were available, we are concerned that the RUPA may rely too heavily on commentary for explanation and interpretation of statutory provisions. In this regard, we note that some states do not adopt the official commentary and other states specifically provide that official commentary is not to be referred to in the interpretation of the direct language of the statute.

13. We have had the benefit of having reviewed a draft of an extensive critique of RUPA prepared by Professor Larry Ribstein, one of the preeminent authorities on partnership law. While not all of the Subcommittee members would agree with all of Professor Ribstein's commentary, we concluded that even if only half of his comments would reflect the position of the Subcommittee, recommending RUPA would be tantamount to recommending an Act for adoption which would immediately be accompanied by a "White Paper II" almost as extensive as the original ABA White Paper which initiated the RUPA process.
EXHIBIT A

to

RUPA Report

Section 101

The Subcommittee believes that the term "Partner" is used too loosely throughout in RUPA. Depending upon which specific section of the RUPA is involved, Partner may mean general partner, or limited partner, or former partner, or dissociated partner, or purported partner. The Subcommittee recommends that NCCUSL should go back through RUPA and provide more specificity to this term and also define each of these terms in this section.

The Subcommittee also believes that the term "Partnership" should be added as a defined term in this section.

The Subcommittee believes that the term "Partnership Interest" should be added as a defined term because of its frequent use throughout the Act and recommends that the definition be based on the same definition in the Revised Uniform Limited Partnership Act ("RULPA").

The Subcommittee also believes that the definition of "Person" should include limited liability companies because twenty states have already enacted limited liability company legislation.

Section 102

The beginning of this section should be modified with "For the purposes of this Act" so as not to create a conflict between these notice provisions and notice provisions of other Acts.

Some members of the Subcommittee expressed strong sentiment that as a default rule, this section is not an advancement over existing Section 3 of the Uniform Partnership Act (the "UPA") relating to the Interpretation of Knowledge and Notice and Section 12 of the UPA relating to when a Partnership is Charged with Knowledge of or Notice to a Partner. After much discussion, however, a majority of the Subcommittee acknowledged that this section did represent a material change over Sections 3 and 12 of the UPA, but did not view the change as being harmful.

The Subcommittee did express, however, that Section 102(d) is poorly drafted and should be revised to reflect that subsection (d)(1) refers to when a person is notified and subsection (d)(2) refers to when a person receives notice of a fact.
Section 103

The Subcommittee strongly objected to many of the subsections of Section 103(b) relating to which rights and duties may not be varied by a partnership agreement. The Subcommittee decided to explain its position as to why certain of these rights and duties should be waivable in the discussion of each underlying right or duty section (i.e. Section 403, 404, 601 and 801), rather than in this section.

Section 106

In response to the Subcommittee’s numerous comment letters, the Subcommittee recognized that NCCUSL finally included a choice of law rule in the Act. In so doing, however, NCCUSL promulgated a new untested choice of law rule based on the law of the partnership’s chief executive office. The Subcommittee expressed concerns over the possible effect of this new rule.

The Subcommittee then recommended that NCCUSL should revise that choice of law rule to the formulation suggested in our March 17, 1992 comment letter, which is based on Section 901 of RULPA and which provided that:

Subject to the Constitution of this State, the laws of the State under which a general partnership not formed under the laws of this State is organized shall govern its organization and internal affairs and its relations with persons who are not partners.

Section 201

The Subcommittee recognized that the addition of this Section in the Act indicating that a partnership is an entity is an improvement over the UPA.

Sections 301 and 302

Article 3 uses the concepts of "knows," "has received a notice" (see Section 301(1)) and "having notice" (see Section 302(a)(3)) in various subsections. The reasons for (a) using these gradations in given subsections and (b) making substantive changes from the UPA (see UPA Sections 10(1) and 10(4), which employ only the concept of knowledge, and compare RUPA Sections 302(a)(3) and 302(b)) were not clear to members of the Subcommittee.

Section 302(c) deals with the implications of holding "all of the partners' interests" in a partnership. Section 501(a) limits the "transferable interest" of a partner to the partner's interest in distributions. This leaves open the question of whether Section 302(c) engages when a partner holds all of the "transferable interests" as opposed to the "interests" in a partnership. This reenforces the Subcommittee's belief (expressed in our
comment letter of July 26, 1991) that RUPA should contain a definition of "partnership interest" similar to that contained in RULPA.

Section 307

Members of the Subcommittee were concerned about Section 307(d)(2). These members feared that Section 307(d)(2) will (a) provide partnership creditors with an inappropriate incentive to file a bankruptcy action against a partnership to circumvent the exhaustion rule and (b) provide partnerships and their partners with an inappropriate disincentive to file such actions to avoid losing the benefits of the exhaustion rule. These Subcommittee members believed that the issue required further study.

Members of the Subcommittee also expressed concerns about the appropriateness of the application of the exhaustion rule to tort claimants.

Section 308

Members of the Subcommittee felt that Sections 308(c) and 308(d) were out-of-place in a section entitled "Purported Partner." These concepts would appear to be addressed more appropriately in Sections 303 or 304.

Section 401

This Section provides in part that "A partnership shall establish an account for each partner..." The Subcommittee is concerned with this injection of accounting procedures into RUPA (see also Section 808 which also relates to the "accounts"). The mandatory language "shall establish an account" appears to impose an affirmative duty, with related liabilities, on some unspecified person or persons if the accounts are not established. This concern is particularly apparent in connection with smaller, more informal partnerships operating under RUPA's default rules. It becomes imponderable when applied to a default partnership, i.e., a partnership which nobody treated as a partnership. As a general matter, we believe the "account" concept adds nothing of substantive value to RUPA. However, it does provide another statutory question for repeated litigation: what is to be required of the partnership and/or partners years later when no formal accounts have been maintained. The resolution of intra-partnership accounting issues ought to remain a matter for case-by-case resolution based upon the state of facts found in each case. We observe that the courts have not appeared to have had a problem in this regard under UPA, so no attempt should be made to fix this unbroken area of the law.

Sections 403(b) and 103(b)(2)

Section 403(b) specifies a partner's rights to information. A "former partner" has access to books and records pertaining to the period during which he/she was a partner. Section 103(b)(2) prohibits only "unreasonable restrictions" on a partner's rights under
Section 403(b). Our concerns are primarily related to the ambiguity created by Section 103(b)(2) using only the word "partner." Does this mean that a partnership may unreasonably restrict a former partner’s right of access to books and records? Would a court enforce such a restriction? Most of us would conclude that an unreasonable restriction would be unenforceable, whether it related to a current or former partner. The reasonableness of the request for access could, presumably, be measured at least in part by the status of the partner/former partner. Then, why is Section 103(b)(2) in RUPA? Clearly, courts do not need to be told that they should only enforce reasonable restrictions on a person’s right to access to books and records, but they need not enforce unreasonable restrictions. Once again, analysis of the problem created by the ambiguity noted above leads to the conclusion that attempting to legislate a prohibition on freedom of contract (Section 103(b)(2)) merely creates another item to litigate, i.e., the statutory interpretation problem.

Section 403(c)

We believe the words "on demand" are inappropriate in Section 403(c). They imply that a partner with important information about the partnership’s affairs may intentionally withhold such information from his or her partners to the withholding partner’s benefit and/or the other partners’ detriment, so long as no one has made a demand for the information. We recognize that "on demand" is in UPA Section 20, the presumed genesis of Section 403(c).

We are also not certain about the relationship between and among Section 403(b), Section 403(c) and Section 404. In this regard we believe an element of confusion is injected into the analysis by the inclusion of the "just and reasonable" standard of Section 403(c), especially when it is measured against Section 403(b) (with or without a proper purpose test being added) and against Section 404. We note that the "just and reasonable" phrase was not a part of UPA Section 20. However, when Georgia adopted UPA after extensive study in 1983 it deleted the "on demand" requirement and replaced it with the "just and reasonable" qualification. This would appear to be the most useful approach to avoid the potential for abuse, noted above, that we believe is inherent in RUPA Section 403(c).

Section 404 (generally)

Much of the Subcommittee’s previous commentary has related to the matters addressed in Section 404. The Subcommittee believed that the version of Section 404 as proposed to NCCUSL in August of 1992 was acceptable in most aspects. However, the Section was extensively revised as a result of floor debate and as it is now presented it cannot be supported by the Subcommittee. We continue to believe that Section 404 must be founded on a presumption that the agreement of partners as reflected in a written partnership agreement made with the consent of the contracting partners, is not manifestly unreasonable and should be enforceable. Further, we are especially concerned with the partnership/limited partnership linkage problems in Section 404, because those problems
are not addressed in the Section or elsewhere in RUPA. We continue to be concerned with the implication that arises out of Section 404(e) that a "duty of good faith and fair dealing" is a separate, substantive non-waivable duty, as opposed to a conduct interpretation standard consistent with the use of such phrase in the Uniform Commercial Code. Finally, because of the importance of the substantive matters addressed in Section 404, and the major changes made to the proposed language in August 1992, we believe the current version of Section 404 should have been widely distributed for comment prior to final NCCUSL approval.

Section 404 (as related to Section 603(b))

As discussed below at Section 603(b), we question whether the latter section is needed or useful, and whether it needlessly raises questions not existing under current law.

Section 404(a)

In order to limit the potentially expansive nature of the "good faith and fair dealing" obligation described in Section 404(e), i.e., to ensure that the good faith and fair dealing obligation is not construed as a separate "fiduciary duty," we suggest substituting for the words "set forth in this section" found in Section 404(a), the words "set forth in (b) and (d) of this section." This suggestion is not in derogation of our conviction that the "good faith and fair dealing" concept is misplaced in a partnership act. (See our extensive commentary in Comment Letter dated March 17, 1992).

Section 404(b)(1)

The words "or opportunity" in this Section potentially expand the duty referred to into problematic and litigation spawning areas which should properly be viewed as being within the concept of "partnership property" which immediately precedes the words "or opportunity."

Sections 404(b) and 103(b)(3)

We are concerned with the problematic and arguably undiscernible relationship among Section 103(b)(3)'s concept of the inability to eliminate the duty of loyalty under Section 404(b), and the "consent" concept appearing in Subsections (b)(1), (2) and (3). How can one on the one hand not eliminate something but be able to consent (presumably to its elimination) to that very same thing? Further, how does Subsection (c) relate to Subsection (b) (why is it once again necessary to say that the duty of loyalty may not be eliminated when it is already in Section 103(b)(3), and how does the ability to identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable, relate to the flat out prohibition of Section 103(b)(3) and to the "consent" concept found in Subsection (b))?
Sections 404(d) and 103(b)(4)

We disagree with the notion of Section 103(b)(4) prohibiting informed contracting parties from eliminating a duty of care in a written agreement. Assuming the prohibition is to remain, however, we suggest that the ability to "reduce" it should be subject to the same "not manifestly unreasonable" standard specified elsewhere in Section 404.

Sections 404(e) and 103(b)(5)

Insofar as Section 404(e)'s "obligation of good faith and fair dealing" is concerned, when read in the context of Section 103(b)(5)'s statement that the obligation of good faith and fair dealing may not be eliminated, the drafting of the last sentence of Subsection (e) is difficult to understand. Section 103(b)(5) precludes the elimination of the obligation of good faith and fair dealing. Section 404(e) seems to repeat (needlessly) the determination that the obligation cannot be eliminated but permits partners by agreement to determine standards by which the performance of the obligation is to be measured, so long as those standards are not manifestly unreasonable. The opportunity for litigation is endless; at what point does determining a standard become eliminating the obligation? As we noted in extensive commentary in our March 17, 1992 Comment Letter, the inclusion of the "good faith and fair dealing" phrase is misplaced in a partnership act. If it is to be included in RUPA at all, it should be in Section 104, "Supplemental Principles of Law," since it is not a separate substantive duty but merely a standard by which conduct is measured.

Section 404(f)

We are not clear how the first sentence of Section 404(f) relates to the non-waivable, but modifiable, duty of loyalty described in Section 404(b) and (c). Further study and commentary is required to resolve whether these two concepts are inherently contradictory.

Section 406

We find that the drafting of this Section leaves open the question of on what causes of action an individual partner may sue. We are confused as to the relationship between Section 406(a) and 406(b) and were, therefore, unable to determine what actions could be maintained by an individual partner. This confusion is only furthered by listing the three specific subparagraphs (i)-(iii) in Subsection 406(b)(2). Questions remaining are whether a partner can sue on behalf of a partnership, and whether one requires a derivative action statute in order to maintain an action on behalf of a partnership. We were led back to the fundamental question of whether there is a need for a derivative claim statute without which it may not be clear that Section 406 rejects previous law to the effect that the exclusive remedy available to a partnership is for an accounting.
Section 407(b)

The Section leaves the reader puzzled. The problem appears to stem from the failure to follow the wording of UPA Section 23(b) upon which Section 407(b) is based. Simply put, UPA Section 23(b) stated that if partners continue to run the business past the expiration of the partnership's fixed term, that was prima facie evidence of continuation of the partnership. Section 407(b) make the rather useless observation that such state of facts is prima facie evidence that the business will not be wound up. But for the clear prior statutory language, most courts would probably interpret Section 407(b) to mean that the partnership continues. However, the clear deviation from the UPA's simple statement to that effect must mean something but we do not know what this change was intended to effect. We are left to litigate whether the partnership continues under Section 407(b), or whether it is dissolved and continuation of the business for purposes other than the most effective liquidation is all that is now permitted. How does Section 407(b), as presently worded relate to Section 801(2)(i) and (iii)? They appear inherently contradictory. Ironically, in Section 407(b), RUPA appears to have taken a major step away from the concept of a partnership as an entity.

Section 501

Although Section 501 significantly improves on the UPA by specifying that a partner does not own any partnership property, the use of the phrase "that can be transferred, either voluntarily or involuntarily," is too narrow. Section 701 of the Delaware Revised Limited Partnership Act (the "Delaware Act") makes the same point by stating simply that a partner has no interest in specific partnership property. The Delaware Act approach does not unnecessarily raise the question whether a partner has some nontransferable interest in specific partnership property.

Section 502

RUPA's focus only on the "transferable interest" of a partner creates two difficulties. First, it is valuable to define what a partner's total interest in the partnership is, not merely the interest that may be transferred. This could best be accomplished by including a definition of "partnership interest" as in the RULPA Section 101(10). As recognized in RULPA, a partner's interest in the partnership includes much more than merely the partner's right to distributions from the partnership. Contrary to the analysis in the comment to earlier drafts of RUPA Section 502, the full effect of the partner's interest in profits and losses of partnerships is not reflected in distributions from the partnership. The partners may recognize profits and losses even when there are no distributions. Furthermore, there are very real income tax effects resulting from the allocation of the profits and losses that are not necessarily reflected in the distributions paid to a partner.
Second, it is incorrect to say that only the right to distribution be transferable. The income tax effect of profits and losses of the partnership is also transferable, whether or not the other partners agree to the transfer.

Accordingly, RUPA would more clearly address the nature of a partner's partnership interests, and the rights of a partner with respect to that interest by defining the term "partnership interest" in Section 101 to include the partner's interests in profits and losses of the partnership as well as distributions and by stating in Section 502 merely that the partnership interest is personal property. Section 503, as discussed below, would deal with the transferability of the partnership interests.

Section 503

Consistent with the comments to Section 502, the reference to a transferable interest should be eliminated. If the term "partnership interest" is defined to include a partner's rights to participate in the management of the partnership, then Section 503 should provide that a partner is unable to transfer this management right. If "partnership interest" is not defined to include the management right, then it would not be necessary to make any additional changes in 503(a)(1). As provided in Section 601(4)(ii), a transfer of a partner's partnership interest does not automatically cause the partner's dissociation. Therefore, Section 503(a)(2) should provide not only that the transfer does not cause a winding-up, but that it does not, by itself, cause a dissociation of the partner.

It is dangerous to attempt to enumerate in Section 502(a)(3) all of the rights to which a transferee is not entitled on an assignment of the partnership interest. It is very possible that there may be, or that a court may believe there to be, some right that is not enumerated in that list. The more prudent approach would be to provide that a transferee not receive any of the rights of the transferor except the right to distribution.

The first sentence of Paragraph (d) is unnecessary if the term "distributions" includes, as it appears to, the right to distributions in connection with a winding-up of the partnership.

Paragraph (d) should not rely on negative implication to specify a partnership duty after it has received notice of a transfer. Instead, the provision should be phrased affirmatively that the transferee's right, as against the partnership, becomes effective when the partnership receives notice of the transfer.

Section 504

The substance and particular language of this Section raise a number of issues. First, it is not clear that a specific provision for charging orders is necessary. State laws otherwise provide for attachment foreclosure of liens on intangible personal property. It is not clear that a partnership interest should be treated differently from other types of intangible personal property.
The language of this Section, as drafted, contains a number of inconsistent usages. For example, this Section uses the terms "debtor partner," "debtor" and "judgment debtor," all apparently to mean the same thing. There is no reason to use three different terms in one section to refer to the same person.

Last, paragraph (c) raises a number of substantive issues because it gives the partnership and the other partners unique rights that they do not have with regard to other types of liens. It is not apparent that the judgment lien is sufficiently unique to justify a different treatment from other types of liens. It is not clear, and we do not purport to suggest, that this section either should apply to other types of liens or should alter treatment of judgment liens to be consistent with the treatment of other liens. We note, however, that the ABA White Paper included an extensive discussion of these and related issues. That these issues have not been resolved or even recognized in RUPA emphasizes the point that additional thought must be given to the area to assure that similar situations receive consistent and reasonable treatment in RUPA.

Section 601

One problem with the provisions permitting dissociation without dissolution is that they do not require written notice of dissociation. Requiring written notice would reduce uncertainty and litigation as to whether a member has withdrawn. Indeed, by requiring "notice" but not requiring that it be in writing, RUPA Section 601 may even cause increased confusion as to whether a partner has dissociated. While this would add formality to what may be an informal relationship, the benefits of this requirement outweigh the costs. Moreover, written notice of withdrawal is less formality than RUPA's buyout rules under Section 701 already impose on the firm and dissociating partners.

A second problem with the dissociation provisions is that the partners cannot contract around a partner's power to withdraw by express will. There are two potential criticisms of permitting partners to contract around the dissociation right. The first concerns open ended liability, which is not a problem in corporations and limited partnerships whose members may not be able to dissociate at will. However, the potential costs of continuing liability are not as great as they might appear. RUPA Section 307(d) reduces the sting of such liability by requiring creditors, subject to their contrary agreement with the partners, to exhaust partnership assets before proceeding against individual partners. Moreover, even a partner who cannot dissociate can negotiate with his co-partners regarding indemnification for liability and with creditors for a release from individual liability for partnership debts.

A second possible argument against allowing contracts around the dissociation right is that the partners cannot predict the effects of the agreement over the course of the partnership. However, legislators and uniform law drafters are no better able to predict the long-term effects of the statutory rule for all partnerships. Moreover, courts can fill contracting gaps by considering whether partners' actions are in good faith accord with
their underlying deal, and by expelling partners or dissolving partnerships in cases of partner misconduct under Sections 601(5) and 801(5). It is unnecessary to prohibit all agreements to protect partners from an occasional bad deal.

Whatever the potential costs of open ended liability, partners should be able to decide the issue for themselves. Indeed, the partners can evade the prohibition by penalizing withdrawal through liquidated damages, a low buyout price or a noncompetition agreement. Thus, the rule forces courts to decide when penalty becomes a prohibition. In deciding this question, the courts may and should apply the same good faith interpretation principles that would condition enforcement of a straight waiver. Cf. Rafe v. Hindin, 29 A.D.2d 481, 288 N.Y.S.2d 662 (1968), aff’d mem. 23 N.Y.2d 759, 244 N.E.2d 469, 296 N.Y.2d 955 (1968) (refusing to enforce a share transfer restriction in a close corporation under circumstances indicating oppression by party seeking enforcement). In short, the prohibition not only is poor policy, but also is confusing and possible meaningless in effect.

Section 603

Since Section 603 is not one of the non-waivable provisions under Section 103, the partners apparently can waive the continuation of their fiduciary duties although, of course, under that section they cannot waive the duties themselves.

Under Section 603(b), a fiduciary duty action against a dissociated partner potentially involves questions concerning (1) whether the partner breached his fiduciary duty; (2) whether the breach concerned "matters or events that occurred before the dissociation;" (3) whether the breach involved the duty not to compete, which does not continue after dissociation; and (4) whether the partners’ agreement waived post-dissociation duties. To give an example of the confusion that may result under this provision, consider a claim that a law partner appropriated a fee from a client and a case he took with him after dissociating. If the attorney is deemed to be appropriating work in process that belongs to the firm, he may be liable if the appropriation is "with regard to" a pre-dissociation matter or event. On the other hand, if he is deemed to be competing with his former firm, or if his conduct is deemed to be with regard to a post-dissociation matter, he apparently has not breached his duty. This casts in doubt the continued authority of cases under the UPA that hold, for example, that former law partners may not appropriate the benefit of cases they continue to handle after leaving the firm. See Little v. Caldwell, 101 Cal. 553, 36 P. 107 (1894); Rosenfeld, Meyer & Susman v. Cohen, 146 Cal. App.3d 200, 194 Cal. Rptr. 180 (1983).

Section 603(b)’s confusing termination of fiduciary duties is unnecessary. RUPA Section 404 imposes fiduciary duties on any "partner." Section 603(b) assumes that term does not apply to a dissociated partner. However, nothing in RUPA prevents courts from holding that a dissociated partner retains some partnership attributes, including fiduciary duties. That would be consistent with RUPA’s recognition of fiduciary duties in connection with "winding up" under Section 404(a)(1)-(2) and that a dissociated partner
may participate in winding up under Section 804. It is also supported by the UPA cases referred to above holding that partners having fiduciary duties after dissociation. As a policy matter, the conditions that initially gave rise to the partners' fiduciary duties still exist as long as a former partner retains control over partnership property or management power. See Tamar Frankel, Fiduciary Law, 71 Cal. L. Rev. 795, 823, n. 100 (1983).

Section 701

The Subcommittee has reviewed, discussed and commented on this section a number of times. Our position has been consistent: retain the UPA provision for purchase of a partner's interest for "value" and do not attempt to define the concept or establish parameters for determining value in the statute. This position could be reflected in Section 701 by deleting the remainder of subsection (a) after the word "for" in line 6, adding the words "its value as of the time of the event causing dissociation, taking into account" and deleting all of subsection (b) except the last sentence and the words "all relevant facts" in the next to last sentence.

The Subcommittee also believes that Section 701(d), which excludes liabilities "unknown" to the partnership from those liabilities from which a dissociated partner is indemnified, could be the basis for litigation in partner dissociations. For example, if the dissociated partner knew of facts existing at the time of dissociation which he should have known would give rise to a partnership liability, will he be indemnified for that liability?

The Subcommittee notes that the buyout procedures contained in Section 701 were inserted in large part in response to comments made to the Drafting Committee by the Subcommittee. However, the Subcommittee made clear, in suggesting a buyout procedure, that its purpose was to give a dissociating partner negotiating leverage to obtain fair value for his interest, if the dissolution provision proposed by the Subcommittee was adopted which eliminates the right of the single partner to cause the partnership's break-up. The Subcommittee believes that it may not be appropriate to provide this additional leverage if the single partner has the break-up right.

Section 702

Section 702(a)(i) properly fixes the time at which the other party to a transaction must have a reasonable belief that the dissociated partner is still a partner at the time when entering the transaction. Sections 702 (a)(ii) and (iii), however, are not similarly located in time but should be. Further, Section 702(a) refers to "deemed notice" under Section 303(e), while Section 303(e) itself refers to "knowledge." Accordingly, Section 702(a) should read:

(a) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Article 9, is bound by an act of the dissociated partner that would have bound the partnership under Section 301
before dissociation only if, *when entering the transaction*, the other party to the transaction:

(i) reasonably believes that the dissociated partner is a partner;

(ii) does not have notice of the partner's dissociation; and

(iii) is not deemed to have *knowledge* under Section 303(e) or *notice* under Section 704.

The awkward distinction between "notice" in Section 702(a)(ii) and "deemed notice" in Section 702(a)(iii) could be eliminated by expanding the definition of "notice" in Section 102(b) to include that which is "deemed" to exist by reason of the provisions of RUPA.

Section 702(b) uses the term "loss" without indication of its scope: If the transaction to which the dissociated partner has bound the partnership involves both gains and losses, is the dissociated partner liable for all of the losses without netting out gains? The question is not pedantic, because gains ("profits") and losses are considered together in Sections 401(b) and 808(b). A provision should be added for mitigation of profits against losses.

This provision stands in contrast to Section 404, which limits a partner's duty of care to "refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." While the Subcommittee recognizes that the dissociated partner is no longer a partner and may logically be subject to a different standard, it has not taken a position on the distinction here.

Section 703

Section 703(b) utilizes phrasing similar to that of Section 702(a). See the comment to Section 702(a) regarding the need for revision to clarify the *time* at which notice is relevant.

Section 704

The Subcommittee believes that the draftsmen should consult with secretaries of state to determine what parameters and requirements, if any, should be provided for filings of statements of dissociation under Section 704, as well as for filings of statements of authority under Section 303, statements of dissolution under Section 806, and statements of merger under Section 906.

Section 704(b) should be clarified by specific reference to Sections 702(a)(iii) and 703(b)(iii), as follows:
(b) For purposes of Section 702(a)(iii) and 703(b)(iii), a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

Section 705

The words "of itself" should be deleted from this section.

Section 801

The Subcommittee has reviewed, discussed and commented on this section a number of times. We have been in favor of continuation of the partnership after a partner dissociates, unless the remaining partners decide to dissolve. Specifically, we would delete subsection (1) and replace it with the following:

(1) In a partnership without a definite term or particular undertaking, by the express will of at least half of the partners.

Subsection (2) would be revised by deleting the words "except as provided in Section 802" and the remainder in subsection (i) following the phrase "under Section 601(6) to (10)," and replacing the latter part with "by the express will of at least half of the partners.

Consideration should also be given to adding a new subsection (5)(iv) to read as follows:

(5) on application by a partner, a judicial decree that...

(iv) dissolution and winding up the partnership’s business is necessary to determine the value of the partner’s interest or to discharge the partner from liabilities in accordance with Section 701.

This addition could help counteract the arguments in favor of protecting the sole dissociating partner who loses his power to cause dissolution automatically under Section 801 as currently drafted.

Section 802

This section attempts to delay the disruptive effects of a dissolution by giving the partners up to 90 days to arrange a settlement with the dissociating partner. There are three corollary rules in subsection (c). First, the dissociated partner has no management rights during the deferral period. This would be the case automatically under the continuation approach our Subcommittee has consistently taken: once dissociated, the partner no longer would have any active role in the partnership’s business. The only exception to the rule would be in the case of a partnership which dissolves as a result of
the dissociated partner's departure. However, that exception can be included in Section 804, relating to who has the right to participate in winding up the partnership's business.

The second rule relates to the dissociated partner's liability for partnership liabilities incurred following his dissociation, which are not appropriate to the winding up of the partnership's business. The Subcommittee has discussed the apparent need for a rule along these lines within the continuation approach which it has favored. Without the rule, it is possible that the remaining partners could take advantage of the situation by testing the waters for a period of time following the partner's departure. If the partnership's business during the period sends positive signals, then the remaining partners would elect the buyout option under Section 701. If the business incurs a significant downturn, the remaining partners could choose to dissolve and cause the liquidating distribution to the dissociated partner to reflect any share of loss incurred during that period. This result would be the same if the remaining partners decided to dissolve immediately following the dissociated partner's departure, if the loss was incurred by the partners in attempting to preserve the partnership's business as a going concern. However, if the remaining partners incur liabilities above and beyond that necessary to preserve going concern value, without a special rule the dissociated partner would share in any losses resulting therefrom based on the reduction of the net amount available for final distribution upon liquidation.

The issue which needs to be addressed is whether a rule can be formulated which is appropriate as a default rule for the small partnership without an agreement. Subsection (c)(2) of Section 802 is similar to the draft rule discussed by the Subcommittee. However, subsection (c)(3), which purports to allocate any profits incurred by the partnership during the deferral period, but losses only to the extent of profits, to the dissociated partner is different from any rule proposed by the Subcommittee. The Subcommittee did contemplate that liabilities incurred by the remaining partners prior to making the decision to dissolve, to the extent not appropriate for winding up, would be excluded in determining the amount of the dissociated partner's liquidating distribution. Thus, regardless of whether a loss was incurred as a result of the slowdown in the partnership's business in anticipation of a probable windup, the dissociated partner would not share in that loss. Also, if the remaining partners grant a second mortgage on partnership property, which would not be appropriate for winding up the business, but as a result thereof do not incur a loss during the deferral period, but merely reduce the net value of the partnership's assets on liquidation, it would not appear that under Section 802 as presently drafted that the dissociated partner would not share in that reduction in value as reflected in the final liquidating distributions. The rule considered previously by the Subcommittee was that the partnership liabilities for which the dissociated partner is not liable should be excluded in determining the net amount distributable to the dissociated partner.
The Subcommittee should consider recommending the deletion of Section 802 and the possible adoption of somewhat simpler rules along the lines previously discussed and summarized above.

Section 807

Like Section 702(b), Section 807(b) should be amended to include a statement permitting mitigation of losses by gains obtained in the transaction. See the comment to Section 702(b).

Furthermore, the phrase "with knowledge of the winding up" should be changed to "with knowledge of the dissolution" in Section 807(b): Winding up may involve a series of events spanning a period of time, and it is not clear what "knowledge" of that might be. "Dissolution," however, is a single event and the presence of absence of knowledge of its occurrence is more easily determined.

Section 808

Subsection (b) makes extensive use of the new concept of individual partner accounts in the partnership, introduced in Article 4. The Subcommittee has previously commented on the difficulty in interpreting and implementing that concept for small default partnerships. Distributions in accordance with positive balances and obligations equal to negative balances will not likely be understood in some circumstances by unsophisticated business partners.

Subsection (c) should be revised. It is not at all clear what the introductory language "[t]o the extent not taken into account in settling the accounts among partners pursuant to subsection (b)" means. The obligation to contribute for losses appears to be included in the last sentence of subsection (b). Perhaps the first sentence of subsection (c) can be deleted. In addition, the last sentence of subsection (c) should be revised to read:

A partner...may recover from any partner who fails to contribute his proportional share any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations.

The sentence as presently drafted implies that a partner could recover from another partner, even if the second partner had contributed in full, including any contributions required because another partner had failed to contribute.

In general, the Subcommittee believes that Section 808 does not represent an improvement over the distribution rules in UPA Section 40, which have worked well and not given rise to any significant litigation.
Article 9

General. Article 9 provides for (i) conversion of general partnerships into limited partnerships, (ii) conversion of limited partnerships into general partnerships, and (iii) mergers of general partnerships into one or more general partnerships or limited partnerships. Statutory authorization for such conversions and mergers is new and probably a useful addition since the ability to have such transactions may be open to question under current law. Section 907 provides that Article 9 is not exclusive and that conversions and mergers may occur in any other manner provided by law.

Many states may choose to tailor the merger and conversion provisions to more closely parallel their existing statutory procedures for corporate and limited partnership mergers. For example, Article 9 does not provide for dissenter’s rights (other than Section 905(e)’s incorporation in the case of a merger of the Section 701 buyout procedure for dissociated partners). While uniformity may be an important goal for many areas of partnership law, it is less important in the area of partnership conversion or mergers - although to the extent that partnership law in general becomes less uniform, mergers and conversions may become a useful redomestication device. Therefore the fact that some states may choose to modify Article 9 to make it more closely parallel and integrate with their existing merger statutes for corporations and limited partnerships is not troubling.

A better approach may be that being considered by the Texas Bar. Apparently, they are establishing a "junction" statute that provides one set of rules for mergers between unlike business forms. NCCUSL or some other group may want to develop a model merger statute that works consistently when different types of entities want to merge or consolidate.

Filing Requirements - Section 101(a) Revision. Article 9 requires certain documents to be filed (see e.g. § 901(c) (conversion to limited partnership), 902(c)(cancellation), and 904(e)(2) (merger, the last section appears to refer to documents required by some other law to be filed, because it does not appear that the plan of merger must be filed). This requires that the definition of statement in §101(9) be revisited, and to at least include the statement of conversion under § 901.

Terminology. Use of the terms partnership and partner to mean only general partnership and general partner in portions of Article 9 may not work. Notwithstanding Sections 202(b) and 202(e), it should be made clear that partnership does not include limited partnership.

With the elimination of former provisions dealing with the effect of RUPA on limited partnerships, the references to limited partners in Article 9 appear to be the only surviving references to limited partners or limited partnerships in RUPA. This is a linkage question, but in any case, the definition should be clarified.
Section 902

There is some question about whether Section 902 should be in RUPA, particularly considering the desire for delinkage. The rules applicable to the change in the relationships within a limited partnership should be set forth in the limited partnership statute. While the approach of Section 902(b) may be to protect limited partners from the loss of limited liability without consent, the protection of limited partners qua limited partners from their partnership agreement is best left to RULPA.

The confusion resulting from the mixed usage of the concept of partner and limited partner discussed above is clearly illustrated by the last word in Section 902(b) which, presumably should be limited partner; in the new argot, a limited partnership does not have partners.

Section 904

Section 904(c)(2) requires the vote of all the partners of a foreign limited partnership. In this case RUPA is not only seeking to impose its approach on a different entity, but doing so to govern the internal affairs of an organization formed under another state’s laws. This is also another example of the linkage issue.

Section 905

The use of the term partner in § 905 is not clear. Particularly in Section 905(c), the term suggests that it encompasses both general and limited partners, or at least general partners of limited partnerships. This is inconsistent with other uses of the term. This section could be interpreted to impose personal liability on limited partners in a limited partnership surviving the merger because it does not distinguish between general and limited partnerships. Section 905(d) makes reference only to Section 808(c) in defining partners' contribution obligations in the case of a surviving entity which does not satisfy pre-merger obligations; in the case of a limited partner, the reference should be to RULPA §§ 502 and 608 if to anything.

Section 905(e)

The Section 701 buyout procedure is imposed by Section 905(e) on a surviving partnership in a merger with respect to partners in the merging partnerships who do not become partners in the surviving entity. Those procedures and requirements vary in some significant respects from the dissenter and appraisal provisions under corporate statutes, and, in some states, under limited partnership statutes.
The ABA White paper stated that RUPA should apply to existing partnerships, but should not impair or adversely affect any rights accrued prior to RUPA’s effective date. It is not clear how application of RUPA to existing partnerships could not affect existing contract rights.

A more mechanical problem also exists. If, under Section 1006(b) in particular and Section 1006 in general, the rules under RUPA have limited application to partnerships existing on the date of enactment, does RUPA apply to the partnership that results from the admission of a new partner or the dissociation of a partner? RUPA attempts to codify the expectation of partners that the partnership continues, thereby avoiding the result in Fairway Development. Nonetheless, if a partnership is in existence on the date of enactment and a partner dissociates and the business is continued, or, arguably if a new partner is admitted, a new partnership is formed. Is this new partnership subject to RUPA, including the rules applicable to RUPA § 802?

The provisions in 1006(c) and (d) appear to deal with the rights existing on the effective date rather than a partnership existing on such date, so presumably a grandfathered contract right or judgment would be enforced against a partnership under the UPA, but the partnership would otherwise be subject to RUPA.

Section 1006(b) states that Section 802 does not apply to a partnership in existence on the effective date. This change was included to avoid surprise. Therefore, there will be two types of partnerships after the effective date: those that are unavoidably dissolved on dissociation, and those that have the right to convince the dissociating partner to allow the continuation. Any existing partnership apparently will dissolve upon dissociation. What happens then if the remaining partners choose to continue the business? Section 701 appears not to apply because there is not a dissociation that does not lead to a dissolution, although that is not clear because Section 701 deals with a dissociation not resulting in a dissolution and winding up, which is what the references to Section 802 in Section 801(1) and (2)(i) are designed to avoid. Therefore the partnership must be wound up under Section 804. It appears that Section 702 and 703 will not apply for the same reason.

Note that because Sections 802 and 701 were designed to deal with the continuation of the partnership, there is no analogue to UPA Section 38(b) setting forth rights of the partners who have not wrongfully caused dissolution and 38(c) providing for the rights of the partners who have wrongfully dissolved the partnership. Of course under Section 1006(c), it is only Section 802 that is inapplicable to existing partnerships, the balance of RUPA applies and the UPA no longer applies. Therefore UPA Section 38 will not apply to this transaction. Section 804(c) only allows the dissolving partner to continue the business as a going concern for a reasonable time. The partnership must therefore dispose of the business, and as a result the business should have no going concern value. Therefore, when some of the remaining partners purchase the business
(as they are permitted to do under Section 404(f)), presumably all of the considerations of valuation that went into Article 7 are inapplicable. Even more clearly, the liability which partners might have for usurping partnership opportunities under Section 404(b)(1) should not apply because a business that can only be operated for a reasonable time for the purpose of winding up doesn’t have any opportunities.

It is not clear who the elimination of Section 802 is intended to protect, but it appears to be a disaster for both the dissociating partner and those who want to carry on the business. Nonetheless, there is a silver lining. If the partnership (a law firm for example) somehow manages to survive the first post RUPA dissociation, it will not need Fairway Development to establish that whatever partnership carries on whatever is left of the partnership’s business after this winding up is a new partnership that was not in existence prior to RUPA. In other words, by eliminating Section 802 and not preserving the old rules of UPA Sections 38, 41, and 42, NCCUSL has insured that every partnership will have to go through one winding up after the effective date. Perhaps the solution is for the partnership to convert to a limited partnership immediately before dissociation with the dissociating partner becoming a limited partner so that the dissociation will not cause a dissolution and winding up. It could then convert back afterwards. Of course under Section 903(a), it would have to continue doing that indefinitely because it would continue to be a partnership in existence before the effective date of RUPA.
# REVISED UNIFORM PARTNERSHIP ACT

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GENERAL PROVISIONS

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SECTION 101. DEFINITIONS. In this [Act]:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(i) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) a comparable order under federal or state law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.
(4) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit created under Section 202 of this [Act], predecessor law, or comparable law of another jurisdiction.

(5) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership.

(6) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(7) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership including the partner's transferable interest and all management and other rights.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(10) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
"Statement" means a statement of partnership authority under Section 303, a statement of denial under Section 304, a statement of dissociation under Section 704, a statement of dissolution under Section 806, a statement of merger under Section 906, or an amendment or cancellation of any of the foregoing.

"Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

SECTION 102. KNOWLEDGE AND NOTICE.

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:
   (1) knows of it;
   (2) has received a notification of it; or
   (3) has reason to know it exists from all of the facts known to the person at the time in question.

(c) As a result of the filing or recording of a statement under this [Act], a person is deemed to know or have notice of a fact as provided in Sections 303(e), 304, 704(b) and (c), or 805(b) and (c).

(d) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.
1 \((e)\) A person receives a notification when it:
2     (1) comes to the person’s attention; or
3     (2) is duly delivered at the person’s place of business
4 or at any other place held out by the person as a place for
5 receiving communications.
6 \((f)\) Except as provided in subsection \((f)\), a person
7 other than an individual knows, has notice, or receives a
8 notification of a fact for purposes of a particular transaction
9 when the individual conducting the transaction knows, has notice,
10 or receives a notification of the fact, or in any event when the
11 fact would have been brought to the individual’s attention if the
12 person had exercised reasonable diligence. The person
13 exercises reasonable diligence if it maintains reasonable
14 routines for communicating significant information to the
15 individual conducting the transaction and there is reasonable
16 compliance with the routines. Reasonable diligence does not
17 require an individual acting for the person to communicate
18 information unless the communication is part of the individual’s
19 regular duties or the individual has reason to know of the
20 transaction and that the transaction would be materially affected
21 by the information.
22 \((g)\) A partner’s knowledge, notice or receipt of a
23 notification of a fact relating to the partnership is effective
24 immediately as knowledge by, notice to, or receipt of a
25 notification by the partnership, but is not effective as such if
26 the partner committed or consented to a fraud on the partnership.
SECTION 103. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE PROVISIONS.

(a) Except as provided in subsection (b), a partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this [Act] governs relations among the partners and between the partners and the partnership.

(b) A partnership agreement may not:

(1) vary the rights and duties under Section 105 except to eliminate the duty to provide copies of statements to all of the partners;

(2) unreasonably restrict a partner or former partner's right of access to books and records under Section 403(b);

(3) eliminate the duty of loyalty under Section 404(b) or 603(b)(3), but the partners by agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable;

(4) unreasonably reduce the duty of care under Section 404(d) or 603(b)(3);

(5) eliminate the obligation of good faith and fair dealing under Section 404(e) or 404(d), but the partners by agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
(6) vary the power to withdraw as a partner under Section 601(1) to 602(a), except to require the notice under Section 601(1) to be in writing;

(7) vary the right to expulsion of a partner by a court in the events specified in Section 601(5);

(8) vary the requirement to wind up the partnership business in cases specified in Section 801(4), (5), or (6); or

(9) restrict rights of third parties under this [Act].

SECTION 104. SUPPLEMENTAL PRINCIPLES OF LAW.

(a) Unless displaced by particular provisions of this [Act], the principles of law and equity supplement this [Act].

(b) If an obligation to pay interest arises under this [Act] and the rate is not specified, the rate is that specified in [applicable statute].

SECTION 105. EXECUTION, FILING, AND RECORDING OF STATEMENTS.

(a) A statement may be filed in the office of [the Secretary of State]. A certified copy of a statement that is filed in an office in another state may be filed in the office of [the Secretary of State]. Either filing has the effect provided in this [Act] with respect to partnership property located in or transactions that occur in this State.

(b) A certified copy of a statement that has been filed in the office of the [Secretary of State] and recorded in the office for recording transfers of real property has the effect provided
for recorded statements in this [Act]. A recorded statement that
is not a certified copy of a statement filed in the office of the
[Secretary of State] does not have the effect provided for
recorded statements in this [Act].

(c) A statement filed by a partnership must be executed by
at least two partners. Other statements must be executed by a
partner or other person authorized by this [Act]. An individual
who executes a statement as, or on behalf of, a partner or other
person named as a partner in a statement shall personally declare
under penalty of perjury that the contents of the statement are
accurate.

(d) A person authorized by this [Act] to file a statement
may amend or cancel the statement by filing an amendment or
cancellation that names the partnership, identifies the
statement, and states the substance of the amendment or
cancellation.

(e) A person who files a statement pursuant to this
section shall promptly send a copy of the statement to every
nonfiling partner and to any other person named as a partner in
the statement. Failure to send a copy of a statement to a
partner or other person does not limit the effectiveness of the
statement as to a person not a partner.

(f) The [Secretary of State] may collect a fee for filing
or providing a certified copy of a statement. The [officer
responsible for] recording transfers of real property may collect
a fee for recording a statement.
SECTION 106. LAW GOVERNING INTERNAL AFFAIRS. The law of the State in which a partnership has its chief executive office governs the partnership's internal affairs.

SECTION 107. PARTNERSHIP SUBJECT TO AMENDMENT OR REPEAL OF [ACT]. A partnership governed by this [Act] is subject to any amendment to or repeal of this [Act].
ARTICLE 2

NATURE OF PARTNERSHIP

Section 201. Partnership As Entity.
Section 202. Existence of Partnership.
Section 203. Partnership Property.
Section 204. When Property Is Partnership Property.

SECTION 201. PARTNERSHIP AS ENTITY. A partnership is an entity.

SECTION 202. CREATION OF PARTNERSHIP.

(a) Except as provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit creates a partnership, whether or not the persons intend to create a partnership.

(b) An association created under a statute other than this [Act], a predecessor law statute, or a comparable law statute of another jurisdiction is not a partnership.

(c) In determining whether a partnership is created, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) of a debt by installments or otherwise;

(ii) for services as an independent contractor or of wages or other compensation to an employee;

(iii) of rent;

(iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

(d) Except as provided by Section 308, persons who are not partners as to each other are not partners as to other persons.

(e) A partnership created under this [Act] is a general partnership, and the partners are general partners of the partnership.

SECTION 203. PARTNERSHIP PROPERTY. Property transferred to or otherwise acquired by a partnership is property of the partnership and not of the partners individually.
SECTION 204. WHEN PROPERTY IS PARTNERSHIP PROPERTY.

(a) Property is partnership property if acquired in the name of:

(1) the partnership; or

(2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) the partnership in its name; or

(2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.
ARTICLE 3

RELATIONS OF PARTNERS TO 
PERSONS DEALING WITH PARTNERSHIP

Section 301. Partner Agent of Partnership.
Section 302. Transfer of Partnership Property.
Section 303. Statement of Partnership Authority.
Section 304. Statement of Denial.
Section 305. Partnership Liable for Partner’s Actionable Conduct.
Section 306. Partner’s Liability.
Section 307. Action Against Partnership and Partners.
Section 308. Purported Partner.
Section 309. Liability of Incoming Partner.

SECTION 301. PARTNER AGENT OF PARTNERSHIP. Subject to the effect of a statement of partnership authority under Section 303:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the usual way the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner has no authority to act for the partnership in the particular matter and the person with whom the partner is dealing knows or has received a notification that the partner lacks authority.

(2) An act of a partner which is not apparently for carrying on in the usual way the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.
SECTION 302. TRANSFER OF PARTNERSHIP PROPERTY.

(a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership
authority under Section 303, partnership

(1) Partnership property held in the name of the partnership may
be transferred by an instrument of transfer executed by a partner
in the partnership name.

(2) Partnership property held in the name of one or
more partners with an indication in the instrument transferring
the property to them of their capacity as partners or of the
existence of a partnership, but without an indication of the name
of the partnership, may be transferred by an instrument of
transfer executed by the persons in whose name the property is
held.

(3) A partnership may recover property transferred
under this subsection if it proves that execution of the
instrument of transfer did not bind the partnership under Section
301, unless the property was transferred by the initial
transferee or a person claiming through the initial transferee to
a subsequent transferee who gave value without having notice that
the person who executed the instrument of initial transfer lacked
authority to bind the partnership.

(b) Partnership property held in the name of one or more persons
other than the partnership, without an indication in the
instrument transferring the property to them of their capacity as
partners or of the existence of a partnership, may be transferred
free of claims of the partnership or the partners by an
instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee as follows:

(1) A partnership may recover property transferred under subsections (a)(1) and (2) only if it proves that

(i) execution of the instrument of initial transfer did not bind the partnership under Section 301, and

(ii) as to a subsequent transferee who gave value, the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(2) A partnership may recover partnership property transferred under subsection (a)(3) only if it proves that

(i) execution of the instrument of initial transfer did not bind the partnership under Section 301, and

(ii) as to a transferee who gave value without having notice that it is gave value, the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(3) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsections (b)(1) or (2), from any prior transferee of the property.
(c) If a person holds all of the partners' interests in
the partnership, all of the partnership property vests in that
person. The person may execute a document in the name of the
partnership to evidence vesting of the property in that person
and may file or record the document.

SECTION 303. STATEMENT OF PARTNERSHIP AUTHORITY.

(a) A partnership may file a statement of partnership
authority, which:

(1) must include:

(i) the name of the partnership;

(ii) the street address of its chief executive office
and of one office in this State, if there is one;

(iii) the names and mailing addresses of all the
partners or of an agent appointed and maintained by the
partnership for the purpose of subsection (b); and

(iv) the names of the partners authorized to execute
an instrument transferring real property held in the name of the
partnership; and

(2) may state the authority, or limitations on the
authority, of some or all of the partners to enter into other
transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an
agent, the agent shall maintain a list of the names and mailing
addresses of all of the partners and make it available to any
person on request for good cause shown.
(c) If a filed statement of partnership authority is executed pursuant to Section 105(c) and states the name of the partnership but does not contain all of the other information required by subsection (a), the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e).

(d) Except as provided in subsection (g), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of
that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as provided in subsection subsections (d) and (e) and Sections 704 and 806, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the [Secretary of State].

SECTION 304. STATEMENT OF DENIAL. A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to Section 303(b) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority to the extent provided in Section 303(d) and (e).
SECTION 305. PARTNERSHIP LIABLE FOR PARTNER'S ACTIONABLE CONDUCT.

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of its business, a partnership receives money or property of a person not a partner which is misapplied by a partner while it is in the custody of the partnership, the partnership is liable for the loss.

SECTION 306. PARTNER'S LIABILITY. All partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

SECTION 307. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.
(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(1) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) an involuntary case under Title 11 of the United States Code has been commenced against the partnership and has not been dismissed within 60 days after commencement, or the partnership has commenced a voluntary case under Title 11 of the United States Code and the case has not been dismissed, is a debtor in bankruptcy;

(3) the partner has agreed that the creditor need not exhaust partnership assets;

(4) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 308.
SECTION 308. PURPORTED PARTNER.

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable as if the purported partner were a partner. If no partnership liability results, the purported partner is liable jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the
existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not a partner in a partnership merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

SECTION 309. LIABILITY OF INCOMING PARTNER. A person admitted as a partner into a partnership is liable for all obligations of the partnership incurred before the person's admission as if the person were a partner when the obligations were incurred, but the liability may be satisfied only out of partnership property.
ARTICLE 4

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

Section 401. Partner’s Rights and Duties.
Section 402. Distributions in Kind.
Section 403. Partner’s Right to Information.
Section 404. General Standards of Partner’s Conduct.
Section 405. Actions by Partner’s Liability to Partnership.
Section 406. Remedies of Partnership and Partners.
Section 407-406. Continuation of Partnership Beyond Definite Term or Particular Undertaking.

SECTION 401. PARTNER’S RIGHTS AND DUTIES.

(a) A partnership shall establish each partner is deemed to have an account for each partner. The partnership shall credit the account that is

(i) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner’s share of the partnership profits. The partnership shall charge the account, and

(ii) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner’s share of the partnership losses.

(b) A partnership shall credit each partner’s account with an equal share of the partnership profits. A partnership shall charge each partner with a share of the partnership losses, whether capital or operating, in proportion to the partner’s share of the profits.
(c) A partnership shall indemnify each partner for payments reasonably made and liabilities reasonably incurred by the partner in the ordinary and proper conduct of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall repay a partner who, in aid of the partnership, makes a payment or advance beyond the amount of capital the partner agreed to contribute.

(e) A payment made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership. Interest accrues from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business
of a partnership and an amendment to the partnership agreement
may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a
partnership to other persons under Section 301.

SECTION 402. DISTRIBUTIONS IN KIND. A partner has no right
to receive, and may not be required to accept, a distribution in
kind.

SECTION 403. PARTNER’S RIGHT TO INFORMATION.

(a) A partnership shall keep its books and records, if
any, at its chief executive office.

(b) A partnership shall provide partners and their agents
and attorneys access to its books and records. It shall provide
former partners and their agents and attorneys access to books
and records pertaining to the period during which they were
partners. The right of access provides the opportunity to
inspect and copy books and records during ordinary business
hours. A partnership may impose a reasonable charge, covering
the costs of labor and material, for copies of documents
furnished.

(c) Each partner and the partnership, on demand, shall
furnish to a partner, and the legal representative of a deceased
partner or partner under legal disability, to the extent just and
reasonable, complete and accurate information concerning the
partnership.
SECTION 404. GENERAL STANDARDS OF PARTNER'S CONDUCT.

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in this section subsections (b) and (c).

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use or appropriation by the partner of partnership property e.g., including the appropriation of a partnership opportunity, without the consent of the other partners;

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business, as or on behalf of a party having an interest adverse to the partnership without the consent of the other partners; and

(3) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership without the consent of the other partners.

(c) A partner's duty of loyalty may not be eliminated by agreement, but the partners by agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(d) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership
business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this [Act] or under partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

The obligation of good faith and fair dealing may not be eliminated by agreement, but the partners by agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.

(e) A partner does not violate a duty or obligation under this [Act] or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership. The rights and obligations of a partner who lends money to or transacts business with the partnership are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

SECTION 405. ACTIONS BY PARTNER'S LIABILITY TO PARTNERS

partner is liable to the partnership for a breach of the
partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

SECTION 406. REMEDIES OF PARTNERSHIP AND PARTNERS.

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting as to partnership business, to:

(1) enforce a right under the partnership agreement;

(2) enforce a right under this [Act], including:

(i) the partner’s rights under Sections 401, 403, and 404;

(ii) the partner’s right on dissociation to have the partner’s interest in the partnership purchased pursuant to Section 701 or enforce any other right under Article 6 or 7; or

(iii) the partner’s right to compel a dissolution and winding up of the partnership business under Section 801 or enforce any other right under Article 8; or

(3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other laws. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.
SECTION 407 406. CONTINUATION OF PARTNERSHIP BEYOND DEFINITE TERM OR PARTICULAR UNDERTAKING.

(a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the business partnership will not be wound up continue.
ARTICLE 5

TRANSFEREES AND CREDITORS OF PARTNER

Section 501. Partner's Interest in Partner Not Co-Owner

PARTNERSHIP PROPERTY NOT TRANSFERABLE. A partner is not

owner of partnership property and has no interest in part

property which can be transferred, either voluntaril

involuntarily.

Section 502. Partner's Transferable Interest in Partner

The only transferable interest of a partner in the par

distribution. The interest is

personal property.

Section 503. Transfer of Partner's Transferable Interest

(a) A transfer, in whole or in part, of a partner's

transferable interest in the partnership:

(1) is permissible;

(2) does not by itself cause the partner's disso

or a dissolution and winding up of the partnership busi

(3) does not, as against the other partners or t

partnership, entitle the transferee, during the continuanc

the partnership, to participate in the management or cond
the partnership business, to require access to information
concerning or an account of partnership transactions, or to
inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in
the partnership has a right:

(1) to receive, in accordance with the transfer,
distributions to which the transferor would otherwise be
entitled;

(2) to receive upon the dissolution and winding up of
the partnership business, in accordance with the transfer, the
net amount otherwise distributable to the transferor; and

(3) to seek under Section 801(6) a judicial
determination that it is equitable to wind up the partnership
business.

(c) In a dissolution and winding up, a transferee is
entitled to an accounting only from the date of the last latest
account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and
duties of a partner other than the interest in distributions
transferred.

(e) Until receipt of notice of a transfer, a partnership
has no duty to give effect to the transferee's rights under this
section.

(f) A transfer in violation of a restriction on transfer
contained in a partnership agreement is ineffective as to a
transferee with notice of the restriction.
SECTION 504. PARTNER'S TRANSFERABLE INTEREST SUBJECT TO
CHARGING ORDER.

(a) On application by a judgment creditor of a partner or
partner's transferee, a court having jurisdiction may charge the
transferable interest of the judgment debtor partner or
transferee to satisfy the judgment. The court may appoint a
receiver of the debtor's share of the distributions due or to
become due to the judgment debtor in respect of the partnership
and make all other orders, directions, accounts, and inquiries
the judgment debtor might have made or which the circumstances of
the case may require.

(b) A charging order constitutes a lien on the judgment
debtor's transferable interest in the partnership. The court may
order a foreclosure of the interest subject to the charging order
at any time and upon conditions it considers appropriate. The
purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged
may be redeemed:

(1) by the judgment debtor;
(2) with property other than partnership property, by
one or more of the other partners; or
(3) with partnership property, by one or more of the
other partners with the consent of all of the partners whose
interests are not so charged.
(d) This [Act] does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.
ARTICLE 6

PARTNER'S DISSOCIATION

Section 601. Events Causing Partner's Dissociation.
Section 602. Partner's Wrongful Dissociation.
Section 603. Effect of Partner's Dissociation.

SECTION 601. EVENTS CAUSING PARTNER'S DISSOCIATION. A partner is dissociated from a partnership upon:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(i) it is unlawful to carry on the partnership business with that partner;

(ii) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(iii) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended.
by the jurisdiction of its incorporation, there is no revocation
of the certificate of dissolution or no reinstatement of its
charter or its right to conduct business; or
(iv) a partnership that is a partner has been dissolved
and its business is being wound up;
(5) on application by the partnership or another partner,
the partner’s expulsion by judicial determination because:
   (i) the partner engaged in wrongful conduct that
   adversely and materially affected the partnership business;
   (ii) the partner willfully or persistently committed a
   material breach of the partnership agreement or of a duty owed to
   the partnership or the other partners under Section 404; or
   (iii) the partner engaged in conduct relating to the
   partnership business which makes it not reasonably practicable to
   carry on the business in partnership with the partner:
(6) the partner’s:
   (i) becoming a debtor in bankruptcy;
   (ii) executing an assignment for the benefit of
   creditors;
   (iii) seeking, consenting to, or acquiescing in the
   appointment of a trustee, receiver, or liquidator of that partner
   or of all or substantially all of that partner’s property; or
   (iv) failing, within 90 days after the appointment, to
   have vacated or stayed the appointment of a trustee, receiver, or
   liquidator of the partner or of all or substantially all of the
   partner’s property obtained without the partner’s consent or
acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a partner who is an individual:
   (i) the partner's death;
   (ii) the appointment of a guardian or general conservator for the partner; or
   (iii) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) termination of a partner who is not an individual, partnership, corporation, trust, or estate.

SECTION 602. PARTNER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION.

(a) A partner has the power at any time to dissociate by express will under Section 601(1).
(a b) A partner's dissociation is wrongful only if:

(1) it is in breach of an express provision of the partnership agreement; or

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows the dissociation of another partner and results in a right to dissolve the partnership under Section 801(2)(i);

(ii) the partner is expelled by judicial determination under Section 601(5); or

(iii) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(b c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other liability of the partner to the partnership or to the other partners.
SECTION 603. EFFECT OF PARTNER’S DISSOCIATION.

(a) If a partner’s dissociation results in a
and winding up of the partnership business, Article 7 applies.

(b) Upon a partner’s dissociation:

(1) the partner’s right to participate in
and conduct of the partnership business terminates
provided in Section 803;

(2) the partner’s duty of loyalty under Section 404(b)(3) terminates; and

(3) the partner’s duty of loyalty under Section 404(b)(1) and (2) and duty of care under Section 404(b)(1) and (2)
continue only with regard to matters arising or existing before the partner’s dissociation, unless the partner participates in winding up the partnership’s business in
Section 803.
ARTICLE 7

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

Section 701. Purchase of Dissociated Partner's Interest.
Section 702. Dissociated Partner's Power to Bind Partnership.
Section 703. Dissociated Partner's Liability to Other Persons.
Section 704. Statement of Dissociation.
Section 705. Continued Use of Partnership Name.

SECTION 701. PURCHASE OF DISSOCIATED PARTNER'S INTEREST.

(a) If a partner is dissociated from a partnership without
resulting in a dissolution and winding up of the partnership
business under Section 801, the partnership shall cause the
dissociated partner's interest in the partnership to be purchased
for a buyout price determined pursuant to subsection (b).

(b) The buyout price of a dissociated partner's interest
is the amount that would have been distributable to the
dissociating partner under Section 807(b) if, on the date of
dissociation, the assets of the partnership were sold at a price
equal to the greater of the liquidation value or the value based
on a sale of the entire business as a going concern without the
dissociated partner and the partnership were wound up as of that
date. In either case, the selling price of the partnership assets
must be determined on the basis of the amount that would be paid
by a willing buyer to a willing seller, neither being under any
compulsion to buy or sell, and with knowledge of all relevant
facts. Interest must be paid from the date of dissociation to
the date of payment.
(c) Damages for wrongful dissociation under Section 602(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner against all partnership liabilities incurred before the dissociation, except liabilities then unknown to the partnership, and against all partnership liabilities incurred after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 702. For purposes of this subsection, a liability not known to a partner other than the dissociated partner is not known to the partnership.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) If a deferred payment is authorized under subsection (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.
(g) The payment or tender required by subsection (e) or (f) must be accompanied by the following:

1. a statement of partnership assets and liabilities as of the date of dissociation;
2. the latest available partnership balance sheet and income statement, if any;
3. an explanation of how the estimated amount of the payment was calculated; and
4. written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to Section 406(b)(2)(ii), to determine the buyout price of that partner's interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced within 120 days after the
partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g).

SECTION 702. DISSOCIATED PARTNER'S POWER TO BIND AND LIABILITY TO PARTNERSHIP.

(a) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Article 9, is bound by an act of the dissociated partner which would have bound the partnership under Section 301 before dissociation only if at the time of entering into the transaction the other party to the transaction:
(1) reasonably believed when entering the transaction that the dissociated partner was then a partner at that time;

(2) did not have notice of the partner's dissociation; and

(3) is not deemed to have had knowledge under Section 303(e) or notice under Section 704(c).

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a).

SECTION 703. DISSOCIATED PARTNER'S LIABILITY TO OTHER PERSONS.

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided in subsection (b).

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9, within two years after the partner's dissociation, only if at the time of entering into the transaction the other party to the transaction:
(1) reasonably believed when entering the transaction that the dissociated partner was then a partner at that time;
(2) did not have notice of the partner's dissociation;
and
(3) is not deemed to have had knowledge under Section 303(e) or notice under Section 704(c).
(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.
(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

SECTION 704. STATEMENT OF DISSOCIATION.
(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.
(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of Section 303(d) and (e).
(c) For the purposes of Sections 702(a)(3) and 703(b)(3), a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.
SECTION 705. CONTINUED USE OF PARTNERSHIP NAME. Continued

use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.
ARTICLE 8

WINDING UP PARTNERSHIP BUSINESS

Section 801. Events Causing Dissolution and Winding Up of Partnership Business.

Section 802. Dissolution Deferred 90 Days.

Section 803 802. Partnership Continues After Dissolution.

Section 804 803. Right to Wind Up Partnership Business.

Section 805 804. Partner’s Power to Bind Partnership After Dissolution.

Section 806 805. Statement of Dissolution.

Section 807 806. Partner’s Liability to Other Partners After Dissolution.

Section 808 807. Settlement of Accounts and Contribution Among Partners.

SECTION 801. EVENTS CAUSING DISSOLUTION AND WINDING UP OF PARTNERSHIP BUSINESS. A partnership is dissolved, and its business must be wound up, only upon:

(1) except as provided in Section 802, receipt by a partnership at will of notice from a partner, other than a partner who is dissociated under Section 601(2) through (10), of that partner’s express will to withdraw as a partner, or upon any later date specified in the notice;

(2) in a partnership for a definite term or particular undertaking:

(1) except as provided in Section 802, within 90 days after a partner’s wrongful dissociation under Section 602 or a partner’s dissociation by death or otherwise under Section 601(6)
through (10), receipt by the partnership of notice from another
partner of that partner’s express will to withdraw as a partner;
   (ii) the express will of all of the partners; or
   (iii) the expiration of the term or the completion of
the undertaking, unless all of the partners agree to continue the
business, in which case the partnership agreement is deemed
amended retroactively to provide that the expiration or
completion does not result in the dissolution and winding up of
the partnership business;
(3) an event agreed to in the partnership agreement
resulting in the winding up of the partnership business, unless
all of the partners agree to continue the business, in which case
the partnership agreement is deemed amended retroactively to
provide that the event does not result in the dissolution and
winding up of the partnership business;
(4) an event that makes it unlawful for all or
substantially all of the business of the partnership to be
continued, but a cure of illegality within 90 days after notice
to the partnership of the event is effective retroactively to the
date of the event for purposes of this section;
(5) on application by a partner, a judicial determination
that:
   (i) the economic purpose of the partnership is likely to
be unreasonably frustrated;
(ii) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) on application by a transferee of a partner’s transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(i) if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer, after the expiration of the term or completion of the undertaking; or

(ii) if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer, at any time.

SECTION 802. DISSOLUTION—DEFERRED 90 DAYS.

(a) Except as provided in subsection (b), a partnership of more than two persons is not dissolved until 90 days after receipt by the partnership of notice from a partner under Section 801(1) or (2)(i), and its business may be continued until that date as if no notice were received. Before that date, the partner who gave
the notice may waive the right to have the partnership business wound up. If there is no waiver before that date, the partnership is dissolved and its business must be wound up.

(b) A partnership may be dissolved at any time during the 90-day period, and its business wound up, by the express will of at least half of the other partners.

(c) After receipt by the partnership of notice from a partner under Section 801(1) or (2)(i), the partner who gave the notice:

(1) has no rights in the management and conduct of the partnership business if it is continued under subsection (a), but may participate in winding up the business under Section 804 if the partnership is dissolved on or before the expiration of the 90-day period pursuant to subsection (a) or (b);

(2) is liable for obligations incurred during the period only to the extent a dissociated partner would be liable under Section 702(b) or 703(b), but is not liable for contributions for, and must be indemnified by the other partners against, any partnership liability incurred by another partner to the extent the liability is not appropriate for winding up the partnership business; and

(3) must be credited with the partner’s share of any profits earned during the period and may be charged with the partner’s share of any losses incurred but only to the extent of profits credited for the period.

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SECTION 803. PARTNERSHIP CONTINUES AFTER DISSOLUTION.

(a) A partnership continues after dissolution—until only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed—at which.

(b) Notwithstanding subsection (a), at any time after the dissolution of a partnership is terminated, and before the winding up of its business is completed, the partner or partners who are entitled to have the partnership’s business wound up may waive that right and consent to the continuation of the partnership and its business by the remaining partners. In that event, the partnership continues and Sections 803 through 807 thereafter do not apply.

SECTION 804 803. RIGHT TO WIND UP PARTNERSHIP BUSINESS.

(a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership’s business, but on application of any partner, partner’s legal representative, or transferee, the [designate the appropriate court], for good cause, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership’s business.
(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 808, settle disputes by mediation or arbitration, and perform other necessary acts.

SECTION 805 804. PARTNER'S POWER TO BIND PARTNERSHIP AFTER DISSOLUTION. Subject to Section 805, a partnership is bound by a partner's act after dissolution that:

(1) is appropriate for winding up the partnership business;

or

(2) would have bound the partnership under Section 301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

SECTION 806 805. STATEMENT OF DISSOLUTION.

(a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.
(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of Section 303(d) and is a limitation on authority for the purposes of Section 303(e).

(c) For the purposes of Sections 301 and 804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in Section 303(d) and (e) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

SECTION 807-808. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER DISSOLUTION.

(a) Except as provided in subsection (b) and Section 802(4)-2, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 804.

(b) A partner who, with knowledge of the winding-up dissolution, incurs a partnership liability under Section 804(2) by an act that is not appropriate for winding up the partnership
business is liable to the partnership for any loss damage caused to the partnership arising from the liability.

SECTION 807. SETTLEMENT OF ACCOUNTS AND CONTRIBUTIONS AMONG PARTNERS.

(a) In winding up a partnership's business, the assets of the partnership must be applied to discharge its obligations to creditors, including partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b).

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to the excess of the credits over the charges in the partner's positive balance account. A partner shall contribute to the partnership an amount equal to the excess of the charges over the credits that partner's negative balance.

(c) To the extent not taken into account in settling the accounts among partners pursuant to subsection (b), each partner shall contribute, in the proportion in which the partner shares...
partnership losses, the amount necessary to satisfy partnership obligations, partner’s account.

(c) If a partner fails to contribute, the other partners shall contribute, in the proportions in which the partners share partnership losses, the additional amount necessary to satisfy the partnership obligations. A partner or partner’s legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner’s share of the partnership obligations.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement.

(e) The estate of a deceased partner is liable for the partner’s obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner’s obligation to contribute to the partnership.
SECTION 901. DEFINITIONS. In this Article:

(a) "General partner" means a partner in a general partnership created under this [Act], predecessor law, or comparable law of another jurisdiction and a general partner in a limited partnership.

(b) "Limited partner" means a limited partner in a limited partnership.

(c) "Limited partnership" means a limited partnership created under the [State Limited Partnership Act], predecessor law, or comparable law of another jurisdiction.

(d) "Partner" includes both a general partner and a limited partner.

SECTION 902. CONVERSION OF PARTNERSHIP TO LIMITED PARTNERSHIP.

(a) A partnership may be converted to a limited partnership pursuant to this section.
(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership which satisfies the requirements of [Section ____ of the State Limited Partnership Act] and includes:

   (1) a statement that the partnership was converted to a limited partnership from a partnership;

   (2) its former name; and

   (3) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes
effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the [State Limited Partnership Act].

SECTION 903. CONVERSION OF LIMITED PARTNERSHIP TO PARTNERSHIP.

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership pursuant to [Section ____ of the State Limited Partnership Act].

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The limited partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.
SECTION 904. EFFECT OF CONVERSION; ENTITY UNCHANGED.

(a) A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

(2) all obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(3) an action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

SECTION 905. MERGER OF PARTNERSHIPS.

(a) Pursuant to a plan of merger approved as provided in subsection (c), a partnership may be merged with one or more partnerships or limited partnerships.

(b) The plan of merger must set forth:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(3) whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(4) the terms and conditions of the merger;
(5) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

(6) the street address of the surviving entity's chief executive office.

(c) The plan of merger must be approved:

(1) in the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(2) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the State or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all the partners, notwithstanding a provision to the contrary in the partnership agreement.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:

(1) the approval of the plan of merger by all parties to the merger, as provided in subsection (c);

(2) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(3) any effective date specified in the plan of merger.
SECTION 906. EFFECT OF MERGER.

(a) When a merger takes effect:

(1) the separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases to exist;

(2) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(b) The [Secretary of State] of this State is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the [Secretary of State] of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the [Secretary of State] shall mail a copy of the process to the surviving foreign partnership or limited partnership.
(c) A partner of the surviving partnership or limited partnership is liable for:

(1) all obligations of a party to the merger for which the partner was personally liable before the merger;

(2) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(3) all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in Section 808(e) 807(c) or in [Section ___ and ___ of the State Limited Partnership Act] as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner as of the date the merger takes effect. The surviving entity shall cause the partner’s interest in the entity to be purchased
under Section 701. The surviving entity is bound under Section 702 by an act of a general partner dissociated under this subsection, and the partner is liable under Section 703 for transactions entered into by the surviving entity after the merger takes effect.

SECTION 907. STATEMENT OF MERGER.

(a) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnership were merged;

(3) the street address of the surviving entity's chief executive office and of an office in this State, if any; and

(4) whether the surviving entity is a partnership or a limited partnership.

(c) Except as provided in subsection (d), for the purposes of Section 302, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For the purposes of Section 302, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is
property held in the name of the surviving entity upon recording
a certified copy of the statement of merger in the office for
recording transfers of that real property.

    (e) A filed and, if appropriate, recorded statement of
merger, executed and declared to be accurate pursuant to Section
105(c), stating the name of a partnership or limited partnership
that is a party to the merger in whose name property was held
before the merger and the name of the surviving entity, but not
containing all of the other information required by subsection
(b), operates with respect to the partnerships or limited
partnerships named to the extent provided in subsections (c) and
(d).

SECTON 908. NONEXCLUSIVE. This article is not exclusive.
Partnerships or limited partnerships may be converted or merged
in any other manner provided by law.
ARTICLE 10
MISCELLANEOUS PROVISIONS

Section 1001. Uniformity of Application and Construction.
Section 1002. Short Title.
Section 1003. Severability.
Section 1004. Effective Date.
Section 1005. Repeals.
Section 1006. Application to Existing Relationships.
Section 1007. Savings Clause.

SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
This [Act] shall be applied and construed to effectuate its
gen~eral purpose to make uniform the law with respect to the
subject of this [Act] among states enacting it.

SECTION 1002. SHORT TITLE. This [Act] may be cited as the

SECTION 1003. SEVERABILITY CLAUSE. If any provision of this
[Act] or its application to any person or circumstance is held
invalid, the invalidity does not affect other provisions or
applications of this [Act] which can be given effect without the
invalid provision or application, and to this end the provisions
of this [Act] are severable.

SECTION 1004. EFFECTIVE DATE. This [Act] takes effect . . .

SECTION 1005. REPEALS. The following acts and parts of acts
are repealed: [the State Partnership Act as amended and in effect
immediately before the adoption of this Act].
SECTION 1006. APPLICATION TO EXISTING RELATIONSHIPS. (a) Except as otherwise provided in this section, this [Act] applies to all partnerships in existence on its effective date that were formed under [the State Partnership Act] or any predecessor law providing for the formation, operation, and liquidation of partnerships.

(b) Section 802 does not apply to a partnership in existence on the effective date of this [Act] unless the partners agree otherwise.

(c) This [Act] does not impair the obligations of a contract existing on the effective date of this [Act] or affect an action or proceeding commenced or right accrued before the effective date of this [Act].

(d) A judgment against a partnership or a partner in an action commenced before the effective date of this [Act] may be enforced in the same manner as a judgment rendered before the effective date of this [Act].

SECTION 1007. SAVINGS CLAUSE. The repeal of any statutory provision by this [Act] does not impair, or otherwise affect, the organization or continued existence of a partnership existing at the effective date of this [Act], nor does the repeal of any existing statutory provision by this [Act] impair any contract or affect any right accrued before the effective date of this [Act].
### REVISED UNIFORM PARTNERSHIP ACT (1992)

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(Approved by Drafting Committee)

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(Text Only/Redlined)

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Section 103. Effect of Partnership Agreement; Nonwaivable Provisions.
Section 104. Supplemental Principles of Law.
Section 105. Execution, Filing, and Recording of Statements.
Section 106. Law Governing Internal Affairs.
Section 107. Partnership Subject to Amendment or Repeal of [Act].

SECTION 101. DEFINITIONS. In this [Act]:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(i) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) a comparable order under federal or state law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.
(4) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit created under Section 202 of this [Act], predecessor law, or comparable law of another jurisdiction.

(5) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership.

(6) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(7) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership including the partner's transferable interest and all management and other rights.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(10) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
"Statement" means a statement of partnership authority under Section 303, a statement of denial under Section 304, a statement of dissociation under Section 704, a statement of dissolution under Section 805, a statement of merger under Section 907, or an amendment or cancellation of any of the foregoing.

"Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

SECTION 102. KNOWLEDGE AND NOTICE.

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) knows of it;

(2) has received a notification of it; or

(3) has reason to know it exists from all of the facts known to the person at the time in question.

(c) As a result of the filing or recording of a statement under this [Act], a person is deemed to know or have notice of a fact as provided in Sections 303(e), 304, 704(b) and (c), or 805(b) and (c).

(d) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learn of it.
{(a)} A person receives a notification when it:

(1) comes to the person's attention; or

(2) is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

{(e)} Except as provided in subsection (g), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

{(f)} A partner's knowledge, notice or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, but is not effective as such if the partner committed or consented to a fraud on the partnership.
SECTION 103. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE PROVISIONS.

(a) Except as provided in subsection (b), a partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this [Act] governs relations among the partners and between the partners and the partnership.

(b) A partnership agreement may not:

(1) vary the rights and duties under Section 105 except to eliminate the duty to provide copies of statements to all of the partners;

(2) unreasonably restrict a partner or former partner's right of access to books and records under Section 403(b);

(3) eliminate the duty of loyalty under Sections 404(b) or 603(b)(3), but the partners by agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable;

(4) unreasonably reduce the duty of care under Section 404(d) Sections 404(c) or 603(b)(3);

(5) eliminate the obligation of good faith and fair dealing under Section 404(e) or 404(d), but the partners by agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
(6) vary the power to withdraw as a partner under Section 601(1) - 602(a), except to require the notice under Section 601(1) to be in writing;

(7) vary the right to expulsion of a partner by a court in the events specified in Section 601(5);

(8) vary the requirement to wind up the partnership business in cases specified in Section 801(4), (5), or (6); or

(9) restrict rights of third parties under this [Act].

SECTION 104. SUPPLEMENTAL PRINCIPLES OF LAW.

(a) Unless displaced by particular provisions of this [Act], the principles of law and equity supplement this [Act].

(b) If an obligation to pay interest arises under this [Act] and the rate is not specified, the rate is that specified in [applicable statute].

SECTION 105. EXECUTION, FILING, AND RECORDING OF STATEMENTS.

(a) A statement may be filed in the office of [the Secretary of State]. A certified copy of a statement that is filed in an office in another state may be filed in the office of [the Secretary of State]. Either filing has the effect provided in this [Act] with respect to partnership property located in or transactions that occur in this State.

(b) A certified copy of a statement that has been filed in the office of the [Secretary of State] and recorded in the office for recording transfers of real property has the effect provided
for recorded statements in this [Act]. A recorded statement that
is not a certified copy of a statement filed in the office of the
[Secretary of State] does not have the effect provided for
recorded statements in this [Act].

(c) A statement filed by a partnership must be executed by
at least two partners. Other statements must be executed by a
partner or other person authorized by this [Act]. An individual
who executes a statement as, or on behalf of, a partner or other
person named as a partner in a statement shall personally declare
under penalty of perjury that the contents of the statement are
accurate.

(d) A person authorized by this [Act] to file a statement
may amend or cancel the statement by filing an amendment or
cancellation that names the partnership, identifies the
statement, and states the substance of the amendment or
cancellation.

(e) A person who files a statement pursuant to this
section shall promptly send a copy of the statement to every
nonfiling partner and to any other person named as a partner in
the statement. Failure to send a copy of a statement to a
partner or other person does not limit the effectiveness of the
statement as to a person not a partner.

(f) The [Secretary of State] may collect a fee for filing
or providing a certified copy of a statement. The [officer
responsible for] recording transfers of real property may collect
a fee for recording a statement.
SECTION 106. LAW GOVERNING INTERNAL AFFAIRS. The law of the State in which a partnership has its chief executive office governs the partnership's internal affairs.

SECTION 107. PARTNERSHIP SUBJECT TO AMENDMENT OR REPEAL OF [ACT]. A partnership governed by this [Act] is subject to any amendment to or repeal of this [Act].
ARTICLE 2

NATURE OF PARTNERSHIP

Section 201. Partnership As Entity.

Section 202. Existence of Partnership.

Section 203. Partnership Property.

Section 204. When Property Is Partnership Property.

SECTION 201. PARTNERSHIP AS ENTITY. A partnership is an entity.

SECTION 202. CREATION OF PARTNERSHIP.

(a) Except as provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit creates a partnership, whether or not the persons intend to create a partnership.

(b) An association created under a statute other than this [Act], a predecessor law statute, or a comparable law statute of another jurisdiction is not a partnership.

(c) In determining whether a partnership is created, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) of a debt by installments or otherwise;

(ii) for services as an independent contractor or of wages or other compensation to an employee;

(iii) of rent;

(iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

(d) Except as provided by Section 308, persons who are not partners as to each other are not partners as to other persons.

(e) A partnership created under this [Act] is a general partnership, and the partners are general partners of the partnership.

SECTION 203. PARTNERSHIP PROPERTY. Property transferred to or otherwise acquired by a partnership is property of the partnership and not of the partners individually.
SECTION 204. WHEN PROPERTY IS PARTNERSHIP PROPERTY.

(a) Property is partnership property if acquired in the name of:

(1) the partnership; or

(2) one or more partners with an indication in the instrument transferring title to the property of the person’s capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) the partnership in its name; or

(2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person’s capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person’s capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.
ARTICLE 3

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

Section 301. Partner Agent of Partnership.
Section 302. Transfer of Partnership Property.
Section 303. Statement of Partnership Authority.
Section 304. Statement of Denial.
Section 305. Partnership Liable for Partner’s Actionable Conduct.
Section 306. Partner’s Liability.
Section 307. Actions By and Against Partnership and Partners.
Section 308. Purported Partner.
Section 309. Liability of Incoming Partner.

SECTION 301. PARTNER AGENT OF PARTNERSHIP. Subject to the effect of a statement of partnership authority under Section 303:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the usual way the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner has no authority to act for the partnership in the particular matter and the person with whom the partner is dealing knows or has received a notification that the partner lacks authority.

(2) An act of a partner which is not apparently for carrying on in the usual way the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.
SECTION 302. TRANSFER OF PARTNERSHIP PROPERTY.

(a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under Section 303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) A partnership may recover property transferred under this subsection if it proves that execution of the instrument of transfer did not bind the partnership under Section 301, unless the property was transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gave value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(b) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred free of claims of the partnership or the partners by an
instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee as follows:

(1) A partnership may recover property transferred under subsections (a)(1) and (2) only if it proves that

(i) execution of the instrument of initial transfer did not bind the partnership under Section 301, and

(ii) as to a subsequent transferee who gave value, the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(2) A partnership may recover partnership property transferred under subsection (a)(3) only if it proves that

(i) execution of the instrument of initial transfer did not bind the partnership under Section 301, and

(ii) as to a transferee who gives value without having notice that it is gave value, the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(3) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsections (b)(1) or (2), from any prior transferee of the property.
(c) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

SECTION 303. STATEMENT OF PARTNERSHIP AUTHORITY.

(a) A partnership may file a statement of partnership authority, which:

(1) must include:

(i) the name of the partnership;

(ii) the street address of its chief executive office and of one office in this State, if there is one;

(iii) the names and mailing addresses of all the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (b); and

(iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.
(c) If a filed statement of partnership authority is executed pursuant to Section 105(c) and states the name of the partnership but does not contain all of the other information required by subsection (a), the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e).

(d) Except as provided in subsection (g), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary; so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of
that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as provided in subsection subsections (d) and (e) and Sections 704 and 805, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the [Secretary of State].

SECTION 304. STATEMENT OF DENIAL. A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to Section 303(b) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority to the extent provided in Section 303(d) and (e).
SECTION 305. PARTNERSHIP LIABLE FOR PARTNER’S ACTIONABLE CONDUCT.

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of its business, a partnership receives money or property of a person not a partner which is misapplied by a partner while it is in the custody of the partnership, the partnership is liable for the loss.

SECTION 306. PARTNER’S LIABILITY. All partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

SECTION 307. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner’s assets unless there is also a judgment against the partner.
(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(1) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) an involuntary case under Title 11 of the United States Code has been commenced against the partnership and has not been dismissed within 60 days after commencement, or the partnership has commenced a voluntary case under Title 11 of the United States Code and the case has not been dismissed;

(3) the partner has agreed that the creditor need not exhaust partnership assets;

(4) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 308.
SECTION 308. PURPORTED PARTNER.

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner’s consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable as if the purported partner were a partner. If no partnership liability results, the purported partner is liable jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the
existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not a partner in a partnership merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

SECTION 309. LIABILITY OF INCOMING PARTNER. A person admitted as a partner into a partnership is liable for all obligations of the partnership incurred before the person's admission as if the person were a partner when the obligations were incurred, but the liability may be satisfied only out of partnership property.
ARTICLE 4

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

Section 401. Partner's Rights and Duties.
Section 402. Distributions in Kind.
Section 403. Partner's Right to Information.
Section 404. General Standards of Partner's Conduct.
Section 405. Actions by Partner's Liability to Partnership.
Section 406. Remedies of Partnership and Partners.
Section 407. Continuation of Partnership Beyond Definite Term or Particular Undertaking.

SECTION 401. PARTNER'S RIGHTS AND DUTIES.

(a) A partnership shall establish an account for each partner. The partnership shall credit the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits. The partnership shall charge the account, and

(b) A partnership shall credit each partner's account with an equal share of the partnership profits. A partnership shall charge each partner with a share of the partnership losses, whether capital or operating, in proportion to the partner's share of the profits.
(c) A partnership shall indemnify each partner for payments reasonably made and liabilities reasonably incurred by the partner in the ordinary and proper conduct of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall repay a partner who, in aid of the partnership, makes a payment or advance beyond the amount of capital the partner agreed to contribute.

(e) A payment made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership. Interest accrues from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business
of a partnership and an amendment to the partnership agreement
may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a
partnership to other persons under Section 301.

SECTION 402. DISTRIBUTIONS IN KIND. A partner has no right
to receive, and may not be required to accept, a distribution in
kind.

SECTION 403. PARTNER’S RIGHT TO INFORMATION.

(a) A partnership shall keep its books and records, if
any, at its chief executive office.

(b) A partnership shall provide partners and their agents
and attorneys access to its books and records. It shall provide
former partners and their agents and attorneys access to books
and records pertaining to the period during which they were
partners. The right of access provides the opportunity to
inspect and copy books and records during ordinary business
hours. A partnership may impose a reasonable charge, covering
the costs of labor and material, for copies of documents
furnished.

(c) Each partner and the partnership, on demand, shall
furnish to a partner, and the legal representative of a deceased
partner or partner under legal disability, to the extent just and
reasonable, complete and accurate information concerning the
partnership.
SECTION 404. GENERAL STANDARDS OF PARTNER'S CONDUCT.

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in this section subsections (b) and (c).

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use or appropriation by the partner of partnership property including the appropriation of a partnership opportunity, without the consent of the other partners;

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business, as or on behalf of a party having an interest adverse to the partnership without the consent of the other partners; and

(3) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership without the consent of the other partners.

(c) A partner's duty of loyalty may not be eliminated by agreement, but the partners by agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(d) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership
business is limited to refraining from engaging in grossly
negligent or reckless conduct, intentional misconduct, or a
knowing violation of law.

(e) A partner shall discharge the duties to the
partnership and the other partners under this [Act] or under the
partnership agreement and exercise any rights consistently with
the obligation of good faith and fair dealing.

The obligation of good faith and fair dealing may not be
eliminated by agreement, but the partners by agreement may
determine the standards by which the performance of the
obligation is to be measured, if the standards are not manifestly
unreasonable.

(f) A partner does not violate a duty or obligation under
this [Act] or under the partnership agreement merely because the
partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other
business with the partnership. The rights and obligations of a
partner who lends money to or transacts business with the
partnership are the same as those of a person who is not a
partner, subject to other applicable law.

(g) This section applies to a person winding up the
partnership business as the personal or legal representative of
the last surviving partner as if the person were a partner.

SECTION 405. ACTIONS BY PARTNER'S LIABILITY TO PARTNERSHIP. A
partner is liable to the partnership for a breach of the
partnership agreement, or for the violation of a duty to the
partnership, causing harm to the partnership.

SEC10ION 406. REMEDIES OF PARTNERSHIP AND PARTNERS.

(a) A partnership may maintain an action against a partner
for a breach of the partnership agreement, or for the violation
of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the
partnership or another partner for legal or equitable relief,
including an accounting as to partnership business, to:

(1) enforce a right under the partnership agreement;

(2) enforce a right under this [Act], including:

(i) the partner's rights under Sections 401, 403, and
404;

(ii) the partner's right on dissociation to have the
partner's interest in the partnership purchased pursuant to
Section 701 or enforce any other right under Article 6 or 7; or

(iii) the partner's right to compel a dissolution and
winding up of the partnership business under Section 801 or
enforce any other right under Article 8; or

(3) enforce the rights and otherwise protect the
interests of the partner, including rights and interests arising
independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of
action for a remedy under this section is governed by other law.
A right to an accounting upon a dissolution and winding up does
not revive a claim barred by law.
SECTION 407. CONTINUATION OF PARTNERSHIP BEYOND DEFINITE TERM OR PARTICULAR UNDERTAKING.

(a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the business partnership will not be wound up continue.
ARTICLE 5
TRANSFEREES AND CREDITORS OF PARTNER

Section 501. Partner’s Interest in Partner Not Co-Owner of Partnership Property Not Transferable.
Section 502. Partner’s Transferable Interest in Partnership.
Section 503. Transfer of Partner’s Transferable Interest.
Section 504. Partner’s Transferable Interest Subject to Charging Order.

SECTION 501. PARTNER’S INTEREST—IN PARTNER NOT CO-OWNER OF PARTNERSHIP PROPERTY NOT TRANSFERABLE. A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

SECTION 502. PARTNER’S TRANSFERABLE INTEREST IN PARTNERSHIP. The only transferable interest of a partner in the partnership is the partner’s interest in distributions. The interest is personal property.

SECTION 503. TRANSFER OF PARTNER’S TRANSFERABLE INTEREST.
(a) A transfer, in whole or in part, of a partner’s transferable interest in the partnership:
(1) is permissible;
(2) does not by itself cause the partner’s dissolution or a dissolution and winding up of the partnership business; and
(3) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of
the partnership business, to require access to information
concerning or an account of partnership transactions, or to
inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in
the partnership has a right:

(1) to receive, in accordance with the transfer,
distributions to which the transferor would otherwise be
entitled;

(2) to receive upon the dissolution and winding up of
the partnership business, in accordance with the transfer, the
net amount otherwise distributable to the transferor; and

(3) to seek under Section 801(6) a judicial
determination that it is equitable to wind up the partnership
business.

(c) In a dissolution and winding up, a transferee is
entitled to an accounting only from the date of the last
account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and
duties of a partner other than the interest in distributions
transferred.

(e) Until receipt of notice of a transfer, a partnership
has no duty to give effect to the transferee's rights under this
section.

(f) A transfer of a partner's transferable interest in the
partnership in violation of a restriction on transfer contained
in the partnership agreement is ineffective as to a transferee
with notice of the restriction.
SECTION 504. PARTNER’S TRANSFERABLE INTEREST SUBJECT TO CHARGING ORDER.

(a) On application by a judgment creditor of a partner or partner’s transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor partner or transferee to satisfy the judgment. The court may appoint a receiver of the debtor’s share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor’s transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time and upon conditions it considers appropriate. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

1. by the judgment debtor;
2. with property other than partnership property, by one or more of the other partners; or
3. with partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.
(d) This [Act] does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.
ARTICLE 6
PARTNER'S DISSOCIATION

Section 601. Events Causing Partner's Dissociation.
Section 602. Partner's Power to Dissociate; Wrongful Dissociation.
Section 603. Effect of Partner's Dissociation.

SECTION 601. EVENTS CAUSING PARTNER'S DISSOCIATION. A partner is dissociated from a partnership upon:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner or upon any later date specified in the notice by the partner;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

   (i) it is unlawful to carry on the partnership business with that partner;

   (ii) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

   (iii) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended.
by the jurisdiction of its incorporation, there is no revocation
of the certificate of dissolution or no reinstatement of its
charter or its right to conduct business; or

(iv) a partnership that is a partner has been dissolved
and its business is being wound up;

(5) on application by the partnership or another partner,
the partner’s expulsion by judicial determination because:

(i) the partner engaged in wrongful conduct that
adversely and materially affected the partnership business;

(ii) the partner willfully or persistently committed a
material breach of the partnership agreement or of a duty owed to
the partnership or the other partners under Section 404; or

(iii) the partner engaged in conduct relating to the
partnership business which makes it not reasonably practicable to
carry on the business in partnership with the partner;

(6) the partner’s:

(i) becoming a debtor in bankruptcy;

(ii) executing an assignment for the benefit of
creditors;

(iii) seeking, consenting to, or acquiescing in the
appointment of a trustee, receiver, or liquidator of that partner
or of all or substantially all of that partner’s property; or

(iv) failing, within 90 days after the appointment, to
have vacated or stayed the appointment of a trustee, receiver, or
liquidator of the partner or of all or substantially all of the
partner’s property obtained without the partner’s consent or
acquiescence, or failing within 90 days after the expiration of a
stay to have the appointment vacated;

(7) in the case of a partner who is an individual:
(i) the partner’s death;
(ii) the appointment of a guardian or general
conservator for the partner; or
(iii) a judicial determination that the partner has
otherwise become incapable of performing the partner’s duties
under the partnership agreement;

(8) in the case of a partner that is a trust or is acting
as a partner by virtue of being a trustee of a trust,
distribution of the trust’s entire transferable interest in the
partnership, but not merely by reason of the substitution of a
successor trustee;

(9) in the case of a partner that is an estate or is acting
as a partner by virtue of being a personal representative of an
estate, distribution of the estate’s entire transferable interest
in the partnership, but not merely by reason of the substitution
of a successor personal representative; or

(10) termination of a partner who is not an individual,
partnership, corporation, trust, or estate.

SECTION 602. PARTNER’S POWER TO DISSOCIATE: WRONGFUL
DISSOCIATION.

(a) A partner has the power at any time to dissociate by
express will under Section 601(1).
(a) A partner’s dissociation is wrongful only if:

1. it is in breach of an express provision of the partnership agreement; or

2. in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:
   (i) the partner withdraws by express will, unless the withdrawal follows the dissociation of another partner and results in a right to dissolve the partnership under Section 801(2)(i);
   (ii) the partner is expelled by judicial determination under Section 601(5); or
   (iii) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(b) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other liability of the partner to the partnership or to the other partners.
SECTION 603. EFFECT OF PARTNER'S DISSOCIATION.

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, Article 8 applies; otherwise, Article 7 applies.

(b) Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as provided in Section 803;

(2) the partner's duty of loyalty under Section 404(b)(3) terminates; and

(3) the partner's duty of loyalty under Section 404(b)(1) and (2) and duty of care under Section 404(a) continue only with regard to matters arising or events occurring before the partner's dissociation, unless the partner participates in winding up the partnership’s business pursuant to Section 803.
ARTICLE 7

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

Section 701. Purchase of Dissociated Partner's Interest.
Section 702. Dissociated Partner's Power to Bind Partnership.
Section 703. Dissociated Partner's Liability to Other Persons.
Section 704. Statement of Dissociation.
Section 705. Continued Use of Partnership Name.

SECTION 701. PURCHASE OF DISSOCIATED PARTNER’S INTEREST.

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under Section 801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under Section 807(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. In either case, the selling price of the partnership assets must be determined on the basis of the amount that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell, and with knowledge of all relevant facts. Interest must be paid from the date of dissociation to the date of payment.
(c) Damages for wrongful dissociation under Section 602(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner against all partnership liabilities incurred before the dissociation, except liabilities then unknown to the partnership, and against all partnership liabilities incurred after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 702. For purposes of this subsection, a liability not known to a partner other than the dissociated partner is not known to the partnership.

(e) If no agreement for the purchase of a dissociated partner’s interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) If a deferred payment is authorized under subsection (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.
(g) The payment or tender required by subsection (e) or (f) must be accompanied by the following:

(1) a statement of partnership assets and liabilities as of the date of dissociation;

(2) the latest available partnership balance sheet and income statement, if any;

(3) an explanation of how the estimated amount of the payment was calculated; and

(4) written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to Section 405(b)(2)(ii), to determine the buyout price of that partner's interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced within 120 days after the
partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner’s interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney’s fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership’s failure to tender payment or an offer to pay or to comply with subsection (g).

SECTION 702. DISSOCIATED PARTNER’S POWER TO BIND AND LIABILITY TO PARTNERSHIP.

(a) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Article 9, is bound by an act of the dissociated partner which would have bound the partnership under Section 301 before dissociation only if at the time of entering into the transaction the other party to the transaction:
(a) reasonably believed when entering the transaction that the dissociated partner was then a partner at that time;

(b) did not have notice of the partner's dissociation; and

(c) is not deemed to have had knowledge under Section 303(e) or notice under Section 704(c).

(b) A dissociated partner is liable to the partnership for any less damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a).

SECTION 703. DISSOCIATED PARTNER'S LIABILITY TO OTHER PERSONS.

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided in subsection (b).

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9, within two years after the partner's dissociation, only if at the time of entering into the transaction the other party to the transaction:
(1) reasonably believed when entering the transaction that the dissociated partner was then a partner at that time;
(2) did not have notice of the partner's dissociation;
and
(3) is not deemed to have had knowledge under Section 303(e) or notice under Section 704(c).

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

SECTION 704. STATEMENT OF DISSOCIATION.

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of Section 303(d) and (e).

(c) For the purposes of Sections 702(a)(3) and 703(b)(3), a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.
SECTION 705. CONTINUED USE OF PARTNERSHIP NAME. Continued

use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.
ARTICLE 8

WINDING UP PARTNERSHIP BUSINESS

Section 801. Events Causing Dissolution and Winding Up of Partnership Business.

Section 802. Dissolution Deferred 90 Days.

Section 803. Partnership Continues After Dissolution.

Section 804. Right to Wind Up Partnership Business.

Section 805. Partner’s Power to Bind Partnership After Dissolution.

Section 806. Statement of Dissolution.

Section 807. Partner’s Liability to Other Partners After Dissolution.

Section 808. Settlement of Accounts and Contributions Among Partners.

SECTION 801. EVENTS CAUSING DISSOLUTI ON AND WINDING UP OF PARTNERSHIP BUSINESS. A partnership is dissolved, and its business must be wound up, only upon:

(1) except as provided in Section 802, receipt by in a partnership at will, the partnership’s having of notice from a partner, other than a partner who is dissociated under Section 601(2) through (10), of that partner’s express will to withdraw as a partner, or upon any later date specified in the notice by the partner;

(2) in a partnership for a definite term or particular undertaking:

   (i) except as provided in Section 802, within 90 days after a partner’s wrongful dissociation under Section 602(b) or a partner’s dissociation by death or otherwise under Section 601(6) through (10), receipt by the partnership’s having of notice from another partner of that partner’s express will to withdraw as a partner;

   (ii) the express will of all of the partners; or
(iii) the expiration of the term or the completion of
the undertaking, unless all of the partners agree to continue the
business, in which case the partnership agreement is deemed
amended retroactively to provide that the expiration or
completion does not result in the dissolution and winding-up of
the partnership business;

(3) an event agreed to in the partnership agreement
resulting in the winding up of the partnership business, unless
all of the partners agree to continue the business, in which case
the partnership agreement is deemed amended retroactively to
provide that the event does not result in the dissolution and
winding-up of the partnership business;

(4) an event that makes it unlawful for all or
substantially all of the business of the partnership to be
continued, but a cure of illegality within 90 days after notice
to the partnership of the event is effective retroactively to the
date of the event for purposes of this section;

(5) on application by a partner, a judicial determination
that:

(i) the economic purpose of the partnership is likely to
be unreasonably frustrated;

(ii) another partner has engaged in conduct relating to
the partnership business which makes it not reasonably
practicable to carry on the business in partnership with that
partner; or
(iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(5) on application by a transferee of a partner’s transferable interest, a judicial determination that it is equitable to wind up the partnership business;

(i) if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer, after the expiration of the term or completion of the undertaking; or

(ii) if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer, at any time.

SECTION 802. DISSOLUTION—DEFERRED—90 DAYS.

(a) Except as provided in subsection (b), a partnership of more than two persons is not dissolved until 90 days after receipt by the partnership of notice from a partner under Section 801(1) or (2)(i), and its business may be continued until that date as if no notice were received. Before that date, the partner who gave the notice may waive the right to have the partnership business wound up. If there is no waiver before that date, the partnership is dissolved and its business must be wound up.

(b) A partnership may be dissolved at any time during the 90-day period, and its business wound up, by the express will of at least half of the other partners.
(c) After receipt by the partnership of notice from a partner under Section 801(1) or (2)(i), the partner who gave the notice:

(1) has no rights in the management and conduct of the partnership business if it is continued under subsection (a), but may participate in winding up the business under Section 804 if the partnership is dissolved on or before the expiration of the 90-day period pursuant to subsection (a) or (b);

(2) is liable for obligations incurred during the period only to the extent a dissociated partner would be liable under Section 702(b) or 703(b), but is not liable for contributions for, and must be indemnified by the other partners against, any partnership liability incurred by another partner to the extent the liability is not appropriate for winding up the partnership business; and

(3) must be credited with the partner’s share of any profits earned during the period and may be charged with the partner’s share of any losses incurred but only to the extent of profits credited for the period.

SECTION 803. PARTNERSHIP CONTINUES AFTER DISSOLUTION.

(a) A partnership continues after dissolution — until only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed, at which time the partnership is terminated.

(b) Notwithstanding subsection (a), at any time after the dissolution of a partnership and before the winding up of its...
business is completed, the partnership business may be continued
by the remaining partners if the right to have the partnership’s
business wound up is waived. The right to have the partnership’s
business wound up is waived if all the partners, including any
dissociating partners other than wrongfully dissociating
partners, consent to the continuation of the partnership and its
business. In that event, the partnership continues and any
liability incurred by the partnership or a partner after the
dissolution shall be determined as if dissolution had never
occurred, but the rights of a third party accruing under Section
804 before the waiver shall not be adversely affected.

SECTION 804 803. RIGHT TO WIND UP PARTNERSHIP BUSINESS.
(a) After dissolution, a partner who has not wrongfully
dissociated may participate in winding up the partnership’s
business, but on application of any partner, partner’s legal
representative, or transferee, the [designate the appropriate
court], for good cause, may order judicial supervision of the
winding up.
(b) The legal representative of the last surviving partner
may wind up a partnership’s business.
(c) A person winding up a partnership’s business may
preserve the partnership business or property as a going concern
for a reasonable time, prosecute and defend actions and
proceedings, whether civil, criminal, or administrative, settle
and close the partnership’s business, dispose of and transfer the

partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 806, settle disputes by mediation or arbitration, and perform other necessary acts.

SECTION 805 804. PARTNER'S POWER TO BIND PARTNERSHIP AFTER DISSOLUTION. Subject to Section 806 805, a partnership is bound by a partner's act after dissolution that:

(1) is appropriate for winding up the partnership business; or

(2) would have bound the partnership under Section 301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

SECTION 806 805. STATEMENT OF DISSOLUTION.

(a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of Section 303(d) and is a limitation on authority for the purposes of Section 303(e).

(c) For the purposes of Sections 301 and 805 804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.
(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in Section 303(d) and (e) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

SECTION 807 806. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER DISSOLUTION.

(a) Except as provided in subsection (b) and Section 802(e)(2), after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 805 804.

(b) A partner who, with knowledge of the winding-up dissolution, incurs a partnership liability under Section 804(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any lesser damage caused to the partnership arising from the liability.

SECTION 808 807. SETTLEMENT OF ACCOUNTS AND CONTRIBUTIONS AMONG PARTNERS.

(a) In winding up a partnership's business, the assets of the partnership must be applied to discharge its obligations to creditors, including partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to
partners in accordance with their right to distributions under subsection (b).

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to the excess of the credits over the charges in the partner's positive balance account. A partner shall contribute to the partnership an amount equal to the excess of the charges over the credits that partner's negative balance.

(c) To the extent not taken into account in settling the accounts among partners pursuant to subsection (b), each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations.
(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.
ARTICLE 9
CONVERSIONS AND Mergers

Section 901. Definitions.
Section 902. Conversion of Partnership to Limited Partnership.
Section 903. Conversion of Limited Partnership to Partnership.
Section 904. Effect of Conversion; Entity Unchanged.
Section 905. Merger of Partnerships.
Section 906. Effect of Merger.
Section 907. Statement of Merger.
Section 908. Nonexclusive.

SECTION 901. Definitions. In this Article:

(1) "General partner" means a partner in a general partnership created under this [Act], predecessor law, or comparable law of another jurisdiction and a general partner in a limited partnership.

(2) "Limited partner" means a limited partner in a limited partnership.

(3) "Limited partnership" means a limited partnership created under the [State Limited Partnership Act], predecessor law, or comparable law of another jurisdiction.

(4) "Partner" includes both a general partner and a limited partner.

SECTION 902. Conversion of Partnership to Limited Partnership.

(a) A partnership may be converted to a limited partnership pursuant to this section.
(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership which satisfies the requirements of [Section ____ of the State Limited Partnership Act] and includes:

(1) a statement that the partnership was converted to a limited partnership from a partnership;

(2) its former name; and

(3) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes
effect. The limited partner’s liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the [State Limited Partnership Act].

SECTION 903. CONVERSION OF LIMITED PARTNERSHIP TO PARTNERSHIP.

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership pursuant to [Section ____ of the State Limited Partnership Act].

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The limited partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.
SECTION 904. EFFECT OF CONVERSION; ENTITY UNCHANGED.

(a) A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

(2) all obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(3) an action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

SECTION 905. MERGER OF PARTNERSHIPS.

(a) Pursuant to a plan of merger approved as provided in subsection (c), a partnership may be merged with one or more partnerships or limited partnerships.

(b) The plan of merger must set forth:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(3) whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(4) the terms and conditions of the merger;
(5) the manner and basis of converting the interests of
each party to the merger into interests or obligations of the
surviving entity, or into money or other property in whole or
part; and

(6) the street address of the surviving entity’s chief
executive office.

(c) The plan of merger must be approved:

(1) in the case of a partnership that is a party to the
merger, by all of the partners, or a number or percentage
specified for merger in the partnership agreement; and

(2) in the case of a limited partnership that is a party
to the merger, by the vote required for approval of a merger by
the law of the State or foreign jurisdiction in which the limited
partnership is organized and, in the absence of such a
specifically applicable law, by all the partners, notwithstanding
a provision to the contrary in the partnership agreement.

(d) After a plan of merger is approved and before the
merger takes effect, the plan may be amended or abandoned as
provided in the plan.

(e) The merger takes effect on the later of:

(1) the approval of the plan of merger by all parties to
the merger, as provided in subsection (c);

(2) the filing of all documents required by law to be
filed as a condition to the effectiveness of the merger; or

(3) any effective date specified in the plan of merger.
SECTION 906. EFFECT OF MERGER.

(a) When a merger takes effect:

(1) the separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases to exist;

(2) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(b) The [Secretary of State] of this State is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the [Secretary of State] of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the [Secretary of State] shall mail a copy of the process to the surviving foreign partnership or limited partnership.
(c) A partner of the surviving partnership or limited partnership is liable for:

(1) all obligations of a party to the merger for which the partner was personally liable before the merger;

(2) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(3) all obligations of the surviving entity incurred after the merger takes effect but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party’s obligations to the surviving entity, in the manner provided in Section 807(e) or in Sections ___ and ___ of the State Limited Partnership Act] as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner’s interest in the entity to be purchased
under Section 701. The surviving entity is bound under Section 702 by an act of a general partner dissociated under this subsection, and the partner is liable under Section 703 for transactions entered into by the surviving entity after the merger takes effect.

SECTION 907. STATEMENT OF MERGER.

(a) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnership were merged;

(3) the street address of the surviving entity's chief executive office and of an office in this State, if any; and

(4) whether the surviving entity is a partnership or a limited partnership.

(c) Except as provided in subsection (d), for the purposes of Section 302, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For the purposes of Section 302, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is
property held in the name of the surviving entity upon recording
a certified copy of the statement of merger in the office for
recording transfers of that real property.

(e) A filed and, if appropriate, recorded statement of
merger, executed and declared to be accurate pursuant to Section
105(c), stating the name of a partnership or limited partnership
that is a party to the merger in whose name property was held
before the merger and the name of the surviving entity, but not
containing all of the other information required by subsection
(b), operates with respect to the partnerships or limited
partnerships named to the extent provided in subsections (c) and
(d).

SECTION 908. NONEXCLUSIVE. This article is not exclusive.
Partnerships or limited partnerships may be converted or merged
in any other manner provided by law.
ARTICLE 10

MISCELLANEOUS PROVISIONS

Section 1001. Uniformity of Application and Construction.
Section 1002. Short Title.
Section 1003. Severability.
Section 1004. Effective Date.
Section 1005. Repeals.
Section 1006. Application to Existing Relationships.
Section 1007. Savings Clause.

SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This [Act] shall be applied and construed to effectuate its
general purpose to make uniform the law with respect to the
subject of this [Act] among states enacting it.

SECTION 1002. SHORT TITLE. This [Act] may be cited as the

SECTION 1003. SEVERABILITY CLAUSE. If any provision of this
[Act] or its application to any person or circumstance is held
invalid, the invalidity does not affect other provisions or
applications of this [Act] which can be given effect without the
invalid provision or application, and to this end the provisions
of this [Act] are severable.

SECTION 1004. EFFECTIVE DATE. This [Act] takes effect .

SECTION 1005. REPEALS. The following acts and parts of acts
are repealed: [the State Partnership Act as amended and in effect
immediately before the adoption of this Act].
SECTION 1006. APPLICATION TO EXISTING RELATIONSHIPS.

(a) Except as otherwise provided in this section subsection (b), this [Act] applies to all partnerships in existence on its effective date that were formed under [the State Partnership Act] or any predecessor law providing for the formation, operation, and liquidation of partnerships.

(b) Section 802 does not apply to a partnership in existence on the effective date of this [Act] unless the partners agree otherwise.

(c) This [Act] does not impair the obligations of a contract existing on the effective date of this [Act] or affect an action or proceeding commenced or right accrued before the effective date of this [Act].

(d) A judgment against a partnership or a partner in an action commenced before the effective date of this [Act] may be enforced in the same manner as a judgment rendered before the effective date of this [Act].

SECTION 1007. SAVINGS CLAUSE. The repeal of any statutory provision by this [Act] does not impair, or otherwise affect, the organization or continued existence of a partnership existing at the effective date of this [Act], nor does the repeal of any existing statutory provision by this [Act] impair any contract or affect any right accrued before the effective date of this [Act].
Edie - The bottom margin on p. 45 must be reduced to .7."
ARTICLE 6
PARTNER'S DISSOCIATION

Section 601. Events Causing Partner's Dissociation.

Section 602. Partner's Power to Dissociate; Wrongful Dissociation.

Section 603. Effect of Partner's Dissociation.

SECTION 601. EVENTS CAUSING PARTNER'S DISSOCIATION. A partner is dissociated from a partnership upon:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner or upon any later date specified in the notice by the partner;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(i) it is unlawful to carry on the partnership business with that partner;

(ii) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(iii) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended.
ARTICLE 8
WINDING UP PARTNERSHIP BUSINESS

Section 801. Events Causing Dissolution and Winding Up of Partnership Business.
Section 802. Dissolution Deferred 90 Days.
Section 803 804. Partnership Continues After Dissolution.
Section 804 805. Right to Wind Up Partnership Business.
Section 805 806. Partner’s Power to Bind Partnership After Dissolution.
Section 806 807. Statement of Dissolution.
Section 807 808. Partner’s Liability to Other Partners After Dissolution.
Section 808 809. Settlement of Accounts and Contributions Among Partners.

SECTION 801. EVENTS CAUSING DISSOLUTION AND WINDING UP OF PARTNERSHIP BUSINESS. A partnership is dissolved, and its business must be wound up, only upon:

1. except as provided in Section 802, receipt by in a partnership at will, the partnership’s having of notice from a partner, other than a partner who is dissociated under Section 601(2) through (10), of that partner’s express will to withdraw as a partner, or upon any later date specified in the notice by the partner;

2. in a partnership for a definite term or particular undertaking:

   (i) except as provided in Section 802, within 90 days after a partner’s wrongful dissociation under Section 602(b); or a partner’s dissociation by death or otherwise under Section 601(6) through (10), receipt by the partnership’s having of notice from another partner of that partner’s express will to withdraw as a partner;

   (ii) the express will of all of the partners; or
business is completed, the partnership business may be continued
by the remaining partners if the right to have the partnership's
business wound up is waived. The right to have the partnership's
business wound up is waived if all the partners, including any
dissociating partners other than wrongfully dissociating
partners, consent to the continuation of the partnership and its
business. In that event, the partnership continues and any
liability incurred by the partnership or a partner after the
dissolution shall be determined as if dissolution had never
occurred, but the rights of a third party accruing under Section
§04 before the waiver shall not be adversely affected.

SECTION §04 §03. RIGHT TO WIND UP PARTNERSHIP BUSINESS.

(a) After dissolution, a partner who has not wrongfully
dissociated may participate in winding up the partnership's
business, but on application of any partner, partner's legal
representative, or transferee, the [designate the appropriate
court], for good cause, may order judicial supervision of the
winding up.

(b) The legal representative of the last surviving partner
may wind up a partnership's business.

(c) A person winding up a partnership's business may
preserve the partnership business or property as a going concern
for a reasonable time, prosecute and defend actions and
proceedings, whether civil, criminal, or administrative, settle
and close the partnership's business, dispose of and transfer the
The Executive Committee recently approved the enclosed technical amendments to the Uniform Partnership Act. In accordance with Section 3.3 of the ULC Constitution, any action by the Executive Committee approving amendments to Uniform Acts must be reported to the Conference membership at least 20 days before the next Annual Meeting. The amendments are thereby adopted by the Conference unless they are disapproved or modified by the Conference at that Annual Meeting on a special order requested by a Commissioner, not later than the third day of the meeting, in a written statement specifying by section the amendment objected to. Only the disputed section will receive consideration at the Annual Meeting.

Amendments to Sections 801 and 802 of the Uniform Partnership Act are on the agenda, scheduled to be read at the Ninth Session on Tuesday afternoon, August 3.

Enclosure

cc: Fred H. Miller (w/enc.)
William J. Pierce (w/enc.)
Subcommittee on RUPA

Re: Partial Update

Gentlemen:

You will notice that my letterhead is somewhat altered from that on my previous communications. Probably most of you know that McKenna & Fitting fell apart earlier this year. As you can well imagine, that has impacted my ability to stay on top of my obligations to the Partnership Committee, and our Subcommittee in particular. I apologize for any inconvenience this may cause. However, I rest comfortably knowing the vast pool of talent that is there to continue our work.

Enclosed is a copy of a letter I sent to John McCabe of NCCUSL, along with a copy of the letter he had sent to Professor Hynes which was the impetus for my letter. I hope that nobody will take offense at the statements in my letter to Mr. McCabe. While I did not want to speak for the Subcommittee on this subject, I also did not want to misstate what I believe to be our general feelings on the subjects addressed. I encourage each of the Subcommittee members who disagrees to send a separate letter to Mr. McCabe.

I am a little unsure exactly what our Subcommittee should be doing at the present time. I presume each of you received the recent RUPA amendment deleting § 802 but, in case you did not, I am enclosing a copy of that as well. I do not know what, if anything, has happened to the various changes that were discussed when we submitted our last comprehensive report at the November Partnership Committee meeting.

Due to my present circumstances, it is impossible for me to go to New York. I have asked Lauris Rall to represent the Subcommittee at the Partnership Committee meetings and get instructions as to what, if anything, we should be doing in the great hereafter. My guess is that by September I will be situated in a more permanent position. I am willing to continue working on this most interesting and challenging project. It may be appropriate, however, to contemplate a change of leadership in as much as I have been in the position for some three years now. I respect the wisdom of the section encouraging revolving leadership for all committee activities. Hopefully, that matter can also be discussed and attended to in New York if we are to proceed as a Subcommittee.
I do appreciate the calls and encouragement I have received from several members of the Subcommittee during the past several months and look forward to seeing all of you in the next year. As you can see from the letterhead, my telephone and fax remain the same so please feel free to call and harass me as much as you have in the past on any subject that comes to mind.

Very truly yours,

Gerald V. Niesar

GVN/k

Enclosures
J. Dennis Hynes
Professor of Law
University of Colorado
School of Law
Campus Box 401
Boulder, Co 80309-0401

Dear Professor Hynes:

RE: Uniform Partnership Act

Your letter to Harry Haynesworth inevitably was circulated to this office. My professional time is mostly devoted to the legislative program of the Uniform Law Commissioners, so I represent the front line of the effort to enact acts like the Uniform Partnership Act. The problem with the state legislatures is that they are not like a water spigot - to be turned on and off at will. The Uniform Law Commissioners spent four years working on the Uniform Partnership Act (1992). There were great expectations among the uniform law commissioners for this act as it was completed, and a sense that there is substantial demand for a modern partnership act in the profession and the legislatures. Plans for introductions and legislative activity were already well underway as the uniform law commissioners were meeting. That kind of momentum is difficult to suppress once it gets underway. The Montana and Wyoming adoptions simply reflect that fact.

The further fact is that the Uniform Act has been nothing but available for comment, and continues in that mode. Both Gerry Niear and Tony van Westrum are long-time members of the Partnership Committee of the Business Law Section of the ABA. Both belong to the ad-hoc committee that precipitated the continuing controversies. Gerry chairs it. The Partnership Committee had full access to the work of the ULC drafting committee, and participated actively for the four years of drafting work. Drafts of the pending act were circulated widely, and were widely commented upon in the professional literature. Anybody who pays even the most cursory attention to the Business Law Journal knew of the drafting work.
Following the four years of exhaustive work, the ULC has continued to make the act available for more comment. I, personally, attended the November, 1992 meeting of the ABA’s Partnership Committee, during which there was a free exchange of opinion on the issues. The Ad-hoc committee had submitted an extensive critique in advance of that meeting. The ULC representatives solicited further comment in anticipation of the April, 1993 meeting of the ABA Partnership Committee. At that meeting, a discussion draft of amendments was circulated to engender even more comment, and the negotiations have essentially been given another year so that everybody has a chance to get an oar in the water. At the end of this process, if it ever does end, this act will have about six years during which it has been open to comment.

I will safely predict, also, that the comments that are tendered between now and April, 1994 will not expose one new issue. The problem has never really been intellectual input. The problem is wholly political in character. The key issues to the Ad-hoc committee are issues that have been considered and debated endlessly in the four years of drafting. It is simply a matter of continuing a political battle that the Ad-hoc Committee lost either in the drafting committee or in the consideration of the act by the whole body of the Uniform Law Commissioners. The Ad-hoc Committee is using ABA approval as a lever to try to win what it could not in the ULC proceedings.

In all of this, I think it is fair to suggest, that uniformity as a concept is not a high priority for some of the folks engaged in this contest. I have too much experience as a defender of uniformity to believe otherwise.

One of the sad facts of the conflict is that the best opportunity for major legislative activity is past. That this act could not get off to a good start effectively puts that start off until 1995. It is not at all clear that we can generate the legislative energy in 1995 that was available this year. So if we resolve conflicts between the ULC and the ABA Partnership Committee, and achieve some shaky consensus on uniformity, we
have probably sentenced the law to a longer period of non-uniformity than otherwise would have been the case.

Thanks for your kind attention.

Sincerely,

John M. McCabe
Legislative Director

cc: Harry Haynesworth
    Dwight Hamilton
Dear Mr. McCabe:

I recently received a copy of the above-referenced letter and felt there should be a response from me, as the Chair of the Subcommittee on RUPA of the ABA Business Law Section, Partnership Committee. I emphasize, however, that the views herein are entirely mine: this does not purport to be a RUPA Subcommittee consensus position.

I think you misunderstand both our motives and our objectives during the three years we have been working with the NCCUSL Drafting Committee on RUPA. I do not know whether you have seen copies of our comment letters, of which we have now issued thirteen. Our comment letters make it clear that a touchstone, in fact one of the fundamental touchstones, of our deliberations and commenting has always been to achieve another act that would have the uniformity of UPA. Many of our concerns which led to suggestions for changes throughout the drafting process were driven by our understanding that the provisions in question could not possibly be expected to be adopted uniformly by the various states. I am sending along a copy of all of our comment letters so you can see this trend of the comments throughout.

I was somewhat distressed that you characterized our work as "a political battle that the Ad-hoc Committee lost". Indeed, I think it would be unanimously acknowledged, among the members of the RUPA Subcommittee and the Drafting Committee, that both groups have significantly won through our discourse over the years. Certainly, it would be disingenuous for anyone to maintain that RUPA is not significantly improved as a result of our commentary and input. This has been repeatedly acknowledged, not only by the Drafting Committee but by other Commissioners. If one looks at the first draft of RUPA and tracks
subsequent drafts against our comment letters, I am sure one will see the significant contribution that the RUPA Subcommittee has made to the current product through its critiques, drafting and, at times, extensive research and commentary. I truly believe that I speak for each of the members of the Subcommittee on RUPA, who collectively have put hundreds and hundreds of hours into this project, when I say that not one of them had a political agenda at any time. Our objective has only been to achieve a uniform law that is free from any significant defects. We have appreciated the candid reception we received from your Drafting Committee, and we believe that their willingness to allow us to work with them has resulted in a significantly improved act.

Perhaps one area where we and the Drafting Committee still disagree is whether RUPA should be promoted to any of the states at the present time, or whether it should be sent to the academic community and various bar associations for comment and review. It has been our experience that the more one gets into RUPA, the more one sees some of the problems that have led to our various comments. Further, we believe that other concerns, and perhaps other solutions, might come to light through an exposure process. We, of course, do not have the political pressures on us that the Drafting Committee does; our comments can be directed towards the act that we think would be the most effective to govern this extremely complicated and sometimes inadvertent business vehicle. At the same time, we recognize that the Drafting Committee does have political pressures on it, in that it must present what it thinks the state legislatures will accept. Perhaps the best example of this was the reaction to the rather emotional letter written by Professor Eisenberg concerning the fiduciary issue which was submitted to the entire conference in August of 1992.

Because we are moving from an act that was virtually uniform to one that must, if modernized, contain significant and fundamental changes, we felt that it would be best for there to be broad study and commentary on the proposed revised act. Unfortunately, the act has been a moving target, as it were, throughout its entire career. This, of course, is best exemplified by the most recent amendment excising the truly objectionable §802 which was in the 1992 RUPA. Because the act has been under constant revision for all of its history, it has not been susceptible to any significant body of comprehensive commentary. We continue to hope that the Commissioners will distribute RUPA in its present form (especially now that §802 has been deleted) to the bar and law schools with the request that it be given significant analysis and comment. Such a process would most effectively ensure that all problems have been identified and corrected so that the final product will be a uniformly adoptable act.

I believe a significant number of our RUPA Subcommittee still feels this exposure would be very useful in achieving the combined objectives of the RUPA Subcommittee and the Drafting Committee to produce a really sound well-integrated and uniformly adoptable RUPA. One or two of the RUPA Subcommittee members feel that the act is far enough
along to be sent out, but it is my understanding that those members are more concerned about getting revisions to UPA quickly than achieving overall uniformity on the substantive and fundamental provisions of RUPA.

I hope that this letter will go some way toward clarifying what has been behind the thinking and the work of the Subcommittee on RUPA. You are not the first to have misunderstood and to have attributed political motives to us. I overheard one conversation in August of 1991 between members of the Drafting Committee where we were accused of seeking "delay" for its own end. If one would step back and look at the tremendous amount of time, energy and personal financial expense that has been contributed to this effort by the RUPA Subcommittee members, one would probably think it more likely that our objective would be to speed things up. It is clear that our only reward can be to see a really fine legislative work of art promulgated and uniformly adopted by all the states.

Very truly yours,

Gerald V. Niesar

GVN/k.

cc: Members of the Subcommittee on RUPA
Professor Dennis Hynes
AMENDMENTS TO
UNIFORM PARTNERSHIP ACT (1992)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-SECOND YEAR
CHARLESTON, SOUTH CAROLINA
JULY 30 - AUGUST 6, 1993

AMENDMENTS TO
UNIFORM PARTNERSHIP ACT (1992)
With Comments

The ideas and conclusions herein set forth, including drafts of proposed legislation, have not been passed upon by the National Conference of Commissioners on Uniform State Laws. They do not necessarily reflect the views of the Committee, Reporters or Commissioners. Proposed statutory language, if any, may not be used to ascertain legislative meaning of any promulgated final law.