Partnership Property and Partnership Authority
Under the Revised Uniform Partnership Act

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The entity approach adopted by the Revised Uniform Partnership Act (RUPA)\(^1\) has simplified greatly the concepts and legal rules regarding partnership property. By making two basic changes to the old rules under the Uniform Partnership Act (UPA),\(^2\) RUPA significantly enhanced the ability of a third party dealing with the partnership to determine whether or not a particular transaction is authorized by the partnership. The first change was to shift the emphasis of the law from protecting the partners against an unauthorized act of their fellow partners to protecting a third party dealing with the partnership in good faith.\(^3\) The second major change was the adoption of a voluntary system of public filings that allows both the partnership and third parties dealing with the partnership to enjoy relative certainty about which partners are and are not authorized to enter into various specified transactions on behalf of the partnership.\(^4\)

**PARTNERSHIP PROPERTY**

**PARTNERS VERSUS THE PARTNERSHIP**

Section 201 of RUPA embraces the entity view of partnerships by stating with boldness and simplicity: "A partnership is an entity."\(^5\) Although ves-

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1. **Revised Unif. Partnership Act** (1993) [hereinafter RUPA]. This Article is based on the text of RUPA in the Draft dated August 3, 1993, adopted by the National Conference of Commissioners on Uniform State Laws at its annual meeting in Charleston, South Carolina, in August 1993 with the revisions proposed by the Committee on Style.
2. **Unif. Partnership Act** (1914) [hereinafter UPA].
3. See RUPA § 302.
4. See id. § 303.
5. Id. § 201.
tiges of the aggregate concept remain in some areas of RUPA related to the liability of the partners for partnership obligations, the change is complete in the area of partnership property.

RUPA section 203 clearly states: "Property transferred to or otherwise acquired by a partnership is property of the partnership and not of the partners individually." The troublesome concept under sections 24 and 25 of the UPA, namely that each partner held a direct undivided interest in partnership property as "tenants in partnership," has been eliminated. RUPA section 501 affirmatively states: "[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 change, however, may sound more sweeping than it is in reality. The old tenancy-in-partnership concept of UPA section 25 was somewhat hollow. Even under the UPA, a partner could not use partnership property except for partnership purposes. A partner could not convey independently his or her interest in partnership property, and a creditor could not reach a partner's interest in the underlying property of the partnership. Therefore, the primary effect of the change in the law is to cause the legal concept to be consistent with the legal reality.

**PARTNERSHIP PROPERTY**

The rules for distinguishing individual property of the partners from the property of the partnership are contained in RUPA section 204, and these rules look primarily to how the property was acquired. Property is acquired in the name of:

1. (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.
2. (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.
3. (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.
4. (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.

RUPA § 204.
presumed to be partnership property if it is in the name of the partnership or if it is in the name of individuals but with an indication in the instrument of transfer of the existence of any partnership.\textsuperscript{11} Property is in the name of the partnership if the instrument of transfer is in the name of the partnership, or if the instrument is in the name of individual partners but indicates the name of the partnership.\textsuperscript{12} Property held by individual partners nonetheless is presumed to be partnership property if acquired with partnership funds.\textsuperscript{13} If partnership funds are not used, it is presumed property of the individual partners, even if used in the partnership’s business.\textsuperscript{14} These rules apply to all types of property, real and personal.

\section*{Property in the Name of the Partnership}

Property will be partnership property if it is acquired in the name of the partnership under section 204(a)(1). Whether or not property is in the name of the partnership is an important legal concept under RUPA. For one thing, statements of partnership authority\textsuperscript{15} operate only with respect to real property held in the partnership name.\textsuperscript{16} The basic rules for determining when property is in the name of the partnership are found in section 204(b) and look to the instrument transferring title to the property. Section 204(b)(1) is obvious: property is held in the partnership name if it is acquired by a transfer to the partnership in its name.\textsuperscript{17}

The rule in section 204(b)(2) is a somewhat subtle variation. Where title to the property is transferred to one or more of the partners in their names, but the name of the partnership appears in the instrument transferring title, the property is in the name of the partnership.\textsuperscript{18}

The important thing to note about both of these sections is that the correct name of the partnership must be used for the property to be considered to be in the name of the partnership. For example, suppose A, B, and C are partners in a partnership with the name of the “A-B

\textsuperscript{11} See id. \S 204(a)(1).
\textsuperscript{12} Id. \S 204(b).
\textsuperscript{13} Id. \S 204(c).
\textsuperscript{14} Id. \S 204(d).
\textsuperscript{15} See infra text accompanying notes 60-89.
\textsuperscript{16} See RUPA \S 303(d)(2) (“A grant of authority to transfer real property held in the name of the partnership. . . .”).
\textsuperscript{17} Id. \S 204(b)(1).
\textsuperscript{18} This provision resolves a question that troubled the North Carolina courts in Simmons v. Quick-Stop Food Mart, Inc., 296 S.E.2d 275 (N.C. 1982). There, the property was conveyed to “Johnny L. Wood and Oscar Harold Simmons, d/b/a Wood and Simmons Investments, a partnership.” Id. at 275. The Court of Appeals found that the property was held in the name of the partnership. Simmons v. Quick-Stop Food Mart, Inc., 286 S.E.2d 807, 810 (N.C. Ct. App.), rev’d, 296 S.E.2d 275 (N.C. 1982). The North Carolina Supreme Court reversed finding the property was held in the names of Johnny L. Wood and Oscar Harold Simmons. Simmons, 296 S.E.2d at 281. Under RUPA \S 204(b)(2), this property clearly would be held in the name of the partnership.
Bicycle Shop Partnership.” A transfer to “A and B as partners in the A-B Bicycle Shop Partnership” would cause the property to be held in the name of the partnership. So would a transfer to the “A-B Bicycle Shop Partnership.” Likewise, a transfer to C as a partner in the “A-B Bicycle Shop Partnership” would result in the property being in the name of the partnership. A transfer to “A-B Cycles” or a transfer to “A and B as partners in the bicycle shop” would not be in the name of the partnership. The property, however, would be partnership property under section 204(a)(2). In the case of the transfer to “A-B Cycles,” the normal conveyancing practices of the state would have to be relied upon to correct title in the same manner as a misnamed corporation. A more difficult case would be a transfer to the “A-B Bicycle Shop Partners.” Clearly it would be partnership property, but is it in the name of the partnership? RUPA does not attempt to make such subtle determinations, intentionally leaving them to interpretation by the courts. The author’s view is that a transfer to the “A-B Bicycle Shop Partners” would be sufficiently close to the “A-B Bicycle Shop Partnership” to be considered property in the name of the partnership.

**Indication of the Existence of a Partnership**

Property is partnership property under section 204(a)(2) if it is acquired in the name of one or more partners where the instrument transferring title to the property contains an indication of the transferee’s capacity as a partner or of the existence of a partnership, but without an indication of the specific name of the partnership. The rule in section 204(a)(2) reflects an attempt to glean the intent of the parties to acquire the property for a partnership from the transfer documentation where the transfer document does not contain a reference to partnership with the specificity necessary for the property to be considered held in the name of the partnership. Therefore, when the transfer is to one or more of the partners, but the instrument discloses the existence of the partnership, the property will be partnership property.19 Examples of this type of conveyance would be: (i) “to A and B as partners;” (ii) “to the partnership of A and B;” or (iii) “to A, a partner and B, a partner.”

**No Indication of a Partnership**

Even where property is not acquired in the name of the partnership or in the name of one or more of the partners with an indication of the existence of a partnership, it still will be presumed to be partnership property under section 204(c) if it was acquired with partnership assets. Because the rights of third-party transferees to partnership property are deter-

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19. The disclosure of the existence of a partnership in the transfer documentation will have significance under the transfer rules. See *infra* text accompanying notes 54-55.
BASIC AUTHORITY OF A PARTNER TO BIND THE PARTNERSHIP

There have been a number of changes to a partner's authority to bind the partnership as its agent. RUPA, however, retains the basic concept that a single partner is authorized to bind the partnership in transactions that carry on the partnership's business in the usual way. There is a subtle change in the rule determining when a third party has notice of a partner's lack of authority. There also is a change broadening the concept of what constitutes carrying on the partnership business in the usual way. The laundry list of transactions considered not to be usual in the conduct of the partnership business has been deleted and each transaction must be evaluated on a case-by-case basis. These changes reflect the intent of the drafters of RUPA to shift more of the burden of unauthorized partnership transactions from third parties dealing in good faith with the partnership to the partners themselves.

EACH PARTNER IS AN AGENT

Under section 301(2), the partnership will be bound where the acts of the partner are in fact authorized, regardless of whether the transaction is in the usual course of the partnership's business or whether the third party knows the transaction is authorized.

The rule of apparent agency is found in RUPA section 301(1) which states:

20. RUPA § 204(c).
21. Compare RUPA § 301 with UPA § 9(1).
22. RUPA § 301(1).
23. Compare UPA § 9(3) with RUPA § 301(2).
24. See, e.g., Patel v. Patel, 260 Cal. Rptr. 255 (Cal. Ct. App. 1989) (the old laundry list acts requiring unanimous approval in UPA § 9(3) controlled over a conflicting provision in old UPA § 10 and therefore a third party who had no notice of the existence of a partnership could not compel the two title-holding partners to convey the property over the objection of the third undisclosed partner because the sale of the property would have made it impossible to carry on the ordinary business of the partnership under UPA § 9(3)(c)). Under RUPA, the other partners, rather than the innocent third party, would bear the risk of such an unauthorized act. See generally RUPA art. 3.
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 the 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 knew or had received a notification that the partner lacks authority.\(^{25}\)

This language is based on UPA section 9(1) with two important changes related to the usual course of business of the partnership and the standards for determining knowledge of lack of authority.\(^{26}\)

**Usual Business of the Partnership**

RUPA's first change to the general rule is the addition of the words "or the business of the kind carried on by the partnership."\(^{27}\) This language is intended to remove the burden from the third party of knowing the manner in which the particular partnership usually conducts its business. This would be especially burdensome on a first time creditor. Under RUPA, it is sufficient if the act of the partner is usual for a business of the same type as the partnership's business.\(^{28}\) This change is consistent generally with case law interpretations of the existing UPA and follows the English rule.\(^{29}\)

**Knew or Received a Notification**

RUPA's second change to the general rule is in the standard to determine when a third party dealing with the partnership has sufficient knowledge of a partner's lack of authority such that the partnership should not be bound.\(^{30}\) Section 301(1) states that the critical point occurs when the third party "knew or had received a notification."\(^{31}\) Both knew and received notification are defined terms under section 102. Knew means having actual knowledge of the fact.\(^{32}\) A person receives notification of a fact when it comes to his or her attention or when notification was delivered properly at the person's place of business or at another place held out by the person as the place for receiving communications.\(^{33}\) Therefore, the RUPA standard is actual knowledge of the lack of authority or having had a notifi-

\(^{25}\) RUPA § 301(1).
\(^{26}\) Compare UPA § 9(1) with RUPA § 301(1).
\(^{27}\) RUPA § 301(1), c.f. UPA § 9(1).
\(^{28}\) RUPA § 301(1).
\(^{29}\) See Burns v. Gonzales, 439 S.W.2d 128 (Tex. 1969).
\(^{30}\) See RUPA § 301(1).
\(^{31}\) Id.
\(^{32}\) Id. § 102(a).
\(^{33}\) Id. § 102(e).
cation of the lack of authority duly delivered. Note the special rules for receipt of notice by an organization or a partnership under sections 102(f) and (g). These definitions are based upon similar definitions in the U.C.C.\(^3\)

Under UPA section 9(1), the partnership was not bound by the unauthorized actions of a partner if the third party had "knowledge" of the partner's lack of authority.\(^35\) Under UPA section 9(1), a third party had knowledge when he or she had actual knowledge or "when he [or she] has knowledge of such other facts as in the circumstances shows bad faith."\(^36\) This latter language creates an implied or inquiry notice, the exact parameters of which are ill-defined.\(^37\) Under RUPA, the third party will not be placed under a duty of inquiry or be deemed to have notice from the facts and circumstances. Only actual knowledge or receipt of a notification of a partner's lack of authority will meet the standard.\(^38\)

Although RUPA generally increases the risk of partners for the unauthorized acts of other partners, it also permits innocent partners to protect themselves from unauthorized transactions to some degree through the use of a system of filed and sometimes recorded statements of authority.\(^39\) These statements may be used to restate a partner's authority. Basically, the partnership's protection against unauthorized acts is absolute for real property held in the name of the partnership, because the filed and recorded statement provides constructive knowledge of any restrictions on authority to third parties.\(^40\) Statements of dissociation and dissolution pro-

35. UPA § 9(1).
36. Id. § 3(1).
37. Cases have been varied on this issue. In McIntosh v. Detroit Sav. Bank, 225 N.W. 628 (Mich. 1929), endorsement by an individual partner of partnership checks and the deposit of the checks in his personal account constituted sufficient knowledge on the part of the bank within the meaning of UPA § 9(1) that the partnership was not bound by the endorsements. This was despite an indication that some of the partnership's expenses were paid from the same personal account. Id. at 628. For a discussion of circumstances indicating bad faith in a similar endorsement case, see Christian v. California Bank, 208 P.2d 784 (Cal. Ct. App. 1949). In Investors Title Ins. Co. v. Herzig, 360 S.E.2d 786 (N.C. 1987), the fact that a title certificate given to a title company was to be used in connection with a personal loan to a partner could be knowledge on the part of the title company that the partner receiving the loan lacked authority to execute the title certificate on behalf of the law firm under UPA § 9(1). The knowledge requirement under UPA § 9(1), however, does not include constructive notice. See Owens v. Palos Verdes Monaco, 191 Cal. Rptr. 381 (Cal. Ct. App. 1983). Possession of a partnership agreement, even if complex and contradictory, is notice of a lack of authority of the managing partner under UPA § 9(1), even where the bank received an opinion of the partnership's counsel that the managing partner was authorized to enter into the transaction on behalf of the partnership. See City Nat'l Bank v. Westland Towers Apartments, 309 N.W.2d 209 (Mich. Ct. App. 1981), rev'd in part, 320 N.W.2d 881 (Mich. 1982), vacated in part, 320 N.W.2d 882 (Mich. 1982) (bank back dated certain documents that the trial court found to be in bad faith).
38. RUPA § 301(1).
39. See id. § 303; see also infra text accompanying notes 61-65.
40. RUPA § 303(e).
vide constructive notice of non-existent or reduced authority in transac-

tions other than real property ninety days after they are filed are the

Secretary of State. As to real property in the name of the partnership,

statements of dissolution and dissociation are effective immediately when

a copy is recorded in the land records. For transactions not involving

real property, a restriction on a partner’s apparent authority is not effective

against third parties unless the statement was delivered to or otherwise

reviewed by the third party. This protection is not as hollow as it may

seem because it is expected that third parties will wish to avail themselves

of the benefit of the conclusive presumption of authority for most signif-

icant personal property transactions. In the process of searching for the

grant of authority, the third party will acquire actual knowledge of any

restriction on authority in a filed statement. Of course the innocent part-

ners may protect themselves by delivering the statement to all known cred-

itors, actual or potential.

Deletion of List of Unusual Acts

UPA section 9(3) contains a list of acts that were considered outside the

usual course of the partnership business and required the unanimous

consent of all partners. RUPA eliminated these specifically enumerated

acts because they were deemed to be too rigid. Many of these rules were

outmoded, such as submitting a partnership claim to arbitration, and

others seemed clearly within the ambit of the basic rule of section 301(1),

such as an act making it impossible to carry on the business. Others

seemed unduly difficult to apply to real life problems, such as the sale of

good-will provision. Each of the enumerated acts might or might not be

in the usual course of the partnership’s business, depending on all the

facts and circumstances. It was deemed best to give the trier of fact the

flexibility to make the determination of whether the act was in the usual

course of business in each individual case.

TRANSFERS OF PARTNERSHIP PROPERTY

Section 302 contains special rules regarding the transfer of partnership

property. These rules relate back to the distinction in section 204 between

41. See id. §§ 704(c), 805(c).

42. Id. § 303(c).

43. Id. § 303(d)(1). This is because the third party then would have actual knowledge of the

restriction under § 301(1).

44. See id. § 303(d)(1).

45. See id. § 303(f). Non-partners are not deemed to know of a limitation solely because

it is contained in a filed statement. Id. Sending a copy to non-partners would cause them to

have received notification of the limitation within the meaning of section 301(1). Id.

46. UPA § 9(3)(c).

47. Id. § 9(3)(c).

48. Id. § 9(3)(b).
partnership property that is in the name of the partnership and all other partnership property. 49 Section 302 substantially simplifies UPA section 10. Section 302 applies to transfers of all property of the partnership, real and personal, where UPA section 10 applied only to real property. Moreover, the concept of a transfer under RUPA is very broad and includes assignments, conveyances, leases, mortgages, deeds, and encumbrances. 50

**PARTNERSHIP PROPERTY IN THE NAME OF THE PARTNERSHIP**

RUPA’s basic rule for transferring property held in the name of the partnership is simple: “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.” 51 In this case, the property is unquestionably property of the partnership named and, consistent with the general rule that each partner is an agent of the partnership, any partner may execute a conveyance that is within the proper chain of title. The authority of the partner to convey the property, as between the partners, will be governed by the partnership agreement or, if silent, by section 401. The authority of the partner to convey the property to third parties will be governed by section 302(b)(1). 52 For property held in the partnership name, the rule in section 302(a)(1) may be varied in a statement of partnership authority under section 303 to provide restrictions on which or how many partners must execute transfers. 53

**PARTNERSHIP PROPERTY NOT IN THE NAME OF THE PARTNERSHIP BUT EXISTENCE OF PARTNERSHIP IS INDICATED**

Partnership property held in the name of one or more partners with some indication of their capacity as partners or the existence of the partnership (e.g. property that would be partnership property under section 204 but not in the name of the partnership) may be transferred by an instrument signed by the partners in whose names the property is held. 54 Where the property was acquired by an individual with an indication of a partnership in the instrument of transfer, but not the specific partnership, so that the chain of title would reflect an individual and not the specific partnership, section 302(a)(2) requires the transfer to be made by the

49. See supra text accompanying notes 15-20.
50. See RUPA § 101(12).
51. Id. § 302(a)(1).
52. See supra and infra text accompanying notes 51-57.
53. RUPA § 303(a)(2).
54. Id. § 302(a)(2).
partners named in the original instrument. For example, where the transfer to the partnership was to "A and B as partners in the bicycle shop," a subsequent transfer must be executed by A and B. This provides a clear chain of title and also provides some protection to A and B in that they cannot be excluded from participating in future transfers of the property by the partnership. Again, authority as among partners is covered by the agreement or section 401 and the partnership's ability to recover an unauthorized conveyance is covered by section 302(b)(1). Here, neither the third party nor the partnership may protect itself by relying upon statements of partnership authority because the property is not in the name of the partnership.

**PARTNERSHIP PROPERTY WITH NO INDICATION OF A PARTNERSHIP**

Partnership property held in the name of one or more partners, but without any indication of the existence of a partnership in the instrument of transfer, may be conveyed by the partners in whose name title is held." The individual partners are the same individuals who would be required to execute a conveyance if no partnership were involved and therefore the chain of title is preserved. Authority as among the partners is governed by the agreement or section 401, if there is no agreement. The rights of the partnership to recover unauthorized conveyances are governed by section 302(b)(2).

**RECOVERY OF PROPERTY WHERE PARTNERSHIP IS INDICATED**

In the case of transfers under both sections 302(a)(1) and 302(a)(2), the record will indicate either the existence of the specific partnership or a partnership in general. Therefore, the party receiving title to the property has been put on notice that a partnership is or may be involved in the transaction. For that reason, section 302(b)(1) allows the partnership to recover the property from that first transferee if the partnership proves that the transfer was unauthorized. The authority of the partner to transfer will be analyzed under sections 301 and 303, not under section 302. If the first transferee, however, retransferred the property to a purchaser for value, the partnership also must prove that the subsequent transferee knew or received a notification that the person executing the initial instrument of transfer lacked authority to bind the partnership. Therefore, in order to reach the property in the hands of a second transferee, the partnership must prove the transferee had actual knowledge or notification of a lack of authority, whether or not the transaction was within the or-

55. See id. § 302(a)(3).
56. See id. § 302(b)(1)(ii).
dinary scope of the partnership’s business. The theory behind the more forgiving treatment of the second transferee is that the second transferee would not be put on notice of the existence of a partnership when he or she reviews the documents by which the first transferee acquired the property and therefore should take free and clear of any claims of the partnership. For example, a preliminary title report ordinarily will reveal how the seller acquired title and if a partnership is mentioned. It would not reveal if the seller’s predecessor acquired title by a deed that mentions a partnership. If a purchaser reviewed a purchase receipt, bill of sale, or vehicle registration whereby the seller of personal property acquired title, it would reveal if a partnership was mentioned. There would be, however, no information regarding the seller’s predecessors in title. This is why no burden of inquiry is placed on the second transferee.

**RECOVERY OF PROPERTY WHERE A PARTNERSHIP IS NOT INDICATED**

Where title to partnership property is held in the name of individual partners with no indication of the existence of a partnership, there is nothing in the record, or on the face of the instrument of transfer, to put a third party on notice of any partnership involvement. In this situation the partnership may recover an unauthorized conveyance only if it proves, pursuant to section 302(b)(2), that the transferee knew or received notification both that the property was partnership property and that the person who executed the instrument of transfer lacked authority to bind the partnership. 58

**PARTNERSHIP CUT OFF BY AN INTERVENING BONA FIDE PURCHASER FOR VALUE**

In order to insure maximum reliability of the record of title, section 302(b)(3) provides that the partnership may not recover the property from any remote transferee if the partnership could not have recovered it from

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57. *Id.* § 302(b)(1).

58. Section 302(b)(2), combined with the omission of the old UPA § 9(3) laundry list of prohibited acts from § 301, is intended to reverse the result in Patel v. Patel, 260 Cal. Rptr. 255 (Cal. Ct. App. 1989). In *Patel*, title to the property was held in the name of a husband and wife who were partners in a partnership that included their son. The record, however, contained no mention of a partnership. Moreover, the partnership agreement required a unanimous approval of transfers of partnership property. The partnership property subsequently was conveyed without unanimous approval to a third party who had no notice of the existence of the partnership, let alone of any restriction on the authority of the partners to convey. The court denied the third party specific performance on the theory that § 9(3) of the UPA controlled over conflicting provisions in § 10(3). *Id.* at 257. Under RUPA, the transfer would be authorized under § 302(a)(3) and the property could be recovered by the partnership under § 302(b)(2) only if the partnership proved the transferee knew both that the property was partnership property and that the conveying partners lacked authority.
any mesne transferee. This is consistent with the policy expressed in the Uniform Fraudulent Transfer Act which protects a subsequent transferee of a bona fide purchaser for value. 59

**ONE REMAINING PARTNER**

Section 302(c) deals with transfer problems that arise when a partnership disappears through definitional failure, i.e., there are no longer the two or more persons having an interest in the partnership as required by section 202(a). In this case, section 302(c) provides that where a single person holds all of the partners' interests in the partnership, all partnership property vests in that person and that person may execute documents in the name of the partnership to confirm title in the individual partner. For this purpose, *partner's interest in the partnership* is defined in section 101(7) to mean all management, economic, or other interests in the partnership. Hence the merger of title occurs only when the sole remaining partner is the only one with any interest in the partnership. Note that under section 503(d), unless otherwise provided, a partner who transfers all of the partner's economic interests in the partnership retains all management and other interests.

**CHANGES FROM UPA**

Overall, the changes reflected in section 302 improve and simplify the old conveyancing rules under the UPA. For example, the policy of favoring third parties over partners is indicated by clearly shifting the burden of proof to the partnership in attacking partnership transactions. Under section 302(b), the burden is on the partnership to establish a lack of authority before it can recover property improperly transferred. Under UPA section 10(1), the burden arguably was on the third party to prove the transaction was properly authorized. Only where the transfer was in the name of the individual partners with no indication of the partnership, UPA section 10(3) placed the burden on the partnership. RUPA section 302(b) gives absolute protection to a bona fide purchaser for value who did not know or did not receive notification of the lack of authority. UPA section 10(2), which provided that a deed executed by a partner that was outside the chain of title passes equitable title, was deleted. With the clarification of the rules in section 302(a)(3), it was unnecessary to treat such a deed as anything other than a wild deed under normal state conveyancing law. Section 10(5) of the UPA—stating that a conveyance by all partners conveyed all of their interest in the property—was deleted as unnecessary and covered by state conveyancing laws.

PARTNERSHIP STATEMENTS

There has been uncertainty under the UPA in determining whether partners are authorized to enter into various transactions on behalf of a partnership. Many cumbersome practices were developed by third parties to protect themselves from claims of lack of authority. Many third parties require each and every partner to execute all documents in any significant transaction. In order to identify all partners and confirm their authority, partners often are required to produce copies of the partnership agreement and all amendments accompanied by affidavits attesting to their validity. These devices create personal liability for the partners providing the assurances. Some creditors require artificial devices such as the appointment of one or two partners as special agents or attorneys in fact of the partnership to execute documents. Even with all of these prophylactic measures, some uncertainty still exits. As a result, the drafter's of RUPA sought to provide increased certainty to third parties regarding partnership authority and to reduce reliance on cumbersome procedures to confirm authority. Moreover, with the shift of the authority and the transfer rules more in favor of third parties, it would be desirable to have a mechanism by which partners clearly could limit the authority of the other partners to effect certain types of partnership transactions.

In response, RUPA provides for a system of voluntary statements that will apply to property held in the name of the partnership. These statements operate only where the property in question is held in the name of the partnership because it is only in those situations where the necessary information for the proper operation of the system of statements is provided to third parties, i.e., both notification that a partnership is involved in the transaction and the name of the partnership so that a search of the appropriate record can be conducted.

Partnership statements serve three basic functions. First, they may serve as supplemental grants of authority to certain partners. Second, they may serve as a restriction on authority of certain partners. And third, they may serve as cancellations of or amendments to previously filed or recorded statements. Some or all of these functions may be served by a single statement. Basically a statement of partnership authority may be relied upon by third parties for supplemental grants of authority; however it must be recorded to be effective for real property transactions. Restrictions on authority do not provide constructive knowledge in transactions involving personal property, but they do provide constructive knowledge in

60. See RUPA § 204(b)(1), (2).
61. See id. § 303(d).
62. See id. § 303(a)(2).
63. See id. § 303(g).
64. See id. §§ 303(a)(2), 105(d).
transactions involving real property when they have been recorded in the land records.\(^6\)

California has enjoyed reasonable success with its statements of partnership.\(^66\) Its statutory scheme served as a starting point for the statements. The Report of the UPA Revision Subcommittee of the ABA Committee on Partnerships and Unincorporated Business Organizations recommended some sort of mandatory partnership filing.\(^67\) It seemed inappropriate, however, to require a filing for an entity that required no written agreement to form,\(^68\) and whose existence could be implied legally from certain facts and circumstances, even without the specific intent to form a partnership.\(^69\) Therefore, a voluntary system was developed. It is expected, however, that for significant transactions, such as loans or real estate transactions, the parties dealing with the partnership will insist upon the protection provided by the statement and require the partnership to make filings. As a result, it likely will become common practice for partnership property to be held in the name of the partnership with partnership statements employed by a majority of commercial partnerships.

**GRANT OF SUPPLEMENTAL AUTHORITY**

The basic statement for partnerships is the statement of partnership authority under section 303. The first substantive provision is section 303(d)(1), which provides that, except for transfers of real property, a grant of authority contained in a filed statement is conclusive in favor of a person who gives value without knowledge to the contrary. Section 303(d)(2) provides the basic rule for real property. A grant of authority to transfer real property held in the name of the partnership that is contained in a certified copy of a statement duly recorded in the real estate records is conclusive in favor of a person who gives value without knowledge to the contrary.\(^70\) This section is applicable only to transfers of partnership real property that are held in the name of the partnership.\(^71\) Authority for transfers of other partnership real property is governed by sections 301 and 302.

The conclusive presumption of a partner’s authority to enter into transactions on behalf of the partnership in real or personal property identified

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\(^{65}\) *Id.* § 303(e).

\(^{66}\) See CAL. CORP. CODE §§ 15010.5-15010.7 (West 1991).

\(^{67}\) UPA Revision Subcommittee of the Committee on Partnership and Unincorporated Businesses, *Should the Uniform Partnership Act Be Revised?*, 43 Bus. Law. 121, 139 (1987).

\(^{68}\) See RUPA § 101(5) ("Partnership Agreement means an agreement, written or oral, among the partners concerning the partnership.").

\(^{69}\) *Id.* § 202(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.").

\(^{70}\) *Id.* § 303(d)(2).

\(^{71}\) *Id.*
in a statement of partnership authority depends on two important matters. First, the transferee must not have knowledge of any lack of authority on the part of the partner entering into the transaction.\(^7\) Second, the grant of authority in the statement must be effective at the time of the transaction.\(^7\) This conclusive presumption is based upon the transferee not having "knowledge to the contrary."\(^7\) Under section 102(a), *knows* and *knowledge* are synonymous and mean actual knowledge or cognitive awareness. Therefore the only state of awareness that can defeat the conclusive grant of supplemental authority occurs when the transferee has actual knowledge, not notification or notice implied from the facts and circumstances, that the partner is not authorized.\(^7\) This is significant because, unlike section 301, receipt of a notification will not defeat the conclusive presumption. The proper way to attack the effectiveness of a statement is by a statement of denial,\(^7\) which carries its own consequences, such as perjury if untrue.\(^7\)

The supplemental grant of authority remains in effect only so long as a limitation on that authority has not been duly filed or, in the case of real property, duly filed and recorded.\(^7\) Certain statements can limit authority within the meaning of sections 303(d)(1) and 303(d)(2), such as a statement of denial under section 304, a statement of dissociation under section 704, or a statement of dissolution under section 805. Each of these may terminate the supplemental grant of authority, whether the limitation pre-dates or post-dates the supplemental grant.\(^7\) This rule is designed to prevent a battle of the statements where disputing partners each repeatedly disclaim the other partner's authority and proclaim their own renewed authority in seriatim filings.\(^7\) Where there is a limitation on file, it prevents a new supplemental grant of authority.\(^7\) In the event that a supplemental grant of authority and a limitation are both on file, then the supplemental grant and the conclusive presumption are nullified.\(^7\) This returns the

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72. See *id.* § 303(d).
73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.* § 304.
77. *Id.* § 105(c).
78. See *id.* § 303(d).
79. The statute states: "so long as and to the extent that a limitation on that authority is not then contained in another filed statement." *Id.* § 303(d)(1). The real property corollary states: "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." *Id.* § 303(d)(2).
80. See Working Group of the Drafting Committee to Revise the Unif. Partnership Act, Response to Comments on the Revised Unif. Partnership Act (1992) and Recommended Amendments § 303 cmt. 2 (June 1993).
81. RUPA § 303(d)(1), (2).
82. *Id.*
authority issue to the basic provisions in sections 301 and 302, and a partner's authority otherwise must be confirmed using the more cumbersome methods in effect today.83

Therefore, if a partner disputes the authority granted to another partner in a statement of partnership authority, he or she should file a statement of denial, which will remain effective until that same partner cancels the statement of denial.84 A cancellation of a limitation revives the original statement of partnership authority.85 This rule was adopted to facilitate settlements with dissident partners to allow transactions to go forward.

An exception to this anti-battle of the statements rule is that a new statement of partnership authority serves as an amendment of a pre-existing statement of partnership authority.86 Therefore a new statement of partnership authority does in fact override a limitation on authority in a previous statement of partnership authority. The requirement that at least two partners sign a statement of partnership authority combined with the requirement that any statement be declared to be true under penalty of perjury is a balance between ease of execution and protection against abuse.

LIMITATIONS ON AUTHORITY

The rules for the effect of limitations on a partner's authority contained in a statement of partnership authority are different from those that apply to grants of supplemental authority. For transactions involving the partnership's real property, section 303(e) provides that a person, not a partner, is deemed to know of a limitation on authority contained in a duly filed and recorded statement of partnership authority. In other words, a duly filed and recorded statement of partnership authority which contains a limitation on a partner's authority gives constructive knowledge of that partner's lack of authority to third parties in transfers of real property in the name of the partnership. In any other matter, except for dissociation and dissolution, a person, not a partner, is deemed not to know of a limitation in a duly filed statement.87 In transactions other than those

83. See supra text accompanying notes 60-69.
84. See RUPA § 105(d).
85. See id. § 303(d)(1): "A filed cancellation of a limitation on authority revives the previous grant of authority." See also id. § 303(d)(2): "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."
86. This result follows from a combination of several sections. First, RUPA § 105(d) provides that any statement may be amended. The only statements that are limitations for the purposes of § 303(d) and (e) are § 304 statements of denial, § 704(b) statements of dissociation, and § 805(b) statements of dissolution. Therefore, the only amendment to a statement that does not serve also as a limitation under § 303(d) and (e) is an amended statement of partnership authority.
87. See RUPA § 303(f).
involving real property in the name of the partnership, a filed statement
does not provide constructive knowledge of the partner's lack of au-
thority.\textsuperscript{88} If a copy of the statement containing the limitation on authority
(or any other document containing notice of the lack of authority), how-
ever, is delivered to the third party at the proper address, then the third
party will have received notification of the lack of authority and will be
unable to rely on that partner's authority under the general rule of section
301(1).\textsuperscript{89}

\textbf{REQUIREMENTS FOR PARTNERSHIP STATEMENTS}

Section 303 sets out several matters that must be included in statements
of partnership authority. The general rules regarding all statements are
found in section 105. The one mandatory substantive requirement is that
the statement of partnership authority must include the names of the
partners who are authorized to execute instruments transferring real prop-
erty held in the name of the partnership.\textsuperscript{90}

\textit{Chief Executive Office}

Under section 303(a)(1), the statement of partnership authority must
include the name of the partnership, the address of its chief executive
office and, if there is one, any office in the state of filing. The provision
requiring the identification of the chief executive office has two purposes.
First, it is the best place to contact the partnership if necessary. Second,
it identifies which state partnership law will govern the internal affairs of
the partnership under section 106, absent an agreement to the contrary.
Note that under section 105, filings of statements intended to affect au-
thority related to property and transactions in a state must be made in
the state where the property is located or the transaction takes place, and
the effect of the statement will be governed by the law of that state, not
the law governing the partnership's internal affairs.\textsuperscript{91}

\textit{Names and Addresses of Partners}

The statement of partnership authority also must include the names and
mailing addresses of all partners or the name of an agent who must main-
tain such a list.\textsuperscript{92} This is intended to assist third parties dealing with the
partnership in the identification of all the partners. Although under section
307 the partnership may be sued without naming the partners, a judgment

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{88} See id. § 303(b).
\item \textsuperscript{89} Id.
\item \textsuperscript{90} See id. § 303(a)(1)(iv).
\item \textsuperscript{91} Section 105 provides: "Either filing has the effect provided in this [Act] with respect
to partnership property located in or transactions that occur in this State." Id. § 105(a).
\item \textsuperscript{92} See id. § 303(a)(1)(iii).
\end{itemize}
\end{footnotesize}
against the partnership is not a judgment against the individual partners unless they have been named in the action.\textsuperscript{93} Hence, many actions still will name all the partners. Although this section has produced some questions, no compelling reason has been advanced why general partners, who have the general authority to bind the partnership and act in its behalf, should be allowed to keep their role secret. If a partner intends to have a secret role in the partnership, perhaps the partner should be a limited partner rather than a general partner.

\textbf{Dual Filing}

RUPA section 105 sets out the dual filing requirements for the system of statements. This dual filing system requires that, in order to be effective, all statements first must be filed with the office of the Secretary of State.\textsuperscript{94} In addition, certified copies of the statements related to real property also must be recorded in the real property records.\textsuperscript{95} It is important to emphasize that the only document that may be recorded effectively is a certified copy of the filing in the office of the Secretary of State. A second original or an uncertified copy will not be effective.\textsuperscript{96} This dual filing system is a compromise. A single filing with the Secretary of State originally was proposed. Many of the real estate lawyers involved in the drafting process, however, strongly believed that all documents affecting the authority of the partners executing transfers of real property should be recorded in the land records. The concept of separate and independent files in the Secretary of State's office and the land records was rejected because of the concern of having inconsistent records. Also, it was deemed desirable to have a central location where a creditor, or a publication assisting creditors, could obtain a complete file of all partnership statements. Hence, only certified copies of the statements filed with the Secretary of State may be recorded. Like all compromises, the dual filing system has drawbacks. In this case the primary cost is a sacrifice of simplicity. The statute is more complex than it otherwise would have been. The dual system requires extra effort and some built-in delay on the part of the filer who must make the initial filing, obtain a certified copy, and then record it in the real estate records. The separate recording in the real estate records seems unnecessary. It would not be a major hardship for the party checking real estate titles to check records other than the local recorder's office. That must be done now for corporate records, tax liens, and some judgments. This type of dual filing system, however, has operated in California

\textsuperscript{93} See id. § 307.
\textsuperscript{94} Id. § 105(a).
\textsuperscript{95} Id.
\textsuperscript{96} See id. § 105(b).
with respect to limited partnerships for a number of years without serious problems.97

**Execution of Statements**

Section 105(c) requires that statements filed on behalf of the partnership must be executed by at least two partners. Obviously, there is a concern for the possibility of fraud. This concern is balanced with the need for convenience in the execution of statements. Section 105(c) requires that individuals executing a statement, whether in an individual or a representative capacity, personally declare the contents of the statement to be accurate under penalty of perjury. This is an attempt to counterbalance the fraud concerns by introducing the criminal element of perjury. It should be noted that the California system of statements strikes a different balance. The primary function of the California statement is the identification of all partners in the partnership and therefore only two partners are required to sign statements of partnership.98 If the statement is intended also to provide constructive notice of a limitation on authority under California law, it must be executed by all partners.99 There have not been significant difficulties with these execution mechanics in California.

**Miscellaneous**

Section 105 also provides that any statement may be canceled or amended in the same manner as the original statement may be filed.100 Additionally, any partner filing a statement must send copies to all non-filing partners; however, a failure to send the copies does not affect the validity of the statement.101 Under section 303(g), a statement of partnership authority is canceled by operation of law five years after the statement, or the most recent amendment, was filed with the Secretary of State.

98. See id. § 15010.5.
99. See id. § 15010.7.
100. RUPA § 105(d).
101. 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 the statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

Id. § 105(e).
AUTHORITY OF PARTNERS AFTER DISSOCIATION

A GENERAL RULE

RUPA has the new concept of dissociation of a partner.\textsuperscript{102} Dissociation occurs whenever a partner leaves the partnership but the partnership does not dissolve under section 801.\textsuperscript{103} Dissociated partners are subject to a mandatory buyout under section 701.\textsuperscript{104} Under section 702, a dissociated partner continues to have authority to bind the partnership for a period of two years after the dissociation in transactions that meet the following requirements: (i) the transaction would have bound the partnership prior to the dissociation;\textsuperscript{105} (ii) the third party dealing with the partnership reasonably believed, at the time of entering into the transaction, that the dissociated partner was then a partner;\textsuperscript{106} and (iii) the third party did not have notice, or constructive notice under section 704(c), of the partner’s dissociation and, as to real property in the name of the partnership, was not deemed to have knowledge of the dissociation under section 303(e).\textsuperscript{107} There is no analogue to dissociation under the UPA.

STATEMENT OF DISSOCIATION

Section 704 provides for a statement of dissociation which may be filed either by the dissociated partner or the partnership.\textsuperscript{108} There is a benefit to each. For the partnership, the statement of dissociation provides constructive notice to all third parties, except those in a real property transaction relying upon a recorded statement of partnership authority, of the partner’s dissociation ninety days after it was filed with the Secretary of State and thereby terminates the dissociated partner’s authority to bind the partnership under section 702.\textsuperscript{109} From the dissociating partner’s point of view, that partner can cut off any continuing liability under section 703 effective ninety days after the statement was filed.\textsuperscript{110} Either can hasten this result by sending copies of the statement to partnership creditors that, when received, would provide notification of the partner’s dissociation to the creditors which in turn immediately would cut off authority under section 702 and liability under section 703.\textsuperscript{111} Like the dissolution section,

\textsuperscript{102} See generally id. §§ 601-603.
\textsuperscript{103} See id. § 601.
\textsuperscript{104} See id. §§ 603(a), 701.
\textsuperscript{105} Id. § 702(a).
\textsuperscript{106} Id. § 702(a)(1).
\textsuperscript{107} Id. § 702(a)(2), (3).
\textsuperscript{108} See id. § 704(a).
\textsuperscript{109} Id. § 704(c).
\textsuperscript{110} Id.
\textsuperscript{111} Id. §§ 702(a), 703(b).
section 704 relies on central filing to provide general notice to creditors rather than relying on a general publication requirement.112

**IMPACT ON STATEMENT OF PARTNERSHIP AUTHORITY**

A statement of dissociation filed with the Secretary of State immediately terminates a grant of supplemental authority to the dissociated partner113 and terminates the supplemental authority of that partner with respect to transfers of real property in the name of the partnership114 when a certified copy of the statement of dissociation is recorded in the real estate records.115

**AUTHORITY OF PARTNERS AFTER DISSOLUTION**

**A GENERAL RULE**

The rules in RUPA section 804 regarding a partner's ability to bind the partnership after dissolution are simple in comparison to the rules in UPA section 35. Under RUPA section 804(1), the partnership is bound by a partner's acts that are appropriate for winding up the partnership business or, under RUPA section 804(2), for acts that would have bound the partnership under section 301 before dissolution if the third party did not have notice of the dissolution. The requirement that a creditor previously must have extended credit or known of the partnership was dropped.116 Likewise the limit on post-dissolution liability for "silent" partners was deleted.117

**STATEMENT OF DISSOLUTION**

An important modernization comes in RUPA section 805, which provides for the filing of a statement of dissolution. The statement of dissolution is constructive notice to all third parties, except those involved in a real property transaction relying upon a recorded statement of partnership authority, of the dissolution of the partnership ninety days after it is filed with the Secretary of State.118 The statement can provide immediate actual notification of the dissolution when it is delivered to the

112. *Id.* § 704(a).
113. *Id.* § 303(d)(1).
114. *Id.* § 303(d)(2).
115. *See id.* § 704(b).
117. *See id.* § 35(2).
118. Section 805 provides: "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." *Id.* § 805(c).
partnership's creditors.119 Because the statement of dissolution provides constructive notice, creditors will be forced to check the record periodically. The ninety-day delay reduces the frequency of the required checks. Generally, creditors must check the Secretary of State's office. Creditors dealing with real property must check the land records. It is anticipated that commercial services will supply this information. This is a replacement for the protection afforded by publication in a newspaper of general circulation under UPA section 35(1)(b)(ii).

IMPACT ON STATEMENT OF PARTNERSHIP AUTHORITY

The statement of dissolution cancels any existing statement of partnership authority on file and serves as a limitation on future partnership authority under section 303(e).120 The statement of dissolution is effective to cancel a prior recorded statement of partnership authority only upon recordation. Under section 805(d), however, the dissolved partnership may file a new statement of partnership authority which conclusively confirms identified partners' supplemental authority to enter into transactions on behalf of the dissolved partnership. The filing of a new statement of partnership authority greatly facilitates the wind up of the partnership's business by relieving third parties from the burden of determining whether a particular transaction is appropriate for the winding up of the partnership's business. The partners, not the third parties, bear the risk of being bound to transactions not appropriate for the winding up of the partnership business. The other partners, however, would continue to have rights against the partners who exceed their authority under section 806(b).

It is important to realize that, until a certified copy of the statement of dissolution is recorded in the real estate records, a third party may continue to rely upon a supplemental grant of authority contained in a recorded statement of partnership, even more than ninety days after the filing of the statement of dissolution with the Secretary of State.121 This follows the policy that a transferee of real property in the name of the partnership should be able to rely completely upon the real estate records to determine authority in the transaction.

119. Id. § 102(e)(2).
120. Section 805 provides: "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)." Id. § 805(b).
121. This result is a combination of § 805(c), which limits the statement of dissolution to providing constructive or notice only under §§ 301 and 804, and § 303(d)(2), which provides that the grant of authority is conclusive unless the third party has actual knowledge (not notice) and remains in effect until a limitation is recorded in the land records.
CONCLUSION

The new partnership authority rules provide a simplification of the basic rules and shift the burden of unauthorized partnership transactions from the third party to the partnership. Partners are charged with knowing and policing their partners. To counterbalance this shift, a system of voluntary partnership filings is provided where property is held in the name of the partnership, allowing third parties to be certain of a partner's authority to bind the partnership and also allowing the partners to affirmatively restrict the authority of other partners in real estate transactions.