V. **January 9, 1992 Draft - Revised Uniform Partnership Act (RUPA)**

1. The January 9, 1992 Draft with changes. Styled by The Committee on Style; Eugene A. Burdick, Chairman; January 24, 1992.


   The history of NCCUSL in a *New York State Bar Journal* article, written by Richard B. Long, entitled "100 Years of Uniformity of Laws, the Story of the National Conference of Commissioners on Uniform State Laws".

3. January 21, 1992: Correspondence from Gerald V. Niesar to Dean Harry J. Haynesworth, 1V. *

   Commentary on the proposed Article 9 - Reorganization and specifically, the merger provision - § 901.

   Attached: a December 10, 1991 draft of Article 9.
   § 901 - Conversions
   § 902 - Mergers
   § 907 - Effect of this Act on Existing Partnerships

4. February 6, 1992: Correspondence from Lauris G. L. Rall to H. Lane Kneedler. *

   The Subcommittee discussed the following sections at length:

   § 801 - Events Causing Dissolution:
   Potential problems with the current state of the law were addressed, followed by recommendations to the dissolution provision. They focused primarily upon the default rules versus alteration by agreement regarding dissolution and dissociation of a partner.

   Attached: a proposed revised § 801 and a new § 806(a) to reflect the changes suggested by the Subcommittee.

   § 701 - Buyout
   Subcommittee suggested retaining the UPA notion of purchase of a partner's interest for "value" without attempting to establish parameters in the statute in determining value. They included a proposed new subsection of § 701 (b) and discussed potential problems in defining a value in the statute.

* Comment Letter to the RUPA Drafting Committee.
UNIFORM PARTNERSHIP ACT (199_)
ARTICLES 4, 6, 7, and 8

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

January 9, 1992, Draft

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.
DRAFTING COMMITTEE TO REVISE UNIFORM PARTNERSHIP ACT

H. LANE KNEEDLER, Office of Attorney General, 101 North Eighth Street, Richmond, VA 23219, Chair
GEORGE H. BUXTON, III, P.O. Box 5389, Oak Ridge, TN 37831
ROBERT H. CORNELL, Suite 3700, 525 Market Street, San Francisco, CA 94105
WILLIAM C. GARDNER, Superior Court, Room 3530, 500 Indiana Avenue, Washington, DC 20001
MENDES HERSHMAN, 20th Floor, 575 Madison Avenue, New York, NY 10022
THOMAS L. JONES, University of Alabama, School of Law, P.O. Box 5557, Tuscaloosa, AL 35486
MORRIS W. MACIEY, Suite 700, 133 Carnegie Way, N.W., Atlanta, GA 30303
FRANCIS J. PAVETTI, P.O. Box 829, Court House Square Building, New London, CT 06320
HAROLD E. READ, JR., 5631 East Desert Vista Trail, Cave Creek, AZ 85331
HOWARD J. SWIBEL, Suite 1200, 120 South Riverside Plaza, Chicago, IL 60606
M. GAY TAYLOR, Office of Legislative Research, 436 State Capitol, Salt Lake City, UT 84114
DONALD J. WEIDNER, Florida State University, College of Law, 425 West Jefferson Street, Tallahassee, FL 32306, Reporter
JOHN W. LARSON, Florida State University, College of Law, 425 West Jefferson Street, Tallahassee, FL 32306, Assistant Reporter
DWIGHT A. HAMILTON, Suite 600, 1600 Broadway, Denver, CO 80202, President (Member Ex Officio)
WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, Executive Director
K. KING BURNETT, P.O. Box 910, 115 Broad Street, Salisbury, MD 21803, Chair, Division A (Member Ex Officio)

Review Committee

JOHN FOX ARNOLD, 714 Locust Street, St. Louis, MO 63101, Chair
L. S. JERRY KURTZ, JR., 1050 Beech Lane, Anchorage, AK 99501
ROGER P. MORGAN, P.O. Box 588, Mystic, CT 06355

Copies of this Act and copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
676 North St. Clair Street, Suite 1700
Chicago, Illinois 60611
312/915-0195
ARTICLE 4

RELATIONS OF PARTNERS TO ONE ANOTHER

AND TO THE PARTNERSHIP

Section 401. Rules Determining Rights and Duties of Partner.

(a) The partnership shall credit each partner with an amount equal to the cash plus the value of any other property the partner contributes to the partnership.

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

(c) The partnership shall indemnify each partner in respect to payments reasonably made and personal 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) The partnership shall repay a partner who, in
aid of the partnership, makes any 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) is treated as 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 business of the partnership.

(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 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 the partnership may be decided by a majority of the partners. An act outside the ordinary course of business of the partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) A partner's right to a liquidating distribution is determined by the partner's capital account. A partner's capital account is increased by the partner's contributions and share of the profits and decreased by the
partner's distributions and share of the losses.

(*1) This section does not limit the obligations of a partnership to other persons under Section 301.

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

SECTION 403. RIGHTS OF PARTNER TO OBTAIN INFORMATION.

(a) A partnership shall keep its books and records, if any, at its principal place of business.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners access to books and records pertaining to the period they were partners. A partnership shall provide 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) A partnership, on demand, shall provide 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. LIMITED FIDUCIARY DUTIES OF PARTNER. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of good faith and fair dealing, the duty of loyalty, and the duty of care, as set
forth in this section.

(a) A partner has a duty of good faith and fair dealing towards the partnership and the other partners in all matters related to the formation, conduct, and liquidation of the partnership. The duty may not be eliminated by agreement, but the parties by agreement may identify specific conduct that does not violate the duty if the conduct is not manifestly unreasonable.

(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 without the informed consent of the other partners, from a transaction connected with the formation, conduct, or liquidation of the partnership or from a use by the partner of partnership property;
2. to refrain from dealing with the partnership as, or on behalf of, an adverse party without the informed consent of the other partners; and
3. to refrain from competing with the partnership without the informed consent of the other partners.

A partner does not violate either the duty of good faith and fair dealing or the duty of loyalty merely because the partner's conduct furthers the partner's individual interest. A partner may purchase, for the
partner's own account or otherwise, the assets of the
partnership in a foreclosure sale or upon liquidation of
the partnership.

A partner owes to the partnership and the

(4) A partner has the duty of care to act in the

conduct of the business of the partnership in a manner that
does not constitute gross negligence or willful misconduct.

An error in judgment or a failure to use ordinary skill and
care does not constitute gross negligence.

(6) This section applies to a person engaged in the

liquidation of the business of the partnership as the

personal or legal representative of the last surviving

partner as if the person were a partner.

SECTION 405. LIABILITY OF PARTNER TO PARTNERSHIP. A

partner is liable to the partnership for any breach of the

partnership agreement or other wrongful conduct.

SECTION 406. REMEDIES OF PARTNERSHIP AND PARTNERS.

(a) A partnership may maintain an action against a

partner for any breach of the partnership agreement or

other wrongful conduct.

(b) A partner may maintain an action for legal or

equitable relief, including an accounting as to partnership

business, to:

(1) enforce a right of the partner specified in

Section 401;

(2) enforce a right to obtain the fair market

value of the partnership cause a dissociating
partner's interest in the partnership to be purchased, as provided in Section 7021(a);

(3) compel a dissolution and winding up of the partnership business, as provided in Section 8021;

(4) enforce a right in connection with a dissolution and winding up of the partnership business, as provided in Article 8;

(45) enforce a right of the partner under the partnership agreement; or

(56) otherwise protect the rights and interests of the partner.

SECTION 407. CONTINUATION OF PARTNERSHIP BEYOND FIXED DEFINITE_TERM OR UNDERTAKING.

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

(b) A continuation of the business by the partners or such of them as habitually acted therein during the term or undertaking, without any settlement or liquidation of the partnership business, is prima facie evidence of an agreement that the business will not be wound up.

(c) The accrual of, and any time limitation on, a
right to an action for a remedy under this section shall be

governed by otherwise applicable law. A right to an
dissolution and winding up shall not
revive a claim otherwise barred by applicable law.
ARTICLE 6
PARTNER DISSOCIATION

Section 601. Events Causing Dissociation of Partner.
Section 602. Wrongful Dissociation.
Section 603. Effect of Dissociation on Partner's Existing Liability. [Moved to 703]
Section 603. Effect of Dissociation of a Partner. [New]
Section 604. Liability of Persons Continuing Business in Certain Cases. [Deleted]
Section 604. Continued Use of Partnership Name. [Old 810]

SECTION 601. EVENTS CAUSING DISSOCIATION OF PARTNER. A partner dissociates from a partnership upon the occurrence of any of the following:

1. Receipt of notice by the partnership of the partner's express will to withdraw as a partner, or upon the future date specified in the notice.

2. An event agreed to in the partnership agreement as resulting in the dissociation of the partner.

3. The expulsion of the partner in accordance with the partnership agreement.

4. The expulsion of a partner by the unanimous vote of the other partners if:
   a. on the ground that it is unlawful to carry on the partnership business with the expelled partner;
   b. because the partner has transferred, voluntarily or involuntarily, all or substantially all of the partner's entire transferable interest in the partnership to a transferee other than a secured party or judgment creditor who has not foreclosed the right of the
partner to redeem the interest transfer for security purposes or a charging order that has not been foreclosed, if the to a transferee who has not been admitted as a substituted partner; or

[Alternative: (ii) there has been a transfer of all or substantially all of the partner's transferable interest in the partnership other than the transfer of a security interest or a charging order that has not been foreclosed to a transferee who has not been admitted as a partner; or]

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

(iv) in the case of a partner that is a partnership, if an event causes the a dissolution and winding up of the business of that a partnership that is a partner.

(35) The expulsion of the partner by a court, on application by another partner, if it is determined that:

(i) the expelled partner has been guilty of engaged in conduct that tending to affect prejudicially the
carrying on of adversely and materially affects the partnership business; or

(ii) the expelled partner has wilfully or persistently committed a material breach of the partnership agreement or otherwise breached of a partnership duty to the other partners; or

(iii) the partner has engaged in conduct relating to the partnership's business that makes it not reasonably practicable to carry on the business in partnership with that partner.

(56) The partner's becoming a debtor in bankruptcy or executing an assignment for the benefit of creditors.

(62) In the case of a partner who is an individual:

(i) the death of the partner;

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

(iii) a judicial determination that the partner has become incapable of performing the partner's obligations under the partnership agreement.

(78) 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, the distribution by the trust of its entire transferable interest in the partnership, but not merely the substitution of a successor trustee.
(92) 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, the distribution of the estate's entire transferable interest in the partnership, but not merely the substitution of a new representative.

(910) In the case of a partner that is not an individual, partnership, corporation, trust, or estate, the termination of the partner.

SECTION 602. WRONGFUL DISSOCIATION.

(9a) A 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 specified definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) a partner withdraws by express will,

unless the withdrawal is authorized by subsection (2) or (3) of Section 801(a); a provision of this [Act] other than Section 601 or by the partnership agreement; or

(ii) a partner is expelled because the partner

by a court upon determination that:

(A) the partner has been guilty of engaged in conduct that tending to affect prejudicially the carrying on of adversely and materially affects the partnership business; or
(B) the partner has wilfully or persistently committed a material breach of the partnership agreement or otherwise breached of a partnership duty to the other partners; or

(C) the partner's conduct in matters relating to the partnership's business makes to the extent that it is not reasonably practicable to carry on the business in partnership with that partner; or

(iii) a partner who that is not an individual, a trust, other than a business trust, or an estate, is expelled or dissociated as a result of having wilfully caused its own termination or dissolution or termination.

(ab) A wrongfully dissociating partner who wrongfully dissociates is liable to the other partners and the partnership for damages caused by the dissociation. The liability is in addition to any other liability of the partner to the other partners or the partnership, including liability for any breach of the partnership agreement or other wrongful conduct.

[Moved to 703] SECTION 603. EFFECT OF DISSOCIATION ON PARTNER'S LIABILITY FOR PARTNERSHIP OBLIGATIONS.

(a) The dissociation of a partner does not by itself discharge the liability of a partner for an obligation of the partnership incurred before the dissociation.

(b) A partner who has dissociated is discharged from liability for an obligation of the partnership incurred
(b) A partner who has dissociated is discharged from liability for an obligation of the partnership incurred before the dissociation by an agreement to that effect between or among the partner, the partnership creditor, and the person continuing the business.

(c) If a creditor of the partnership who has notice of a dissociation, but not the consent of the dissociating partner, consents to a material alteration in the nature or time of payment of an obligation of the partnership incurred before the dissociation, the partner who has dissociated is discharged from the obligation.

SECTION 604. LIABILITY OF PERSONS CONTINUING BUSINESS IN CERTAIN CASES. Unless otherwise agreed or provided in this [Act], relationships between a partnership and its creditors are not affected by the dissociation of a partner or by the addition of a new partner.

SECTION 603. EFFECT OF DISSOCIATION OF A PARTNER. Upon dissociation of a partner, that partner's interest in the partnership must be purchased under Article 7 unless there is a dissolution and winding up of the partnership business under Article 8.

SECTION 610604. CONTINUED USE OF PARTNERSHIP NAME. The use by a person continuing the business of the partnership name, or the name of a deceased dissociating partner as part thereof, by a person continuing the business does not of itself make the separate property of the deceased
dissociating partner liable for any debt or obligation of that the person continuing the business.
ARTICLE 7

BUYOUT PURCHASE OF PARTNER'S INTEREST

Section 701. Buyout of Person Who Dissociates Purchase of
Dissociating Partner's Interest When
Partnership Business Is Not Wound Up.

Section 702. Power of Dissociating Partner to Bind
Partnership and Liability to Other Persons
If Dissociation Does Not Cause Winding up of
When Business Not Wound Up.

Section 6703. Effect of Dissociation on Partner's
Liability of Dissociating Partner for
Partnership Obligations When Business Not
Wound Up.

SECTION 701. BUYOUT OF PERSON WHO DISSOCIATES PURCHASE
OF DISSOCIATING PARTNER'S INTEREST WHEN PARTNERSHIP
BUSINESS IS NOT WOUND UP.

(a) If a person partner dissociates from a
partnership pursuant to Section 601, but no event causes a
dissolution and winding up of the partnership business
under Section 802, the partnership shall cause the interest
of the person who dissociates dissociating partner to be
purchased for its fair market value a purchase price
pursuant to
determined as provided in subsection (b).

(b) The fair market value purchase price of the
dissociating partner's interest of the dissociated person
is determined as of the time of the event causing
dissociation. Fair market value of the person's The
purchase price of the dissociating partner's interest is
the amount that would have been distributable to that
The purchase price of the dissociating partner's interest is the amount that would have been distributable to that partner if the partnership business had been wound up at the time of the event causing dissociation and is determined as of that time. In determining that amount, the assets of the partnership are valued at the greater of liquidation value or value based on sale of the entire business as a going concern without the dissociating partner. In either case, the determination valuation must be made on the basis of the price 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) The amount owing to the dissociating partner under this section shall be offset by any damages for wrongful dissociation, as provided in Section 602(b), and all other amounts owing, whether or not presently due, from the dissociating partner to the partnership.

(ed) The partnership shall indemnify the dissociating partner against all present and future liabilities, except for liabilities that are unknown to the partnership.
than to the dissociating partner] and were caused by the
dissociating partner that have been taken into account to
determine the amount paid for the partnership interest.

[Alternative: A partnership must indemnify a dissociating
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 dissociating partner pursuant to
Section 702(a). For purposes of this section, the
dissociating partner's knowledge of a partnership liability
is not imputed to the partnership.]

(de) If no agreement for the purchase of the
interest of a dissociating partner is reached within 90-120
days after a demand for payment, either the departing
dissociating partner or the partnership may maintain an
action to determine the amount due the partnership shall
pay, or cause to be paid, in cash to the dissociating
partner the net amount the partnership estimates to be the
purchase price, plus accrued interest. The payment must be
accompanied by a statement of partnership liabilities as of
the date of dissociation and a written notice stating that
the payment will be deemed in full satisfaction of the
purchase obligation unless, within 120 days of the notice,
the dissociating partner commences an action to determine
the purchase price or other terms of the purchase.
obligation. If a deferred payment is authorized under subsection (g), in lieu of a cash payment, the partnership may tender a written offer to pay the net amount it estimates to be the purchase price, the time of payment, the amount and type of security, and the other terms and conditions of the deferred payment obligation.

(f) If the court determines the amount due, it shall order the partnership to cause the purchase of the interest of the departing dissociating partner and enter judgment accordingly. A dissociating partner may commence an action to determine the purchase price of the dissociating partner's partnership interest or other terms of the purchase obligation, as provided in Section 406.1, within 120 days after receipt of payment from the partnership as provided in subsection (e) or (f) within 120 days after demand if no payment is received. The court shall determine the purchase price of the dissociating partner's interest and the net amount due to or from the dissociating partner and shall enter judgment for any additional payment or refund. If deferred payment is authorized pursuant to subsection (g), the court shall also determine the security and other terms of the purchase obligation and enter judgment accordingly. The court may assess the fees and expenses of counsel and appraisers or other experts for a party to the action, in amounts the court finds equitable, against any other party, if the
court finds that the other party has acted arbitrarily, vexatiously or not in good faith.

(g) A partner who wrongfully dissociates before the expiration of a specified definite term or the completion of a definite undertaking need not be paid any portion of the value of the partner's interest purchase price before 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.

[Alternative: Payment of the purchase price to a partner who wrongfully dissociates before the expiration of a definite term or the completion of a definite undertaking may be deferred until after the expiration of the term or completion of the undertaking. The court may order earlier payment of any or all of the purchase price if the wrongfully dissociating partner establishes that earlier payment will not cause undue hardship to the business of the partnership.] Any deferred payments must be adequately secured and bear interest.

SECTION 702. POWER OF DISSOCIATING PARTNER TO BIND PARTNERSHIP AND LIABILITY TO OTHER PERSONS IF DISSOLUTION DOES NOT CAUSE WINDING-UP OF WHEN BUSINESS NOT WOUND UP.

(a) Except as provided in this section, after a person partner dissociates pursuant to Section 601 without causing a dissolution and winding up of the partnership
business windup under Section 802, the person dissociating partner is neither personally liable as a partner for any partnership liability incurred, nor empowered to bind the partnership, after the dissociation, unless the transaction is one that would bind the partnership before dissociation under Section 301. The dissociating person partner is liable, and empowered to bind the partnership, for transactions entered into within two years after the dissociation if the other party to the transaction did not have notice of the dissociation and either:

(1) had extended credit to the partnership within two years before the dissociation; or

(2) had known, before the dissociation, that the person was a partner and the dissociation had not been advertised, prior to the time the liability was incurred, in a newspaper of general circulation in each place at which the partnership business was regularly carried on.

(b) The liability of a dissociating person partner under this section must be satisfied out of partnership assets alone if the dissociating partner, before the dissociation, was:

(1) unknown as a partner to the person with whom the contract is made; and

(2) so far unknown and inactive in partnership affairs that the business reputation of the partnership
could not be said to have been in any degree due to the
dissociating partner's connection with it.

[Alternative: SECTION 702. POWER OF DISSOCIATING PARTNER
TO BIND PARTNERSHIP WHEN BUSINESS NOT WOUND UP.

(a) Subject to subsection (c), a partner who
dissociates pursuant to Section 601 without causing a
dissolution and winding up of the partnership business may
bind the partnership, after the dissociation, by any act
that would have bound the partnership under Section 301 if
the dissociated partner were not dissociated at the time of
the act, if the person with whom the dissociated partner is
dealing reasonably believes, at the time of the act, that
the dissociated partner is a partner.

(b) Subject to subsection (c), a partner who
dissociates pursuant to Section 601 without causing a
dissolution and winding up of the partnership business
shall be liable for any liability incurred by the
partnership under subsection (a).

(c) A dissociating partner or the partnership may
execute and file, in the office of [the Secretary of
State], a statement that the partner is dissociated from
the partnership. The partnership shall not be liable under
subsection (a), and the dissociated partner shall not be
liable under subsection (b), if a statement of dissolution
is filed at least two years before the act or before the
liability is incurred.
(d) A person who receives from a partnership a written statement of the names of all persons who are partners on the date of the statement is deemed reasonably to believe that a person who is not named as a partner is not in fact a partner on the date of the statement, in the absence of knowledge to the contrary.

SECTION 6703. EFFECT OF DISSOCIATION ON PARTNER'S LIABILITY OF DISSOCIATING PARTNER FOR PARTNERSHIP OBLIGATIONS WHEN BUSINESS NOT WOUND UP.

(a) The dissociation of a partner does not by itself discharge the liability of a the partner for an obligation of the partnership incurred before the dissociation.

(b) A dissociating partner who has dissociated is discharged released from liability for an partnership obligation of the partnership incurred before the dissociation by an agreement to that effect between or among the dissociating partner, the partnership creditor, and the person partners continuing the business.

(c) If a partnership creditor of a partnership who has with notice of a dissociation, but not without the consent of the dissociating partner, consents to a material alteration in the nature or time of payment of an partnership obligation of the partnership incurred before the dissociation, the dissociating partner who has dissociated is discharged released from liability for the obligation.
ARTICLE 8

WINDING UP PARTNERSHIP BUSINESS

Section 801. Events Causing Dissolution and Winding Up of Partnership Business.

Section 802. Winding Up Partnership Business.

Section 803. Authority to Wind Up Partnership Business.

Section 804. Power of Partner to Bind Partnership to Other Persons After Dissolution.

Section 805. Statement of Dissolution.

Section 8056. Liability of Partner to Other Partners After Dissolution.

Section 8067. Distribution of Assets upon Winding Up of Partnership Business.

Section 8021. EVENTS CAUSING DISSOLUTION AND WINDING UP OF PARTNERSHIP BUSINESS.

(a) Except as provided in subsection (b), the dissolution of a partnership occurs if the partnership's business is dissolved and its business must be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, upon receipt by the partnership of notice from a partner (not then otherwise dissociated under Section 601) of the partner's express will to withdraw as a partner or to wind up the partnership, or upon the on a future date specified in the notice.

[Alternative A: (1) Within 90 days of the dissociation of a partner under Section 601, by the express will of a majority of the remaining partners. If any remaining partner elects within the 90 days to dissociate from the...
partnership under Section 601(1), the dissociation is not wrongful for purposes of Section 602.]

[Alternative B: (1) In a partnership at will, the expiration of 90 days after the partnership has received notice from a partner, if not then otherwise dissociated under Section 601(1) of the partner's express will to withdraw as a partner or to wind up the partnership business, or at a future date specified in the notice.]

(2) In a partnership for a definite term or undertaking, if a partner wrongfully dissociates, upon receipt by the partnership of notice, within 90 days after the a partner's wrongful dissociation, or any other partner's express will that to withdraw or to wind up the partnership business be wound-up.

(3) In a partnership for a definite term or undertaking, if a partner dissociates by death or otherwise pursuant to Sections 601(5), (6), (7), (8) or (9), upon receipt by the partnership of notice, within 90 days after the dissociation of a partner by death or otherwise pursuant to Sections 601(5), (6), (7), (8) or (9), of any other partner's express will that to withdraw or to wind up the partnership business be wound-up.

(4) In a partnership for a definite term or undertaking, if a partner's transferable interest has been assigned pursuant to Section 503 or charged for a partner's separate debts under Section 504, by the express will of
all the partners, except those whose have transferred all
or substantially all of their transferable interests have
been assigned or charged in the partnership other than a
transfer for security purposes or a charging order that has
not been foreclosed) [Alternative: other than the transfer
of a security interest or a charging order that has not
been foreclosed].

(75) An event agreed to in the partnership
agreement requiring the resulting in the dissolution and
winding up of the partnership business unless all the
partners agree to the contrary. If there is unanimous
agreement, the partnership agreement shall be deemed
amended retroactively to provide that the event does not
result in the dissolution and winding up of the partnership
business.

(76) In a partnership for a definite term or
undertaking, the termination expiration of the term or the
completion of the undertaking unless all the partners
agree to the contrary. If there is unanimous agreement,
the partnership agreement shall be deemed amended
retroactively to provide that the termination or completion
does not result in the dissolution and winding up of the
partnership business.

(67) An event that makes it unlawful for all or
substantially all of the business of the partnership to be
continued, but any 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.

If

(98) When a court, on application by a partner,
decrees that:

(i) the economic purpose of the partnership is
likely to be unreasonably frustrated;

(ii) a partner's conduct in matters relating
to the partnership business is such that it is 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.

(52) When a court, on application by a person who
becomes an assignee transferee of a partner's transferable
interest under Section 503 or 504, decrees that it is
equitable to wind up the partnership business:

(i) after the termination of the term or

completion of the undertaking, if the partnership was for a
definite term or undertaking; or

(ii) at any time, if the partnership was a
partnership at will when the transferable interest was
assigned or when at the time of the transfer or the
charging order was issued.
(b) Within 90 days after receipt of the notice to by
the partnership under subsection (a)(1), (a)(2), or (a)(3),
the partner who gave the notice may expressly revoke the
notice, accept an offer agree to the purchase of the
partner's partnership interest by the partnership or a
nonwithdrawing partner to purchase his partnership
interest, or otherwise expressly consent to the avoidance
of avoid the dissolution and winding up of the partnership
business. If all the partnership agrees to the
revocation, purchase, or consent, it relates back and takes
effect as of the date of the notice was received for
purposes of this section and the partnership resumes
carrying on its business as if dissolution had never
occurred.

[Alternative C: (b) A partnership is not dissolved until
the expiration of 90 days after receipt of a notice to the
partnership under subsection (a)(1), (a)(2) or (a)(3), and
its business may be continued for 90 days as if no notice
were received. If, within 90 days, the partner who gave
the notice expressly revokes it, agrees to the purchase of
the partner's [his or her] partnership interest by the
partnership or a nonwithdrawing partner, or otherwise
expressly consents to the continuation of the partnership
business without a winding up, the nonwithdrawing partners
may, by unanimous consent, continue the partnership
business without a dissolution. If, within 90 days after
receipt of the notice, there is no revocation, purchase, or
consent to continue the business, the partnership is
dissolved and its business shall be wound up.

SECTION 8032. WINDING UP PARTNERSHIP BUSINESS.

(a) SECTION 8031. WHEN PARTNERSHIP IS DISSOLVED.

A partnership is dissolved only when an event occurs which
causes a winding up of its business under Section 8032. On
dissolution, the partnership is not terminated, but
continues until the winding up of partnership business
is completed, at which time the partnership is terminated.

(b) If an event causes a winding up of the
partnership business, the assets of the partnership must be
applied to discharge its liabilities, and any surplus must
be applied to pay in cash the net amount distributable to
the each partners.

SECTION 8033. WHO MAY AUTHORITY TO WIND UP.

(a) The partners who have not wrongfully caused a
winding up dissociated may wind up the partnership
business, but the [designate the appropriate court] court
may, for good cause, wind up the partnership business upon
application of any partner, partner's legal representative, or assignee transferee.

(b) The legal representative of the last surviving
partner may wind up the partnership business.

(c) A person winding up a partnership's business, in
the name of, and for and on behalf of, the partnership, may
preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend suits, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and convey the partnership's property, discharge the partnership's liabilities, distribute to the partners any remaining the assets of the partnership in accordance with Section 806, and perform other necessary acts.

SECTION 804. POWER OF PARTNER TO BIND PARTNERSHIP TO OTHER PERSONS AFTER EVENT CAUSES WINDING-UP DISSOLUTION.

(a) After the occurrence of an event that causes a dissolution and winding up of the partnership business, a partner can bind the partnership [Alternative: a partnership is bound]:

1. (1) by any act appropriate for winding up the partnership business; and

2. (2) by any transaction that would bind the partnership under Section 301 if the winding up had not been caused, unless the other party to the transaction has notice of the winding up.

(b) This section does not affect the liability under Section 308 of a person who, after an event causing a dissolution and winding up, purports to be a partner or consents to being represented by another as a partner in a partnership engaged in carrying on business.
[Alternative: (a) Except as provided in subsection (c), after the occurrence of an event that causes a dissolution and winding up of the partnership business, a partner can bind the partnership:

(1) by any act appropriate for winding up partnership business; and

(2) by any transaction that would bind the partnership under Section 301 if the winding up had not been caused, unless the other party to the transaction had notice of the winding up and:

(i) had extended credit to the partnership within two years before the event causing the winding up; or

(ii) knew of the partnership before the event causing the winding up and the fact of winding up had not been advertised in a newspaper of general circulation in each place in which the partnership business was regularly carried on.

(b) The liability of a partner under subsection (a)(2) must be satisfied out of partnership assets alone when the partner, before the event causing the winding up, was:

(1) unknown as a partner to the person with whom the contract was made; and

(2) so far unknown and inactive in partnership business that the business reputation of the partnership
could not be said to have been in any degree due to the partner's connection with it.

(c) This section does not affect the liability under Section 308 of a person who after an event causing a dissolution and winding up purports to be a partner or consents to being represented by another as a partner in a partnership engaged in carrying on business.

SECTION 805. STATEMENT OF DISSOLUTION.

(a) A partnership may execute and file, in the office of [the Secretary of State], a statement that the partnership has dissolved and is winding up its business.

(b) If no statement of partnership authority is filed and in effect, a statement of dissolution must meet the requirements of Section 303 for execution of an original statement of partnership authority; otherwise, it must meet the requirements of Section 303 for an amendment to a statement of partnership authority.

(c) Unless otherwise stated in a statement of dissolution, it does not amend a grant of authority or a restriction on authority in an existing statement of partnership authority except to limit the grant of authority to acts appropriate for winding up the partnership business.

(d) A statement of dissolution has the same effect as a statement of partnership authority, except that two years after it is filed with [the Secretary of State] the
statement of dissolution is deemed conclusive notice that
the partnership has dissolved and its business is being
wound up.

SECTION 8056. LIABILITY OF PARTNER TO OTHER PARTNERS
AFTER EVENT-CAUSES-WINDING-UP DISSOLUTION.

(a) Except as provided in subsection (b), each
partner is liable to the other partners for the partner's
share of any liability binding the partnership by an act of
a partner after the occurrence of an event causing that
causes a dissolution and winding up of the partnership
business if:

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

(2) the act binds the partnership under Section
804(a)(2).

(b) A partner is not liable to another partner who,
with knowledge of the winding up, binds the partnership
under Section 804(a)(2) in a transaction that is not
appropriate for winding up the partnership business.

SECTION 807. DISTRIBUTION OF ASSETS UPON WINDING-UP
SETTLEMENT OF ACCOUNTS AMONG PARTNERS.

(a) Upon winding up the partnership business, each
partner shall have the right to a settlement of all
partnership accounts.

(b) In settling accounts between among the partners
upon winding up the partnership business:
(1) The assets of the partnership shall be applied in the following order:

(i) to creditors, including partners who are creditors, in satisfaction of liabilities of the partnership; and

(ii) to partners, in accordance with their right to distributions.

(2) Partnership assets shall be applied to satisfy partnership liabilities before partners are required to make additional contributions.

(3) The partners shall contribute, as provided by Section 401(b), the amount necessary to satisfy the liabilities. If any partner fails to contribute, the other partners shall contribute their share of the liabilities and, in the relative proportions in which they share the losses, the additional amount necessary to pay the liabilities.

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

(5) A partner, or partner's legal representative or assignee, may recover any contributions the partner made under subsection (3), to the extent the amount exceeded the
partner's share of the liability under the partnership agreement.

(6) The estate of a deceased partner is liable for the contributions specified in subsection (3).

SECTION 808. ACCRUAL OF ACTIONS. The right to an account of a partnership interest accrues to a partner or partner's legal representative or transferee, as against the winding-up partners or the surviving partners or the person or partnership continuing the business, at the date of dissociation. The right to an account upon the dissociation of a partner is independent of any right to account under Section 406.

SECTION 809. FRAUDULENT TRANSFERS. This Article does not modify any right of creditors to set aside an assignment on the ground of fraud.

SECTION 810. CONTINUED USE OF PARTNERSHIP NAME. The use by a person continuing the business of the partnership name, or the name of a deceased partner as part thereof, does not of itself make the separate property of the deceased partner liable for any debt or obligation of that person.
January 21, 1992

John H. Small, Esq.
Prickett, Jones, Elliott
Kristol & Schnee
1310 King Street
P.O. Box 1328
Wilmington, Delaware 19899

Re: NCCUSL

Dear John:

I saw the enclosed article in the current issue of the New York State Bar Journal (I remain a member of the New York Bar) on the history of NCCUSL and thought you and some of our RUPA colleagues might find it of interest.

Best regards.

Very truly yours,

NORRIS, MCLAUGHLIN & MARCUS

PDH/gmr
Enclosure
cc: Dean Harry Haynsworth W/Encl.
Allan Donn, Esq. W/Encl.
Gerald Niesar, Esq. W/Encl.
Lauria G. Rall, Esq. W/Encl.
100 Years of Uniformity of Laws, the Story of the National Conference of Commissioners on Uniform State Laws

"Law must be stable, and yet it cannot stand still," observed Roscoe Pound. The Commissioners on Uniform State Laws are dedicated to seeing that the Law's growth is both stable and progressive. In this article a distinguished trial advocate and member of the Commission recounts the impressive one-hundred-year record of that hard-working organization.

One hundred years ago the states and the legal profession began a unique partnership called the National Conference of Commissioners on Uniform State Laws. Delegates from seven states gathered at the Grand Union Hotel in Saratoga Springs, New York, on August 24, 1892 for the first meeting of the "Conference of State Boards of Commissioners on Promoting Uniformity of Law in the U.S." Not since the framers of the Constitution met in Philadelphia 104 years earlier had representatives from several states assembled outside of the halls of Congress for the purpose of encouraging interstate cooperation. The report of this first conference states with pardonable immodesty: "It is probably not too much to say that this is the most important juristic work undertaken in the United States since the adoption of the Federal Constitution."

Need for Uniformity Recognized

The events leading up to this epochal meeting in Upstate New York deserve review. One of the underlying principles of the drafters of the U.S. Constitution, embodied in the Tenth Amendment (which celebrated its centennial in 1891), was that all powers not specifically delegated to the Federal Government were reserved to the states. While this laudable reservation of power to the states was an indispensable feature of our federal system of government, inherent within it was the possibility of diverse legislative enactments by different states on the same subject, leading to confusion in those areas common to all jurisdictions.

When the American Bar Association was organized in 1878, also at Saratoga Springs, New York, one of its stated objectives was to promote "uniformity of legislation throughout the Union," a union at that time consisting of 38 states.

The Alabama Bar Association was the first state bar to take formal action to encourage the development of uniform laws, creating a committee in 1881 to examine the law for the purpose of making recommendations about uniformity between states. The need for uniformity was particularly acute in the areas of commerce, marriage and divorce, insolvency, real property, and weights and measures. In those days commercial paper tendered in Tennessee was unlike that in New York, California or Kentucky. The laws regarding conveyance of real estate differed in every state in the Union. It may come as a surprise today to learn that, with the exception of wheat, the legal weights of a bushel varied in every state.

New York State Takes the Lead

In 1890, New York Legislator Albert E. Henschel secured the passage of a Legislative Resolution providing for the appointment by the Governor of three Commissioners:

To examine the subject of marriage and divorce, insolvency, the form of notarial certificates, and other subjects; and to ascertain the best means to effect an assimilation and uniformity in the laws of the states, and especially to consider whether it would be wise and practicable for the State of New York to invite other states of the Union to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several states...

In 1892 New York Governor Roswell Flower appointed the first three Commissioners on Uniform

Six other states, Delaware, Georgia, Massachusetts, Michigan, New Jersey and Pennsylvania, joined the New York Commissioners in Saratoga Springs in that momentous August 1892 meeting of what was to become the National Conference of Commissioners on Uniform State Laws. This body now celebrates a 100 year tradition of excellence.

The Early Years

The first Conference of Commissioners on Uniform State Laws elected New York's Henry Beekman as its first Chairman, then wasted no time proposing specific uniform acts for adoption by the states. The Commissioners completed acts relating to Acknowledgements on Written Instruments, Validating Wills Lawfully Executed Without the State, and Recognizing as Valid Wills Probated in Another State.

In 1893 committees were appointed to draft laws on Wills, marriage and divorce, and descent and distribution.

A momentous first step was taken in 1895 that would lead a half century later to development of the flagship of all uniform state laws, the Uniform Commercial Code, with the formation of a Committee on Commercial Law and the drafting of a Negotiable Instruments Law. The Negotiable Instruments Law was the first uniform law to be adopted by New York and the very first to be adopted by every state, territory and the District of Columbia.

By 1900 thirty-three states and two territories had appointed Commissioners. By 1910 Nevada and the territory of Alaska were the only holdouts. Two years later they came on board. The present name, National Conference of Commissioners on Uniform State Laws (NCCUSL)—with a name like that it must be useful—was adopted in 1915.

Key Enactments

Throughout its 100 years of service, the National Conference has responded to the needs of the times. During the first decade of the 20th century, following the advent of the automobile, Uniform Law Commissioners concentrated on Acts to facilitate interstate commerce, and drafted laws concerning sales, warehousing, and transportation. In its third decade, the Conference adopted legislative proposals on issues ranging from partnerships to child labor. In the 1920s NCCUSL concentrated on such problem areas as aviation and public utilities, and in the 1930s wrestled with machine gun laws, torts and trusts.

In 1940 a decision was made to launch the mammoth project that ultimately produced the Uniform Commercial Code (UCC). Then Conference President William Schrader of Pennsylvania characterized this project as "...the most important and the most far-reaching project on which the Conference has ever embarked." After a decade of effort, aided by the American Law Institute (ALI), the Uniform Commercial Code was offered to the states for consideration. By 1967 all of the states except for Louisiana, the lone holdout on several Code provisions, had enacted the UCC.

In the years that followed uniformity was achieved in virtually every state and territory by adoption of Uniform State Law proposals covering a wide range of topics. Some of the best known Acts are: Anatomical Gifts, Attendance of Out-of-State Witnesses, Child Custody Jurisdiction, Reciprocal Enforcement of Support, Durable Powers of Attorney, Simultaneous Death, Arbitration, Limited Partnership, Controlled Substances and Enforcement of Foreign Judgments.

The State of New York, during its long history as a member of the National Conference, has adopted 54 Uniform and Model Acts including most of those just listed.

Who Are Commissioners and How Are They Appointed

Commissioners are appointed by all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Although most states have at least three Commissioners, the number and method of appointment varies from state to state. Commissioners receive no salaries or fees for their work with the Conference and often are not fully reimbursed for travel and living expenses while attending the mandatory Annual Conference.

In New York, as in many states, the Governor is responsible for appointments, and the selection is usually nonpartisan. New York
Executive Law § 165 provides in part:

The commission...shall consist of five members appointed by the governor. The members shall hold office and may be removed at the pleasure of the governor. The commission shall serve without compensation, but each commissioner shall be entitled to receive his actual disbursements for his expenses in performing the duties of his office.

Despite that statutory mandate, New York Commissioners routinely pay a portion of their own expenses to attend the Annual Conference.

In this century, Woodrow Wilson served as a Commissioner. This, of course, was before his more notable political prominence as President of the United States. U.S. Supreme Court Justices Brandeis, Rutledge and Rehnquist have served as Commissioners as have such law school legends as Roscoe Pound, George Bogert, Samuel Williston, John Wigmore and William Prosser.

Currently, the National Conference includes 278 law school deans and professors, judges, state legislators and practicing attorneys.

Commissioners from New York

During its century of participation, New York has had 28 Commissioners on Uniform State Laws. The list includes Professors George Bogert, Robert S. Stevens, and Arthur E. Sutherland, Jr.; Judges Francis Bergan and Sol Rosenblatt, and attorneys Henry S. Fraser, Edward Ward McMahon, Alfred Buerger and Charles Thaddeus Terry. Commissioner Terry served the Conference as Secretary from 1906 to 1912 and as President from 1912 to 1915.

The current New York Commissioners are: Mendes Hershman, Chairman of the New York Delegation and General Counsel to the New York City Law Firm of Rosenman & Colin (since 1978), Professor William E. Hogan, New York University School of Law (since 1983), and Professor Robert A. Pincus, New York University School of Law (since 1980).
New York State Bar Journal January 1992

1974), Richard B. Long, Partner in the Binghamton Law Firm of Coughlin & Gerhart (since 1981); Justin L. Vigdor, former President of the New York State Bar Association and Partner in the Rochester Law Firm of Mousaw, Vigdor, Reeves, Heilbronner & Kroll (since 1989), and James A. Yates, Counsel to the Speaker of The Assembly (since 1989).

How Uniform Laws Come to Be

NCCUSLs reputation has been built on the high quality of its Uniform Acts. This results from a procedure structured to bring a unique blend of legal minds to bear on a particular problem.

Chief Justice William H. Rehnquist in his Foreword to the recently published "A Centennial History of the National Conference of Commissioners on Uniform State Laws" by former Commissioner Walter P. Armstrong, Jr., observed:

Some of the commissioners were practicing lawyers and legal academics of national reputation, but the majority of us who did not fit that description never hesitated to contribute our two cents' worth. The debates testified to the ability of thoughtful practitioners, usually without any expertise in the field under study, to carefully analyze and discuss the merits of a pending proposal. I have seen many deliberative bodies before and since, but in none were the discussions of the same high quality.

Initially, the Scope and Program Committee considers whether a need exists for a "Uniform Act" which every state will be urged to adopt, or a "Model Act" to guide legislatures dealing with issues that do not require uniformity. The Uniform Act begins with the selection of a Drafting Committee whose members are chosen to ensure that a blend of expertise and diverse view points will be represented at the drafting table. Thus, for example, the committee that drafted the real estate package which includes the Uniform Land Transactions Act, Uniform Simplification of Land Transfers Act, Uniform Condominium Act, and Uniform Planned Community Act included Commissioners who were law school professors, and practicing attorneys specializing in real estate law. Outside experts representing associations of lenders, builders, sellers, lawyers and consumers were invited to provide the Drafting Committee with specialized knowledge.

Preliminary drafts of proposed Acts are circulated within the Drafting Committee. Eventually, after numerous committee meetings, the Drafting Committee presents its work at an Annual Meeting of the Conference for "initial consideration" by all Commissioners.

Commissioners assemble annually for a week, usually just before the summer ABA meeting, spending every day and some nights considering each "tentative draft" prepared by the Drafting Committees. On average at least 10 proposed Acts are considered at an Annual Meeting. Drafts are read "line by line," discussed, debated and revised. A draft rarely leaves the Annual Meeting without significant revision. Since the National Conference is a confederation of state commissions on uniform laws, close issues are decided by polling state delegations. Each state has one vote, regardless of the number of Commissioners from that state.

Proposed Acts are subjected to this rigorous process for at least two annual Meetings before they are submitted to a final vote and become eligible for designation as Uniform Acts or Model Acts. The final decision on whether a proposed Act is ready for submission to the states is made by vote of the Commissioners on a one-state one-vote basis.

With drafting done at the Annual Meeting, a Commissioner's job is but half completed. Each Commissioner must then return home to work for adoption of the completed proposed Acts in his or her state legislature. This can be the most difficult part of a Commissioner's responsibility, recognizing the normal resistance to anything that is new or that has originated outside the halls of the state legislature. The process is often slow. It took 14 years for the Uniform Commercial Code to be adopted by 49 states. But the process is a steady one because each year up to 100 Uniform Acts or Model Acts are adopted by the legislatures of the various states and territories.

Present and Future Developments

As Professor Roscoe Pound noted, paraphrasing Judge Benjamin Cardozo: "Law must be stable, and yet it cannot stand still." With changing times, existing laws must change and new laws must be promulgated to meet society's needs. No Uniform Act, not even the prestigious Uniform Commercial Code, is a static monument. In recent years, NCCUSL has addressed piecemeal the need to modernize the UCC to meet the business and financial concerns of the fast approaching 21st century. UCC Articles 3 (Commercial Paper), and 4 (Bank Deposits and Collections) have been thoroughly revised since 1987. Article 4-A dealing with electronic funds transfers was approved in 1989 and adopted in New York in 1990. Article 2-A (Leases) was promulgated in 1990 and a Study Committee has just been selected to examine Article 8 (Investment Securities).

Concerns for health, for the legal problems created by scientific extensions of life, artificial insemination and the use of borrowed body parts have lead to the promulgation of such Acts as: Uniform Rights of the Terminally III, Uniform Putsative and Unknown Fathers, Uniform Health-Care Information, Uniform Status of Children of Assisted Conception, and amendments to the Uniform Anatomical Gifts Act.

Continued on page 29
Denying that the evidence showed a "trap for the unwary, too perilous to be endured," the judge, hardly an habitué of Coney Island, may have smiled as he penned the bad news for Mr. Murphy.

"The antics of the clown," he wrote, "are not the paces of the cloistered cleric. The rough and boisterous joke, the horseplay of the crowd, evokes its own guffaws, but they are not the pleasures of tranquility. The plaintiff was not seeking a retreat for meditation. Visitors were tumbling about the belt when he made his choice to go with them. He took the chance of a like fate, with whatever damage to his body might ensue from such a fall. The timorous may stay at home."13

I hope that these few selections may give a sense of Cardozo's appeal as a judicial writer and as a person. I have enjoyed reading these cases once again and I trust that some of this pleasure may be contagious. A true New Yorker, an outstanding jurist and a proud American, in character and achievement, he continues to stand as a reassuring model for lawyers and for all citizens in these difficult days of turmoil and uncertainty.


100 Years of Uniformity of Laws, the Story of the National Conference of Commissioners on Uniform State Laws

Continued from page 15

In its centennial year, the National Conference considered Uniform Acts on such diverse subjects as: Transfer of Litigation, Employment Termination, Victims of Crime, Defamation, Adoption, a revised Reciprocal Enforcement of Support Act, and the controversial Civil Forfeiture for Drug Offenses Act.

Legislative Recognition

On April 17, 1991, the New York State Assembly adopted a Legislative Resolution "MEMORIALIZING the 100th Anniversary of the National Conference of Commissioners on Uniform State Laws and recognizing the distinguished work of the members who have served New York State as Uniform Law Commissioners."

The Assembly:

RESOLVED, That this Legislative Body of the State of New York, join with its sister states, in proudly acknowledging a most significant celebration, the 100th Anniversary of the National Conference of Commissioners on Uniform State Law; paying just tribute and homage to a distinguished tribunal, the New York State Uniform Law Commissioners, who have faithfully served their State and Nation in a cause no less noble than the noblest of laws;... On July 30, 1992, meeting in San Francisco, California, the National Conference will begin its second century as America's foremost champion of uniformity. Its sole purpose has been, and remains, service to state governments and improvement of state laws.
January 21, 1992

Harry J. Haynsworth, IV
Southern Illinois University
School of Law
Carbondall, Illinois 62901-6804

Re: RUPA -- Proposed Reorganization Provisions Dated 12/10/91

Dear Harry:

The Partnership Committee’s Subcommittee on Proposed RUPA met January 10-11 in Denver. We had a very productive meeting and substantive comment letters will be prepared on a number of the points discussed. We hope they will all be in the Drafting Committee’s hands by the mid-February meeting.

This letter is a brief commentary on the proposed Article 9 -- Reorganizations. Unfortunately, they are quite general and probably incomplete as we only had about one hour for Article 9. Generally, the impression was that you’ve made a very good start on an extremely difficult project. The following are ideas generated from review of the merger provisions -- Section 901:

1. The statute should make clear that a merger really is a merger so that all partners in the resulting entity will be fully liable (as general partners) for all debts of each constituent. Under current law, and arguably under draft RUPA, if one of two general partnerships was designated the surviving entity, the partners of the non-surviving partnership may be deemed new partners in which case their "real" liability for prior debts of the surviving entity would be limited to the extent of their assets in the surviving entity.

2. We were not sure what happens to the liability of a cashed-out partner. It appears covered if he/she votes against the merger. But what if a partner votes for a merger pursuant to which he/she will be cashed out?

3. What happens if the merger does not comply with all of the requirements of Section 902? We speculated that perhaps Article 9 is
non-exclusive and the non-complying "merger" would be analyzed under existing statutory and caselaw. If so, perhaps that should be stated explicitly in the Article.

4. Should there be a mandatory filing (perhaps linked into RUPA Section 303) if there is to be a statutory merger?

5. Can the vote on the merger be the vote to amend the partnership agreement of the surviving entity (if there is to be one)?

6. Following comment (5), must the "terms and conditions of the proposed merger" [see 2(a)(iii)] include all terms and conditions of the resulting (or surviving) partnership's agreement of partnership?

7. We note that the transition rule (§ 907) appears to make all of Article 9 applicable to pre-RUPA partnerships. Can this override super-majority voting requirements? Indeed, would Article 9 allow less than all partners in the constituent partnership to make any change to one or more partnership agreements except under a provision specifically set forth in the affected partnership agreement?

There were ten Subcommittee members participating in our discussion. By copy of this letter, I am asking any of them to call or write you directly regarding Article 9 in case my summary above is incomplete or inaccurate. Since consideration of Article 9 is at such a preliminary stage, and may be discussed in February, we felt it best to get these comments to you quickly instead of circulating the draft letter to the Subcommittee as is our usual procedure.

Very truly yours,

McKENNA & FITTING

By

Gerald V. Niesar

GVN:cmm

cc: Denver Attendees (List Attached)
Article 9
Reorganizations

Section 901. Conversions.

A partnership formed under the provisions of this Act or any predecessor general partnership enacted by this state may, upon the affirmative vote of a majority of the partners, convert to a limited partnership by:

(a) filing a certificate of limited partnership that meets the requirements of Section [201 of the Revised Uniform Limited Partnership Act] and includes the following:

(i) statement that the partnership formerly operated as a general partnership; and

(ii) the name of the former general partnership at the time of the conversion;

(b) amending its partnership agreement to reflect the change in status of the partnership and the partners; and

(c) sending a copy of the amended partnership agreement and the certificate of limited partnership to each continuing partner.

The conversion will be effective at the time of the filing of the certificate of limited partnership, or at the date specified in the certificate, whichever is later. Any partner who
votes against the conversion will be deemed to be a partner who has dissociated from the partnership in a manner that is not wrongful under Section [602] of this Act. A general partner who becomes a limited partner as a result of the conversion will be treated as being a general partner under this Act until the effective date of the conversion for purposes of liability for obligations of the partnership incurred before the conversion and thereafter will be treated as a limited partner whose liability for the obligations of the partnership incurred after the conversion will be governed by Chapter ___ of this Title [the state’s limited partnership act].

(2) A limited partnership formed under the provisions of Chapter ___ of this Title [the state’s limited partnership act] or any predecessor limited partnership act enacted by this state may, with unanimous consent of the partners, convert into a general partnership by:

(a) canceling its certificate of limited partnership pursuant to Section [203 of the Revised Uniform Limited Partnership Act];

(b) amending its partnership agreement to reflect its change in status and any change in its name; and

(c) sending a copy of the amended partnership agreement to each continuing partner.

The conversion will be effective at the date the certificate of limited partnership is canceled; a limited partner who becomes a general partner as a result of the conversion will be treated as a limited partner for purposes of liability for the obligation incurred by the partnership before the conversion and thereafter will be treated as a general partner whose liability for
the obligations of the partnership incurred after the conversion is governed by this Act.

(3) A partnership that has converted pursuant to this section is for all legal purposes the same partnership as existed before the conversion. When the conversion is effective, the title to all real estate and other property or rights owned by the converting partnership remains vested in the converted partnership without further act or deed and without revision or impairment; and the liabilities of the converting partnership will continue to be the liabilities of the converted partnership to the same extent as if these liabilities had been incurred by the converted partnership.

Section 902. Mergers.

(1) Pursuant to a plan of merger approved as provided in subsection 2(c), the following entities may be merged accordance with the provisions of this section:

(a) One or more general partnerships formed under the provisions of this Act or any predecessor general partnership act enacted by this state and one or more other general partnerships formed under the provisions of this Act or any predecessor general partnership act or general partnership statute of another state;

(b) One or more general partnerships formed under the provisions of this Act or any predecessor general partnership act enacted by this state and one or more limited partnerships formed under the provisions of Chapter ___ [the state's limited partnership act] or the limited partnership statute of another state.
The plan of merger --

(a) must set forth

(i) the name of each domestic or foreign partnership that is a party to the merger or consolidation;

(ii) the name of the surviving domestic or foreign partnership and whether it will be a general or a limited partnership;

(iii) the terms and conditions of the merger;

(iv) the manner and basis of converting the equity ownership interests of each party to the merger into partnership interests or debt obligations, or other ownership interests of the surviving domestic or foreign partnership, or into cash or other property in whole or part;

(v) the address of the place of business where a copy of the plan of merger will be maintained by the surviving business entity; and

(vi) the effective date of the merger, which will be a date or time certain.

(b) may set forth any other provisions relating to the transaction the parties wish to include.

(c) must be approved:

(i) in the case of all domestic general partnerships that are parties to the transaction by an affirmative vote of a majority of the general partners and any general partner who votes against the plan of merger or consolidation will be deemed to be a partner who has dissociated
from the partnership in a manner that is not wrongful under Section [602] of this Act;

(ii) in the case of any other domestic or foreign partnership that is a party to the transaction, by the vote required for approval of a merger by the applicable statutory provisions of the state where the other domestic or foreign partnerships were formed or organized, and in the absence of any specific applicable statute, by the unanimous vote of all the partners in each partnership that is a party to the transaction.

(3) A copy of the plan of merger must be furnished to each owner of an equity interest in each domestic or foreign partnership that is a party to the plan prior to the time the plan is approved.

(4) Notwithstanding prior approval, a plan of merger may be terminated or amended at any time prior to the effective date of the merger in accordance with a provision for termination or amendment contained in the plan.

(5) The merger shall be effective on the later of the following:

(a) the approval by all the partnerships that are parties to the transaction as set forth in subsection (2)(c);

(b) the filing of all documents required by statute to be filed by or on behalf of one of the parties to the transaction in a merger or equivalent transaction; or

(c) the effective date specified in the plan of merger or consolidation.

(6) If the surviving partnership is a foreign partnership, that partnership is deemed
to irrevocably appoint the Secretary of State of this state as its agent for service of process in any proceeding to enforce any obligation of any domestic partnership that is a party to the merger and shall specify the address to which a copy of any process served on the Secretary of State against any domestic partnership that is a party to the merger or against the surviving partnership shall be mailed.

(7) The surviving partnership shall promptly file, or cause to be filed, in the appropriate filing office or offices all notices and documents relating to the merger required to be filed by all applicable statutes governing the domestic and foreign partnerships that are parties to the transaction, including amendments to or cancellation of any statement of partnership authority or equivalent filing by a general partnership, certificate of limited partnership, articles of merger and the like.

(8) When the merger is effective:

(a) Every other partnership that is a party to the transaction, except the surviving partnership, shall cease to exist;

(b) The title to all real estate and other property or right owned by each domestic or foreign partnership which is a party to the transaction automatically vests in the surviving business entity without further act or deed and without reversion or impairment;

(c) The liabilities of each domestic or foreign partnership which is a party to the transaction will be assumed by the surviving partnership to the same extent as if these liabilities had been incurred by the surviving partnership;

(d) Any proceeding pending against any domestic or foreign partnership
that is a party to the transaction may be continued as if the transaction had not occurred or the surviving partnership may be substituted in the proceeding for any domestic or foreign partnership whose existence ceases under subsection (1); and

(e) Any partnership that is formed under this act or any predecessor general partnership act enacted in this state which is not the surviving partnership in the transaction shall not be required to wind up its affairs, pay its liabilities or distribute its assets under [Article 8] of this Act.
Section 907. Effect of this Act on Existing Partnerships

Except as otherwise, stated in this section and in Section [906]

This Act applies to all partnerships in existence on its effective date that were formed under the ____ Act or any predecessor statute in this state providing for the formation, operation and liquidation of general partnerships.

(a) The ____ Act shall apply to the collection of any judgment against the partnership and any of its partners obtained by a creditor of the partnership if the suit giving rise to the judgment was filed prior to the effective date of this Act.
Mr. Lane Kneedler  
Office of Attorney General  
101 N. Eighth Street  
Richmond, Virginia 23219

Dear Lane:

On behalf of the Subcommittee on the Proposed Revised Uniform Partnership Act of the ABA Committee on Partnerships and Unincorporated Business Organizations (the "Subcommittee"), I am pleased to submit some additional comments concerning the partnership "break-up" provisions resulting from the Subcommittee’s meetings on January 10 and 11, 1992.

As you are aware, the Subcommittee has devoted substantial time during its meetings to these sections, considering the current state of the law, the various NCCUSL drafts of RUPA and various approaches discussed by the Subcommittee. The Subcommittee takes as one of its fundamental precepts that the enactment of a revised general partnership statute, based upon an entity concept, must include dissociation and dissolution provisions structured to encourage the continuity of the entity.

All RUPA Section references herein refer to the draft of Articles 6, 7 and 8 furnished by the NCCUSL Drafting Committee Reporters to the NCCUSL Subcommittee on those Articles, under cover of their memorandum dated January 23, 1992, a marked copy of which is attached hereto.

Section 801: Events Causing Dissolution

The Subcommittee considered this Section again, at length, with particular attention to the issues relating to the liabilities of the dissociated partner to third parties following his dissociation. In a "default" partnership of three partners, A, B and C (no partnership agreement), A announces his withdrawal from the business. B and C are left with the decision whether to continue the business. If A’s dissociation causes a dissolution, then B and C must purchase the business in the winding up of the old partnership, if they desire to continue. A receives his share of the purchase price, based upon his interest in the partnership. If A’s
dissociation only results in his right to a buyout of his partnership interest, B and C must determine the value of his interest and pay it to him.

Regardless of which rule applies, there is at least some period of time during which B and C will decide upon the best course of action. During this period B and C may take actions related to the partnership and its business which will expose the partnership’s assets to claims. If B and C decide not to continue the business but rather to wind it up and liquidate the partnership, the issue remains as to A’s liability for those post-dissociation liabilities. The Subcommittee believes that, except for circumstances in which the creditor relied on the credit of the dissociating partner and did not have notice of his dissociation, the dissociated partner should not be liable for partnership liabilities incurred after the date of his dissociation by the remaining partners, other than liabilities incurred in winding up the partnership’s business. The Subcommittee would not change the rule in Section 803 to the effect that the remaining partners may preserve the business as a going concern for a reasonable period during the winding up period.

If the partnership is dissolved upon the dissociation of a partner, the remaining partners may incur liabilities in the name of the partnership in anticipation of continuing the business and reaching agreement on the purchase of the dissociating partner’s interest. (The NCCUSL approach would permit the remaining partners, in agreement with the dissociating partner, to avoid dissolution retroactively.) However, failing to reach agreement on the buyout within the prescribed time would force the dissolution and winding up to proceed. If the liabilities incurred in anticipation of continuing the business are in excess of what would have been appropriate to preserve the business as a going concern during a winding up, the dissociating partner’s share of the net assets in the final distribution on termination will be adversely, and seemingly unfairly, affected. The dissociating partner may have a cause of action for contribution from the remaining partners for his share of these excess liabilities.

The Subcommittee’s analysis of the dissolution provisions proposed based upon discussions in its most recent meeting (as summarized above) and in previous meetings, has caused it to conclude that certain modifications should be proposed to the dissolution framework:

1. The decision whether to dissolve an at will partnership following a partner dissociation should be made by at least half, rather than a majority, of the remaining partners. If half of the partners want to dissolve, it is likely that the partners may be deadlocked in any other major business decisions. Section 801(1) has been so revised. In addition, a new 801(2) has been proposed to extend this right for half the partners in an at will partnership to dissolve at any time.

2. The dissociating partner should have the express statutory right to make application for a court ordered dissolution on the grounds that dissolution is necessary in order for the dissociating partner to realize the full value of his interest or to discharge him from liabilities for which indemnification is either inappropriate or insufficient. Sections 701(e) and 801(7) have been revised to reflect this proposal.
3. Dissolution by the decision of the remaining partners should not be retroactive to the date of the partner’s dissociation, but should be effective upon the decision to dissolve. The dissociating partner can still be included in the dissolution process by eliminating the buyout right if dissolution results under 801(1). In addition, the dissociating partner would be protected to a significant extent (and can protect himself even further by notifying third parties) by limiting his liability to liabilities incurred in connection with activities appropriate for winding up (proposed new Section 806A). Finally, the position of creditors will be somewhat less uncertain than if a partnership can suddenly dissolve retroactively.

We have enclosed a revised Section 801 and a new Section 806A to reflect the changes suggested above.

As noted above, the Subcommittee still resolutely believes in the "bias" for continuation following dissociation. The Subcommittee has spent considerable time weighing the policy considerations involved in choosing between an absolute statutory dissolution right of the dissociating partner versus a statutory right of the remaining partners to continue the partnership (subject to court intervention on behalf of the dissociating partner).

The Subcommittee believes that the default rule should be the rule to which business people would likely have agreed had they entered into a written partnership agreement at the time of formation (even if they did not realize they were forming a partnership). If business people generally believe they will be able to continue a business following the departure of one of their co-owners, the costs of each default rule (statutory dissolution versus buyout obligation only) on the continuation of the business must be examined.

If a statutory dissolution right is granted to a dissociating partner, and the partners did not alter that right by agreement, the ability of the remaining partners to carry on the business may be hindered in several ways: First, contractual arrangements with suppliers and creditors of the partnership — due on sale, default and termination provisions — may be triggered by dissolution. To the extent these arrangements were necessary for the viability of the partnership’s business, and one or more third parties takes action on the basis of a dissolution, even if that third party was not relying on the participation of the dissociating partner in the partnership’s business in contracting with the partnership, the remaining partners may not be able to continue the business.

Secondly, the dissociating partner may be able to force a takeover of the business, completely depriving the remaining partners of any participation therein. This would depend
upon the circumstances and the nature of the partnership’s business. For example, A, B, C and D operate an automotive repair garage. D becomes frustrated with A, B and C’s reluctance to expand the facilities and invest heavily in equipment to repair foreign sports cars. D has significantly greater financial resources than A, B or C, who collectively supervise or perform 95% of the repair work. Without an agreement to the contrary, D causes the partnership to be dissolved. In the subsequent liquidation auction, which is court supervised as a result of the acrimonious dispute, D outbids A, B and C, who split 75% of the net proceeds but who are also out-of-work mechanics.

Thirdly, dissolution and winding up the partnership’s business necessarily implies a resolution of all existing partnership liabilities as of the dissolution. Resolution of liabilities may result in forced sales of assets, regardless of the strength of the market for those assets at that time. Or dissolution can result in the withdrawal of partnership assets by one or more partners who contributed the use of those assets. In any event, the remaining partners may have difficulty restructuring the partnership’s financial affairs so as to satisfy creditors that the liabilities will be discharged from the earnings of the continuing business. In that financial restructuring with creditors it is likely that the remaining partners could incur costs relating to changes in terms of outstanding liabilities (eg. loss of benefit of a fixed rate loan if interest rates have risen since the borrowing) and fees and expenses related thereto. Alternatively, if the partners have the right to purchase the interest of the dissociating partner, and indemnify him from all liabilities (other than those he has "hidden" from his partners), it may be possible to consummate the buyout without altering partnership liabilities. For example, the remaining partners could finance the buyout by incurring new personal liabilities.

If the default rule is that the remaining partners are only obligated to purchase the interest of the dissociated partner, that partner will continue to be liable to third parties for liabilities previously incurred. But prior to entering the partnership, a person may bargain for, and contract with his partners to require, dissolution upon his dissociation or limitations on indebtedness without his approval. And before a partnership incurs substantial new liabilities requiring his approval, a partner can dissociate. Of course, the dissociating partner also has the power to give the other partners advance notice of his intention to dissociate, thereby allowing time to work out jointly the economic consequences of the dissociation. Thus, if the default rule is continuation, the dissenting partner has the burden to protect his interests. It is the partner who has doubts about the viability of the enterprise, or who is not confident in the abilities of his partners to succeed, who has the obligation to work things out ahead of time with his partners and spell out in an agreement what different rules he believes should be applicable upon break-up. It is the collective experience of the Subcommittee that when partners include "break-up" provisions in a partnership agreement, the remaining partners will usually have some period of time to decide whether to continue or not. It is the partners who believe that the business will succeed and will continue, and with their participation should they so choose (and so long as they do not engage in any misconduct or breach any duty), who should have that right, subject to an agreement to the contrary.
Section 701: Buyout

The Subcommittee reviewed and discussed the changes made to Section 701, the buyout of a dissociating partner's interest, as well as the decision by the NCCUSL Committee not to adopt certain suggested changes proposed by the Subcommittee. The Subcommittee concluded once again that it would be highly preferable to retain the UPA notion of a purchase of a partner's interest for "value" and not attempt to define the concept or establish parameters for determining value in the statute.

The Subcommittee would restate the current NCCUSL RUPA draft of Section 701(a) and (b) to read as a new subsection (a) as follows:

If a partner dissociates from a partnership pursuant to Section 601, but that dissociation does not result in a dissolution and winding up of the partnership business under Section 801(1), the partnership shall cause the interest of the dissociating partner to be purchased for its value as of the time of the event causing dissociation, taking into account all relevant facts. Interest must be paid from the date of dissociation to the date of payment.

The Subcommittee continues to believe that the second, third and fourth sentences of NCCUSL RUPA draft Section 701(b) will be confusing to apply in many partnerships, leading to increased litigation. In addition, the sentences may be viewed as limiting the valuation determination, and could produce results which are unfair or inconsistent with the historical, case-by-case interpretation under the UPA, which permitted parties and courts to determine value based, in effect, upon all relevant facts. There is no market for interests in general partnerships. A court might examine comparable business, but the value of a general partnership interest is likely to depend on specific characteristics, such as the type of services rendered, geographic location and the extent to which the business depends upon the personal services ("human capital") of the partners. In addition, valuation based on profitability and earnings may require the application of formulas and analysis by experts.

The Subcommittee discussed several kinds of partnerships in which valuation would more appropriately take into account circumstances which would likely produce a different result than if a court attempted to apply the proposed NCCUSL parameters. For example, A, B and C own a rug cleaning partnership: A's Very Clean Rugs. A's relationship with several owners of carpeted office buildings, and his personal reputation for honesty and fairness is critical to the business. B, who works principally as a supervisor of work crews, is a 1/3 partner, on the basis of capital invested. B dissociates, A and C decide to continue the partnership. Should B receive 1/3 of the going concern value of the business, including the value of A's personal involvement (A's "human capital") therein?

Another example: D, E and F are developing a new software package for personal computer users. The software is unique, but not yet ready for and not yet tested in the marketplace. E leaves the partnership after 3 years of intensive development work. The product is ready in the following year and is a tremendous success. Should not E receive some share of that success as part of his buyout?
The Subcommittee maintains that since the "value" of a partnership interest is necessarily contextual, it is not possible to define "value" in the statute. A court needs discretion to determine the appropriate value under the specific circumstances. And certainly the parties, in negotiating the buyout, will take into account any matters they believe relevant, prior to agreeing to terms.

We look forward to discussing these comments with you further at future meetings. In the meantime, please telephone either me or our Chairman, Gerry Niesar, should you have any questions or if you would like to discuss the foregoing in advance of the meetings. By copy of this letter to the NCCUSL Reporters, we are furnishing certain additional textual comments to the revised draft of Articles 6, 7 and 8.

See you in Richmond on February 14th!

Best personal regards.

Sincerely,

Lauris G. L. Rall
On behalf of the ABA
Subcommittee on RUPA

cc: Prof. Donald J. Weidner
    Gerald V. Niesar, Esq.
    Harry J. Haynsworth, IV
    Allan G. Donn, Esq.
    Howard Swibel, Esq.
SECTION 801. EVENTS CAUSING DISSOLUTION AND WINDING UP OF PARTNERSHIP BUSINESS.

A partnership is dissolved and its business must be wound up upon the occurrence of any of the following events:

(1) Within 90 days of the dissociation of a partner under Section 601, by the express will of at least half of the remaining partners.

(2) In a partnership at will, by the express will of at least half of the partners, except those who have transferred all or substantially all of their transferable interests in the partnership (other than the transfer of a security interest or a charging order that has not been foreclosed).

(3) In a partnership for a definite term or undertaking, by the express will of all the partners, except those who have transferred all or substantially all of their transferable interests in the partnership (other than the transfer of a security interest or a charging order that has not been foreclosed).

(4) In a partnership for a definite term or undertaking, the expiration of the term or the completion of the undertaking. If all the partners agree to the contrary, the partnership agreement shall be deemed amended retroactively to provide that the termination or completion does not result in the dissolution and winding up of the partnership business.

(5) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but any 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.

(6) When a court, on application by a partner, decrees that:

(i) the economic purpose of the partnership is likely to be unreasonably frustrated;
(ii) a partner’s conduct in matters relating to the partnership business is such that it is not reasonably practicable to carry on the business in partnership with that partner;

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

(iv) dissolution and winding up of 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.

(7) When a court, on application by a transferee of a partner’s transferable interest under Section 503 or 504, decrees that it is equitable to wind up the partnership business:

(i) after the termination of the term or completion of the undertaking, if the partnership was for a definite term or undertaking; or

(ii) at any time, if the partnership was a partnership at will at the time of the transfer or the charging order.
SECTION 806A. LIABILITY OF DISSOCIATING PARTNER IF DISSOLUTION RESULTS UNDER SECTION 801(1).

A partner who dissociates pursuant to Section 601 and whose dissociation results in a dissolution and winding up of the partnership’s business under Section 801(1) shall not be liable for any partnership liabilities incurred by the remaining partners from the date of dissociation to the date of dissolution by any acts not appropriate for winding up the partnership’s business, except to the extent provided by Sections 702, 804 and 806. Any partnership liabilities for which the dissociated partner is not liable shall be excluded in determining the net amount distributable to the dissociated partner under Sections 802 and 807.