VII. March 3, 1992 Draft - Revised Uniform Partnership Act (RUPA)

1. March 17, 1992: Correspondence from Gerald V. Niesar to H. Lane Kneedler. *

   The Subcommittee commented that it had serious concerns with the question of fiduciary duties of partners in the March 3, 1992 draft in regard to: § 404 - the duty of good faith and fair dealing (they felt this is not a fiduciary duty and would cause confusion), applying fiduciary duties in contract negotiations and the proposed ban against contracting away the fiduciary duties. The Subcommittee proposed alternative language for several of Article 4 provisions to achieve those suggested changes.

2. March 17, 1992 - A copy of the proposed Subcommittee revisions § 801, § 901, § 902, § 904, § 905 and § 906 and a suggested new § 704 (c).

3. March 17, 1992 - Correspondence from James L. Jerue to H. Lane Kneedler.*

   This letter supplemented the October 29, 1990 and July 26, 1991 letters. The Subcommittee proposed a provision based upon the Revised Uniform Limited Partnership Act § 901(1) and suggested new subsections be added to § 104 and believe the relationship between § 307 and § 308 should be clarified with respect to purported partners.

4. April 1, 1992 - Correspondence from Gerald V. Niesar to the Ad Hoc Subcommittee Distribution List.

   Enclosed were the following commentaries:

   a. "What Was Accomplished in Dallas" -- a synopsis of the various topics which were discussed during the March 13-14, 1992 RUPA Subcommittee Meeting.

   b. March 27, 1992: Correspondence from Lauris G. L. Rall to Gerald V. Niesar.

      Summary of actions taken by the NCCUSL Drafting Committee at the March 19-22, 1992 meeting. Specifically, the following sections were discussed:

      (1) § 801 - Events of Dissolution.

      The NCCUSL Drafting Committee did not favor the deferral of dissolution for 90 days upon a partner withdrawing by death or otherwise wrongfully, and

*Comment Letter to the RUPA Drafting Committee.
believed it would be preferable to choose the original UPA approach or the Ad Hoc Subcommittee approach.

(2) § 404 - Fiduciary Duties.

The Ad Hoc Subcommittee proposed draft to take "the duty of good faith" out of the "fiduciary duties" section was well received. Subsections relating to § 401’s "good faith" were discussed, and they noted it should also be included into § 404.

(3) Article 9 - Mergers and Conversions.

Significant new changes in this provision were made and adopted by the NCCUSL Drafting Committee in Chicago, such as, when a general partnership merged with a limited or general partnership in a state which adopts this version of RUPA. Clarification was also made in § 905(c) regarding liabilities of the constituent partnerships in a merger.

(4) Articles 1, 2 and 3.

Discussions on which section the NCCUSL Drafting Committee adopted and what new sections were proposed. Clarification of certain terms were also made.

(5) Article 4.

A capital account for each partner in § 401 was adopted by the NCCUSL Drafting Committee, as well as § 403(c), which added a duty of each partner to furnish information regarding the partnership.

(6) General.

Throughout RUPA including Articles 5, 6 & 7 - technical changes were made. Administrative discussions were also held regarding the time frame for the Act's completion.
UNIFORM PARTNERSHIP ACT (199_)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 3, 1992, Draft

UNIFORM PARTNERSHIP ACT (199_)
Without Prefatory Note And Comments

The ideas and conclusions herein set forth, including drafts of proposed legislation, have not been passed upon by the National Conference of Commissioners on Uniform State Laws. They do not necessarily reflect the views of the Committee, Reporters or Commissioners. Proposed statutory language, if any, may not be used to ascertain legislative meaning of any promulgated final law.
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NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
676 North St. Clair Street, Suite 1700
Chicago, Illinois 60611
312/915-0195
# REVISED UNIFORM PARTNERSHIP ACT

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UNIFORM PARTNERSHIP ACT (199_)

ARTICLE 1

GENERAL PROVISIONS

Section 101. Definitions.
Section 102. Applicability to Limited Partnerships.
Section 103. Knowledge and Notice.
Section 104. Supplemental Principles of Law.
Section 105. Effect of Partnership Agreement; Non-waivable Provisions

SECTION 101. DEFINITIONS. In this [Act]:

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

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

(i) an order for relief under Title 11 of the United States Code;

(ii) a comparable order under a successor statute of general application; or

(iii) a comparable order under a state insolvency act.

(3) "Distribution" means a transfer of cash or other property from a partnership to a partner in the partner's capacity as a partner.
(4) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership business.

(5) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration or completion of a definite term or undertaking.

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

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

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

(9) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

SECTION 102. APPLICABILITY TO LIMITED PARTNERSHIP.
This [Act] governs a limited partnership in a case not provided for in the [State] Limited Partnership Act.

SECTION 103. KNOWLEDGE AND NOTICE.

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

(1) knows of it;

(2) has received a notice or notification of it;

or

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

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

(d) A person receives notice of a fact when it:

(1) comes to the person's attention; or

(2) is duly delivered at the person's place of business or at any other place held out by the person as the place for receiving communications.

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

(f) Receipt of notice by a partner of a matter relating to partnership affairs becomes effective immediately as notice to the partnership, except in the case of fraud on the partnership committed by or with the consent of the partner.

SECTION 104. SUPPLEMENTAL PRINCIPLES OF LAW.

(a) Unless displaced by particular provisions of this [Act], the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause, supplement this [Act].

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

SECTION 105. EFFECT OF PARTNERSHIP AGREEMENT; NON-WAIVABLE PROVISIONS.

(a) This [Act] governs relations among the partners and between the partners and the partnership except to the
the partnership agreement provides otherwise.

(b) The partnership agreement may not:

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

(2) eliminate the duty of good faith and fair dealing under Section 404(b);

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

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

(5) vary the requirement to wind up the partnership business in the events specified in Sections 801(4), (5), or (6); or

(6) restrict rights of third parties under this [Act].
ARTICLE 2

NATURE OF PARTNERSHIP

Section 201. Definition and Existence of Partnership.
Section 202. Partnership Owns Partnership Property.
Section 203. When Property Is Partnership Property.

SECTION 201. DEFINITION AND EXISTENCE OF PARTNERSHIP.

(a) A partnership is an entity resulting from the association of two or more persons to carry on as co-owners a business for profit.

(b) An association created pursuant to a statute other than this [Act], the [State] Limited Partnership Act, or a statute of another jurisdiction comparable to this [Act] or the Limited Partnership Act is not a partnership.

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

(d) In determining whether a partnership exists, the following rules apply:

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

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

(e) The receipt by a person of a share of the profits of a business is prima facie evidence that the person is a partner in the business, but that inference may not be drawn if the profits were received in payment:

(1) of a debt by installments or otherwise;

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

(3) of rent;

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

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

or

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

SECTION 202. PARTNERSHIP OWNS PARTNERSHIP PROPERTY.

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

(a) Property is partnership property when acquired

(i) in the partnership name or (ii) in the name of one or
more partners with an indication in the instrument
transferring title to the property of the persons' capacity
as partners or of the existence of a partnership, if the
name of the partnership is not mentioned.

(b) Property is acquired in the partnership name by

a transfer or conveyance to (i) the partnership in its name
or (ii) to one or more partners in their capacity as
partners in the partnership, if the name of the partnership
is indicated in the instrument transferring title to the
property.

(c) Property is presumed to be partnership property

if purchased with partnership funds, even if not acquired
in the partnership name or in the name of one or more
partners with an indication in the instrument transferring
title to the property of the persons' capacity as partners
or of the existence of a partnership.

(d) Property acquired in the name of one or more of

the partners without an indication in the instrument
transferring title to the property of the persons' capacity
as partners or of the existence of a partnership and
without use of partnership funds is presumed to be the
separate property of that partner, even if used for
partnership purposes.
ARTICLE 3

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

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

SECTION 301. PARTNER AGENT OF PARTNERSHIP AS TO PARTNERSHIP BUSINESS. Subject to Section 303:

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

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

(3) An act of a partner in contravention of a restriction on authority does not bind the partnership to persons knowing of the restriction.

SECTION 302. TRANSFER OF PARTNERSHIP PROPERTY.

(a) Except as limited by a statement of authority pursuant to Section 303:

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

(2) Title to partnership property which is held in the name of one or more partners with an indication in the instrument transferring title to the property to them of their capacity as partners or of the existence of a partnership, if the name of the partnership is not mentioned, may be transferred by an instrument of transfer executed by the persons in whose name title is held.

(3) Property transferred under subsection (1) or (2) may be recovered by the partnership if it proves that the act of the person executing the instrument of transfer did not bind the partnership under Section 301, unless the property had been transferred by the transferee or a person claiming through the transferee to a holder for value without notice that the person executing the instrument of transfer lacked authority.
(b) Title to partnership property which is held in the name of one or more persons other than the partnership, without an indication in the instrument transferring title to the property of the persons' capacity as partners or of the existence of a partnership, may be transferred by the persons in whose name title is held to a transferee who gives value without notice that it is partnership property free of any claims of the partnership or the partners.

SECTION 303. STATEMENT OF PARTNERSHIP AUTHORITY.

(a) A partnership may execute and file in the office of [the Secretary of State] a statement of partnership authority.

(b) A statement of partnership authority:

(1) must list the name of the partnership and the mailing address of an office of the partnership in this State, if there is one, otherwise the principal executive office of the partnership;

(2) must list the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership;

(3) must be signed and acknowledged by all of the partners, if there are 10 or fewer partners, and by at least 10 partners, if there are more than 10 partners;

(3) must be signed and acknowledged by at least two partners;
must specify the partners required to sign a
transfer of real property held in the name of the
partnership; and

to contain any other matters the partnership
chooses, including the authority, or limitations upon the
authority, of some or all of the partners to enter into
other transactions on behalf of the partnership.

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

(d) An amendment to a statement of partnership
authority must meet the requirements for execution of an
original statement unless otherwise provided in the
statement. A notice of denial under Section 304 is not an
amendment under this subsection.

(e) Even if a filed statement of partnership
authority or an amendment thereto does not conform to
all of the requirements of subsections (b) and (c), it
operates with respect to other persons as provided in
subsections (h) and (i) if it is signed and acknowledged by
the number of partners specified in subsection (b)(3).

(f) Partners filing a statement of partnership
authority, or an amendment thereto, shall promptly send
copies of the statement or amendment to all of the partners
or other persons named as partners. Failure to send a copy
under this subsection does not affect the validity of the statement or amendment.

(g) A person may sign and acknowledge a statement of partnership authority, or an amendment thereto, by an attorney in fact.

(h) A filed statement of partnership authority supplements the authority of a partner under Section 301 to enter into transactions on behalf of the partnership as follows:

(1) Except as provided in paragraph (2), a grant of authority to a partner contained in a statement of partnership authority is conclusive, in favor of a person who gives value without knowledge to the contrary, that a partner stated to be authorized to transfer partnership property or enter into other transactions on behalf of the partnership is authorized.

(2) A grant of authority to a partner contained in a statement of partnership authority to transfer real property is conclusive in favor of a person who gives value without knowledge of an actual lack of authority only if the title to the real property is recorded in the partnership name and the statement, or a certified copy thereof, is recorded in the place for recording transfers of that property.

(i) A filed statement of partnership authority limits the authority of a partner under Section 301 to
enter into transactions on behalf of the partnership as
follows:

(1) Except as provided in paragraph (2), a
limitation on the authority of a partner contained in the
statement is effective against a person not a partner only
if the person knows of the limitation.

(2) A limitation on the authority of a partner to
transfer real property contained in the statement is
effective against a person not a partner if title to the
property is recorded in the partnership name and the
statement, or a certified copy thereof, is recorded in the
place for recording transfers of that property.

(j) A partnership may record, in the place for
recording transfers of real property, a certified copy of
the statement of partnership authority, or any amendment
thereto or notice of denial thereof, that has been filed in
the office of [the Secretary of State].

(k) A partnership may cancel a statement of
partnership authority by filing an amendment that
identifies the statement and states that it is canceled. A
statement of partnership authority that is not otherwise
canceled is canceled by operation of law upon the
expiration of five years after the day on which it is filed
with [the Secretary of State].

(1) The [Secretary of State] may collect a fee for
the filing of a statement of partnership authority, or any
SECTION 304. NOTICE OF DENIAL OF STATUS AS PARTNER OR AUTHORITY.

(a) A partner or other person named as a partner in a statement of partnership authority, or the person's legal representative, may sign, acknowledge, and file in the office of [the Secretary of State] a notice of denial stating the name of the partnership and the fact that is being denied.

(b) A person named as a partner in a statement of partnership authority may deny present or previous membership in the partnership by filing a notice of denial as provided in subsection (a). However, the filing of a notice of denial does not relieve a departing partner of compliance with Articles 6, 7, and 8.

(c) If a partner, or a person named as a partner in a filed statement of partnership authority, denies a supplemental grant of authority contained in the statement, the statement with respect to the grant of authority ceases to be effective against a person not a partner. But if the statement is recorded in the place for recording transfers of real property, the denial is not effective unless it, or a certified copy, is also recorded in the same place.

(d) A present or former partner filing a notice of denial shall promptly send a copy of the notice to the
other persons named as partners in the statement of
partnership authority and to any agent named in the
statement. Failure to send a copy under this subsection
does not affect the validity of the denial with respect to
other persons.

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

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

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

SECTION 306. PARTNER'S LIABILITY. All partners are
liable jointly and severally for all obligations of the
partnership as provided in Section 307 unless otherwise
agreed by the claimant or provided by law.

SECTION 307. ACTION AGAINST PARTNERSHIP AND PARTNERS.

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

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

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

1. a judgment based on the same claim has been obtained against the partnership and a writ of execution against the partnership on the judgment against it has been returned unsatisfied in whole or in part;
2. an involuntary case under Title 11 of the United States Code has been commenced against the partnership and has not been dismissed within 60 days after commencement, or the partnership has commenced a voluntary case under Title 11 of the United States Code and the case has not been dismissed;
3. the partner has agreed that the creditor need not exhaust partnership assets;
4. the court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to
execution within this State are clearly insufficient to
satisfy the judgment, that exhaustion of partnership assets
is excessively burdensome, or that the grant of permission
is an appropriate exercise of the court's inherent
equitable powers; or

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

SECTION 308. PURPORTED PARTNER.

(a) If a person, by words spoken or written or by
conduct, purports to be a partner, or consents to being
represented by another as a partner, in a partnership or
with one or more persons not partners, the purported
partner is liable to a person to whom the representation is
made, who, relying on the representation, gives credit to
the actual or purported partnership. If the representation,
either by the purported partner or by a person with the
purported partner's consent, is made in a public manner,
the purported partner is liable to a person who gives
credit in reliance upon the purported partnership even if
the purported partner is not aware of being held out as a
partner to the claimant. If partnership liability results,
the purported partner is liable as if the purported partner
were a partner. If no partnership liability results, the
purported partner is liable jointly and severally with any
other person consenting to the representations.
(b) If a person is represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who give credit in reliance upon the representation. If all of the members of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the members of the existing partnership consent to the representation, the person acting and the persons consenting to the representation are jointly and severally liable.

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

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

SECTION 309. LIABILITY OF INCOMING PARTNER. A person admitted as a partner into a partnership is liable for all obligations of the partnership arising before the person's admission as if the person had been a partner when the obligations were incurred, but the liability may be satisfied only out of partnership property.
ARTICLE 4

RELATIONS OF PARTNERS TO ONE ANOTHER
AND TO PARTNERSHIP

Section 401. Rules Determining Partner's Rights and Duties.

Section 402. Distributions in Kind.

Section 403. Partner's Right to Information.

Section 404. Partner's Limited Fiduciary Duties.

Section 405. Partner's Liability to Partnership.

Section 406. Remedies of Partnership and Partners.

Section 407. Continuation of Partnership Beyond Definite Term or Particular Undertaking.

SECTION 401. RULES DETERMINING PARTNER'S RIGHTS AND DUTIES.

(a) A 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) A 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) A partnership shall indemnify each partner for 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) A 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 accept a distribution in kind.

SECTION 403. PARTNER'S RIGHT TO INFORMATION.

(a) A partnership shall keep its books and records,
if any, at its 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 furnish to a
partner, and the legal representative of a deceased partner
or partner under legal disability, to the extent just and
reasonable, complete and accurate information concerning
the partnership.

SECTION 404. PARTNER'S LIMITED FIDUCIARY DUTIES.

(a) 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.

(b) A partner owes a duty of good faith and fair dealing to the partnership and the other partners in all matters related to the formation, conduct, buyout, 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.

(c) 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.

(d) 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.

(e) A partner owes a duty of care to the partnership
and the other partners 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 is not gross negligence.

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

SECTION 405. PARTNER'S LIABILITY TO PARTNERSHIP. A
partner is liable to the partnership for a 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 a 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 under Section

401;
(2) enforce a right under Section 701 to have the partnership cause a dissociated partner's interest in the partnership to be purchased;

(3) compel a dissolution and winding up of the partnership business under Section 801;

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

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

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

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

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

(b) 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 of action for a remedy under this section is governed by otherwise applicable law. A right to an accounting upon a dissolution and winding up does not revive a claim otherwise barred by applicable law.
ARTICLE 5

TRANSFEREEES AND CREDITORS OF PARTNER

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

SECTION 501. PARTNER'S INTEREST IN PARTNERSHIP PROPERTY NOT TRANSFERABLE. A partner has no interest that can be transferred, either voluntarily or involuntarily, in partnership property.

SECTION 502. PARTNER'S TRANSFERABLE INTEREST IN PARTNERSHIP.

(a) The only transferable interest of a partner in the partnership is the partner's interest in distributions. The interest is personal property.

(b) A transferee of a partner's transferable interest in the partnership has the right to cause a winding up of the partnership business as provided in Section 801(6).

SECTION 503. TRANSFER OF PARTNER'S TRANSFERABLE INTEREST.

(a) A transfer of a partner's transferable interest in the partnership:

(1) is permissible, in whole or in part;

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

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

(b) A transferee of a partner's transferable interest in the partnership is entitled to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled. Upon transfer, the transferor retains all of the rights and obligations of a partner other than the interest in distributions.

(c) If an event causes a dissolution and winding up of the partnership business under Section 801, a transferee is entitled to receive, in accordance with the transfer, the net amount otherwise distributable to the transferor. The transferee may require an account only from the date of the last account agreed to by all of the partners.

(d) Upon receipt of notice of a transfer, the partnership shall give effect to the transferee's rights under this section.

SECTION 504. PARTNER'S TRANSFERABLE INTEREST SUBJECT TO CHARGING ORDER.
(a) On application to a court by a judgment creditor of a partner or partner's transferee, the court that entered the judgment, or any other court, may charge the transferable interest of the debtor partner or transferee with payment of the unsatisfied amount of the judgment with interest thereon. The court, then or later, may appoint a receiver of the debtor's share of the distributions due or to become due to the debtor in respect of the partnership, and make all other orders, directions, accounts, and inquiries the debtor might have made or which the circumstances of the case may require.

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

(c) At any time before foreclosure, an interest charged may be redeemed by the judgment debtor or:

(1) with separate property, by one or more of the partners; or

(2) with partnership property, by one or more of the partners with the consent of all of the partners whose interests are not so charged or sold.
(d) This [Act] does not deprive a partner of any right under the exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or a partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.
ARTICLE 6

PARTNER'S DISSOCIATION

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

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

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

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

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

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

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

(ii) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership to a transferee who has not been admitted as a partner, other than a transfer for security purposes or subjecting the partner's interest to a charging order that has not been foreclosed;
(iii) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate 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, there is no reinstatement of its charter or its right to conduct business; or

(iv) an event causes a dissolution and winding up of the business of a partnership that is a partner;

(5) the partner's expulsion by a court, on application by another partner, upon a judicial determination that:

(i) the partner has engaged in conduct that adversely and materially affects the partnership business;

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

(iii) the partner 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;

(6) the partner's becoming a debtor in bankruptcy or executing an assignment for the benefit of creditors;

(7) in the case of a partner who is an individual:
(i) the partner's death;

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

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

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

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

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

SECTION 602. PARTNER'S WRONGFUL DISSOCIATION.

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

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

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:
(i) a partner withdraws by express will,
unless the withdrawal follows the premature dissociation of
another partner and results in a dissolution of the
partnership under Section 801(a)(2)(i) or (ii);

(ii) a partner is expelled by a court upon its
determination that:

(A) the partner has engaged in conduct that
adversely and materially affects the partnership business;

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

(C) 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; or

(iii) a partner 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
dissolution or termination.

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

SECTION 603. EFFECT OF PARTNER'S DISSOCIATION.
(a) A dissociated partner's interest in the partnership must be purchased under Article 7 unless that partner's dissociation causes a dissolution and winding up of the partnership business under Article 8.

(b) Upon a partner's dissociation, that partner's right to participate in the management and conduct of the partnership business under Section 401(f) is terminated unless that partner's dissociation causes a dissolution and winding up of the partnership business under Article 8.
ARTICLE 7

PURCHASE OF DISSOCIATED PARTNER'S INTEREST


Section 703. Dissociated Partner's Liability to Other Persons When Business Not Wound Up.

Section 704. Statement of Dissociation.

Section 705. Continued Use of Partnership Name.

SECTION 701. PURCHASE OF DISSOCIATED PARTNER'S INTEREST WHEN PARTNERSHIP BUSINESS NOT WOUND UP.

(a) If a partner is dissociated from a partnership under Section 601 without causing a dissolution and winding up of the partnership business under Section 801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a price determined under subsection (b).

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

(c) Any damages for wrongful dissociation under Section 602(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price.

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

(e) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the net amount the partnership estimates to be the buyout price, including any offsets under subsection (c) and accrued interest, and an explanation of how the estimated amount was calculated. The payment must be accompanied by a statement of partnership liabilities as of
the date of dissociation, the latest available partnership
balance sheet and income statement, if any, and a written
notice stating that the payment is in full satisfaction of
the obligation to purchase unless, within 120 days after
the written notice, the dissociated partner commences an
action to determine the buyout price, any offsets under
subsection (c), or other terms of the obligation to
purchase. 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 buyout price, including any offsets
under subsection (c), stating the time of payment, the
amount and type of security, and the other terms and
conditions of the obligation.

(f) A dissociated partner may maintain an action,
pursuant to Section 406(b)(2), to determine the buyout
price of the dissociated partner's interest, any offsets
under subsection (c), or other terms of the purchase
obligation. The action must be commenced within 120 days
after the partnership has tendered payment, pursuant to
subsection (e), or an offer to pay, pursuant to subsection
(g), or within one year after written demand if no payment,
or offer to pay, is tendered. The court shall determine
the buyout price of the dissociated partner's interest, and
any amount due under subsection (c), and enter judgment for
any additional payment or refund. If deferred payment is
authorized under subsection (g), the court shall also
determine the security and other terms of the obligation to
purchase. The court may assess attorney's fees and the
fees and expenses of appraisers or other experts for a
party to the action, in amounts the court finds equitable,
against any other party, if the court finds that the other
party acted arbitrarily, vexatiously, or not in good faith,
including the partnership's failure to pay, pursuant to
subsection (e), or offer to pay, pursuant to subsection
(g).

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

SECTION 702. DISSOCIATED PARTNER'S POWER TO BIND
PARTNERSHIP WHEN BUSINESS NOT WOUND UP. Subject to Section
704, for two years after a partner dissociates under
Section 601 without causing a dissolution and winding up of
the partnership business, the partnership is bound by an
act of the dissociated partner that would have bound the
partnership under Section 301 before dissociation if the
other party to the transaction reasonably believes when entering the transaction that the dissociated partner is a partner at that time and does not have notice of the partner's dissociation.

SECTION 703. DISSOCIATED PARTNER'S LIABILITY TO OTHER PERSONS WHEN BUSINESS NOT WOUND UP.

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation.

(b) Subject to Section 704, a partner who dissociates under Section 601 without causing a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership within two years after the partner's dissociation, if the other party reasonably believes when entering the transaction that the dissociated partner is a partner at that time and does not have notice of the dissociation.

(c) A dissociated partner is released from liability for a partnership obligation incurred before the dissociation by an agreement of the partnership creditor, the dissociated partner, and the partners continuing the business.

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

SECTION 704. STATEMENT OF DISSOCIATION.

(a) A dissociated partner or the partnership may execute and file in the office of [the Secretary of State] a statement that the partner is dissociated from the partnership and may record a certified copy of the statement in the place for recording transfers of real property.

(b) A partnership is not bound by an act of a dissociated partner under Section 702, and a dissociated partner is not liable for a partnership transaction under Section 703(b), if a statement of dissociation is filed more than 90 days before the act or transaction provided that the statement of dissociation must also be recorded in the place for recording transfers of real property to be effective in a transaction that concerns partnership real property.

SECTION 705. CONTINUED USE OF PARTNERSHIP NAME.

Continued use of a partnership's name, or a dissociated partner's name as part thereof, by the partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners continuing the business.
ARTICLE 8

WINDING UP PARTNERSHIP BUSINESS

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

SECTION 801. EVENTS CAUSING DISSOLUTION AND WINDING UP OF PARTNERSHIP BUSINESS. Except as provided in Section 802, a partnership is dissolved, and its business must be wound up, only upon:

(1) in a partnership at will, receipt by the partnership of notice from a partner, other than a partner who has dissociated under Sections 601(2) or (10), of the partner's express will to withdraw as a partner or wind up the partnership business, or upon any later date specified in the notice;

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

(i) receipt by the partnership of notice, within 90 days after a partner's wrongful dissociation under Section 602, of any other partner's express will to withdraw as a partner or wind up the partnership business;
(ii) receipt by the partnership of notice, within 90 days after a partner's dissociation by death or otherwise under Sections 601(6) through (10), of any other partner's express will to withdraw as a partner or wind up the partnership business;

(iii) 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 for security purposes, or those whose interest is subject to a charging order that has not been foreclosed; or

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

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

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but 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;

(5) if a court, on application by a partner, decrees that:

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

(ii) another 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; or

(6) if 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 expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking; or

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

SECTION 802. DISSOLUTION DEFERRED NINETY DAYS.
(a) Except as provided in subsection (b), a partnership is not dissolved until the expiration of 90 days after receipt of a notice to the partnership under Section 801(1) or 801(2)(i) or (ii), and its business may be continued until that time as if no notice were received. Within that time, the partner who gave the notice may waive the right to have the partnership business wound up. If there is no waiver within that time, the partnership is dissolved and its business must be wound up.

(b) Notwithstanding subsection (a), upon receipt by a partnership of notice from at least half of the partners of their express will to withdraw as partners or to wind up the partnership business pursuant to Section 801(1) or 801(2)(i) or (ii), the partnership is dissolved and its business must be wound up.

(c) A partner who withdraws under Section 801(1) or 801(2)(i) or (ii) may not participate in the management and conduct of the partnership business if it is continued under subsection (b), but may participate in winding up the business under Section 804(a) if the partnership is dissolved after 90 days.

(d) Notwithstanding Section 807(a), a partner who dissociates under Section 601(1) and whose dissociation results in a dissolution and winding up of the partnership business under Section 802(a) is not liable to the other partners for, and shall be indemnified by them against, any
partnership liability incurred after the partner's
dissociation that is not appropriate for winding up the
partnership business, except a partnership liability
incurred by the dissociated partner's act under Section
805(2). A partnership liability for which the dissociated
partner is not liable to the other partners under this
subsection shall be excluded in determining the net amount
distributable to that partner under Sections 803 and 808 if
the partnership business is wound up as a result of the
partner's dissociation.

(e) If a partner dissociates under Section 601(1)
and the partnership business is continued under Section
802(a), but is thereafter wound up as a result of that
partner's dissociation, the capital account of the
dissociated partner shall not be credited with a share of
any profit, nor charged with a share of any loss, from new
business undertaken by the remaining partners before
dissolution; the dissociated partner's capital account
shall be credited with a share of any profit and charged
with a share of any loss from partnership business
undertaken before the partner's dissociation and from any
transaction that is appropriate for winding up the
partnership business.

SECTION 803. WINDING UP PARTNERSHIP BUSINESS.
(a) A partnership continues after dissolution until
the winding up of its business is completed, at which time
the partnership is terminated.

(b) In winding up a partnership's 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 each partner, if any.

SECTION 804. RIGHT TO WIND UP PARTNERSHIP BUSINESS.

(a) After dissolution, the partners who have not
wrongfully dissociated may wind up a partnership's
business. However, the [designate the appropriate court]
court, for good cause, may wind up a partnership's business
upon application of a partner, partner's legal
representative, or transferee.

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

(c) A person winding up a partnership's business
may preserve the partnership business or property as a
going concern for a reasonable time, prosecute and defend
actions, 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 the assets of the partnership
pursuant to Section 808, and perform other necessary acts.
SECTION 805. PARTNER'S POWER TO BIND PARTNERSHIP AFTER DISSOLUTION. Subject to Section 806, a partnership is bound by a partner's act after dissolution that:

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

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

SECTION 806. STATEMENT OF DISSOLUTION.

(a) Any partner, other than a dissociated partner, 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) Unless otherwise stated in a statement of dissolution, the statement 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.

(c) A statement of dissolution has the same effect as a limitation of authority in a statement of partnership authority under Section 303(i), except that 90 days after it is filed with [the Secretary of State] the statement of dissolution is deemed notice that the partnership has dissolved and its business is being wound up.
SECTION 807. PARTNER'S LIABILITY TO OTHER PARTNERS
AFTER DISSOLUTION.

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

(b) The other partners are not liable to a partner who, with knowledge of the winding up, incurs a partnership liability under Section 805(2) by an act that is not appropriate for winding up the partnership business.

SECTION 808. SETTLEMENT OF ACCOUNTS AMONG PARTNERS.

(a) Upon winding up the partnership business, each partner is entitled to a settlement of all partnership accounts.

(b) In settling accounts among the partners upon winding up the partnership business:

(1) The assets of the partnership must 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 must 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 partnership 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 creditors of a partnership or a partner, or any person appointed by a court to represent creditors of a 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 transferee, may recover any contributions the partner made under paragraph (3) to the extent the amount exceeded the partner's share of the liability.

(6) The estate of a deceased partner is liable for the contributions specified in paragraph (3).
ARTICLE 9

CONVERSIONS AND MERGERS

Section 901. Conversion of Partnership to Limited Partnership.

Section 902. Conversion of Limited Partnership to General Partnership.

Section 903. Effect of Conversion; Entity Unchanged.

Section 904. Merger of Partnerships.

SECTION 901. CONVERSION OF PARTNERSHIP TO LIMITED PARTNERSHIP.

(a) A partnership formed under this Act or any predecessor partnership may convert to a limited partnership as provided in this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by the unanimous vote of all the partners, or any lesser vote specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership that satisfies the requirements of [Section 201 of the Revised Uniform Limited Partnership Act] and includes:

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

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

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

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

SECTION 902. CONVERSION OF LIMITED PARTNERSHIP TO
GENERAL PARTNERSHIP.

(a) A limited partnership formed under the provisions of
the [State] Limited Partnership Act, or any predecessor
limited partnership act, may convert to a general
partnership as provided in this section.
(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a general partnership must be approved by the unanimous vote of all the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership pursuant to Section [203 of the Revised Uniform Limited Partnership Act].

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

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the partnership before the conversion takes effect. The partner is liable as a general partner, as provided in this [Act], for an obligation of the partnership incurred after the conversion takes effect.

SECTION 903. EFFECT OF CONVERSION; ENTITY UNCHANGED.

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

(b) When a conversion takes effect:

(1) Title to all property owned by the converting partnership remains vested in the converted partnership
without further act or deed and without reversion or impairment;

(2) All liabilities of the converting partnership continue as liabilities of the converted partnership; and

(3) Any proceeding pending against the partnership may be continued as if the conversion did not occur.

SECTION 904. MERGER OF PARTNERSHIPS.

(a) Pursuant to a plan of merger approved as provided in subsection (c), partnerships may be merged as provided in this section:

(1) One or more general partnerships formed under the provisions of this [Act], or any predecessor partnership act, may merge with one or more other partnerships formed under the provisions of this [Act], or any predecessor partnership act, or the partnership statute of another state or foreign jurisdiction;

(2) One or more partnerships formed under the provisions of this [Act] or any predecessor partnership act may merge with one or more limited partnerships formed under the provisions of this [State] Limited Partnership Act, or any predecessor limited partnership act, or the limited partnership statute of another state or foreign jurisdiction.

(b) The plan of merger must set forth:
(1) the name of each partnership that is a party to the merger;
(2) the name of the surviving partnership into which the other partnerships will merge;
(3) whether the surviving partnership is a general or a limited partnership and the status of each partner;
(4) the terms and conditions of the merger;
(5) the manner and basis of converting the ownership interests of each party to the merger into partnership interests or debt obligations, or other ownership interests, of the surviving partnership, or into cash or other property in whole or part; and
(6) the address of the surviving partnership’s place of business where a copy of the plan of merger shall be maintained.

(c) The plan of merger must be approved:

(1) in the case of a general partnership that is a party to the merger, by the unanimous vote of all the partners, or any lesser vote specified for merger in the partnership agreement; and
(2) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the applicable statute of the state or foreign jurisdiction where the other partnership is formed or organized, and, in the absence of a specifically applicable
statute, by the unanimous vote of all the partners,
notwithstanding a provision to the contrary in the
partnership agreement.

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

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

(1) the approval of the plan of merger by the
partners of each party to the merger, as provided in
subsection (c);

(2) the filing of all documents required by
statute to be filed by each party to the merger; or

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

(f) The surviving partnership shall promptly file
all notices and documents relating to the merger required
by all applicable statutes governing the partnerships that
are parties to the merger, including articles of merger or
the amendment or cancellation of a statement of partnership
authority or certificate of limited partnership.

(g) A surviving foreign partnership is deemed to
appoint irrevocably the [Secretary of State] of this State
as its agent for service of process in any proceeding to
enforce an obligation of a domestic partnership that is a
party to the merger. The partnership must promptly notify
the [Secretary of State] of its current mailing address.
(h) When a merger takes effect:

(1) Every other partnership that is a party to the merger, except the surviving partnership, ceases to exist;

(2) Title to all property owned by each of the merged partnerships vests in the surviving partnership without further act or deed and without reversion or impairment;

(3) All liabilities of every partnership that is a party to the merger become the liabilities of the surviving partnership;

(4) Any proceeding pending against a partnership that is a party to the merger may be continued as if the merger did not occur or the surviving partnership may be substituted in the proceeding for a partnership whose existence ceased under paragraph (1); and

(5) A partnership that is not the surviving partnership in the merger is deemed to have wound up its business.
ARTICLE 10

MISCELLANEOUS PROVISIONS

Section 1001. Uniformity of Application and Construction.
Section 1002. Short Title.
Section 1003. Severability.
Section 1004. When Act Takes Effect.
Section 1005. When Legislation Repealed.
Section 1006. Application to Existing Relationships.

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

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

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

SECTION 1004. EFFECTIVE DATE. This [Act] take effects . . . .

SECTION 1005. REPEALS. The following acts and parts of acts are repealed: [the Uniform Partnership Act as amended and in effect immediately prior to the adoption of this [Act]].
SECTION 1006. APPLICATION TO EXISTING RELATIONSHIPS.

(a) This [Act] does not impair the obligations of a contract existing when the [Act] goes into effect or affect an action or proceeding begun or right accrued before this [Act] takes effect.

(b) Except as otherwise stated in this section and in Section 1006, this [Act] applies to all partnerships in existence on its effective date that were formed under the [State] Partnership Act or any predecessor statute providing for the formation, operation, and liquidation of partnerships.

(c) The [State Execution Law] shall apply to the satisfaction of a judgment against the partnership or a partner obtained by a creditor of the partnership if the suit giving rise to the judgment was commenced before the effective date of this [Act].
March 17, 1992

Mr. Lane Kneedler  
Office of Attorney General  
101 North 8th Street  
Richmond, Virginia 23219

Re: RUPA -- Fiduciary Duty Questions

Dear Mr. Kneedler:

This is a comment letter on behalf of the Subcommittee on the Proposed Revised Uniform Partnership Act of the ABA Committee on Partnerships and Incorporated Business Organizations (the "Subcommittee"). On December 7, 1990, we submitted a comment letter specifically addressing the issue of a partner's accountability as a fiduciary. In certain areas the Subcommittee is still seriously concerned about the current draft RUPA regarding this issue. The purpose of this letter is to provide our further comments with supporting information. We have also provided suggested alternate language as Exhibit A and an explanation regarding our proposals will be found below.

I. Concerns With Draft RUPA.

The Subcommittee has three principal areas of serious concern with what we understand to be the current (March 3, 1992) draft RUPA to the extent it deals with the question of fiduciary duties of partners. These areas are:

(1) Section 404 begins with the phrase "The only fiduciary duties a partner owes to the partnership and the other partners are the duty of good faith and fair dealing...." The Subcommittee believes that the duty of good faith and fair dealing is not a fiduciary duty and that its inclusion as one of the "fiduciary duties" of a partner to the others will cause continuing confusion and misconstruction of the purpose of Section 404, and a fundamental change in existing law;
(2) Subsection 404(a), by reference to the duty of good faith and fair dealing which has previously been defined as one of the fiduciary duties, arguably continues the exceedingly untenable and litigation-fostering concept that parties to a proposed contract (partnership) are fiduciaries to each other in the pre-formation stage; and

(3) Subsection 404(a) compounds the pre-formation stage problem by specifically providing that "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."

We address below in more detail our comments regarding these three problems.


The Subcommittee believes that the duty of good faith and fair dealing is a concept of general contract law and is not to be confused as creating a special relationship duty -- a fiduciary duty. The Uniform Commercial Code, Section 1-201(19), defines "good faith" to mean "honesty in fact in the conduct or transaction concerned." Section 1-203 of the UCC further provides: "Obligation of Good Faith - Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement." While draft RUPA uses the term "good faith and fair dealing," we presume that the concepts addressed are intended to be the same as those set forth as the duty of good faith in the Uniform Commercial Code sections cited above.

The Subcommittee does not dispute the notion that partners, by virtue of their contract relationship with each other, owe each other a duty of good faith. We are convinced, however, that characterization of that duty as a special relationship duty, or fiduciary duty, generates considerable mischief and will spawn considerable litigation.

A fiduciary duty arises out of a special relationship, not a garden variety contract relationship. As with all other aspects of RUPA, we must be mindful of spill-over problems that can be created by well-meaning but perhaps incompletely thought through creative activity. If the duty of good faith and fair dealing between partners is a fiduciary duty, how long will it be before some court is persuaded that the same
duty in UCC governed contracts is also a fiduciary duty? We think that step in logic would be inevitable and not long in coming.

2. Applying Fiduciary Duties to the Preformation Stage.

As lawyers advising persons engaged in contract negotiations, we find inconceivable the notion that they can be at arm’s length in their bargaining while at the same time fiduciaries vis-a-vis each other. Nonetheless, that is what draft Section 404(a) would support.

One might argue that UPA § 21 provides for fiduciary duties in the pre-formation stage. However, while § 21 is referred to as the UPA Section codifying fiduciary duties, this appears more an accident of mis-labeling than a design of the UPA itself. The only use of the word "fiduciary" is in the section caption. (Indeed, California relabeled the section to eliminate this misnomer.) Section 21 merely prescribes a duty to account to the partnership for profits derived from any transaction connected with the formation, conduct or liquidation of the partnership, or use of its property by the charged partner. Somehow this was mislabeled as a fiduciary duty in the UPA.

We agree that the notion of fiduciary relationships existing between and among partners has become firmly established in decisional law of partnerships. Our concern is not that the duty is stated to exist; it is with the failure of draft RUPA to properly circumscribe the duty so that it is relevant to the business context of general partnerships. Section 21(1) of UPA sets forth an entirely appropriate standard of accountability when one partner derives a personal profit from a transaction that should benefit the partnership. One searches Section 21 in vain to find the notion that one who may have earned a secret profit through a pre-formation transaction is, therefore, a general fiduciary to those with whom he or she is negotiating a fundamental business relationship. At this stage in their hoped-for relationship the prospective partners are, in fact, adverse parties, bargaining at arm’s length for the best deal each can achieve in the proposed partnership. How can they be fiduciaries to one another? We must not confuse a duty to deal honestly, and without fraud, with the special relationship that is fundamental to the existence of a fiduciary duty.
The practical problems of proposed § 404(a) becomes more apparent when one considers the implications of advising these so-called "fiduciaries" in their negotiations with each other. Would any lawyer represent a Trustee in connection with negotiations for a contract with the Trustee's beneficiary? Perhaps some might if the beneficiary had independent counsel advising him or her. Even then, we submit, the path of negotiations would be exceedingly narrow with precipitous drops on either side.

We are aware that a very few cases in recent years have found, or at least stated, that a general partner is a fiduciary to proposed limited partners. Each of the cases where this result was reached was a garden variety securities fraud case which could and should have based general partner liability on Rule 10b-5 or the state law equivalent. In one case (Eisenbaum) the court used the "pre-formation fiduciary" wild card to extend the applicable securities law statute of limitations on the grounds that the statute is tolled when the "fiduciary" fails to tell the beneficiary that he/she has a lawsuit. At least two courts, in similar cases, have expressly decided against the notion that the fiduciary relation arises prior to the partnership relationship.

Many cases have held that there is no fiduciary duty to disclose prior to the formation of a partnership relationship. As the court said in Walker v. Patterson, "unless there is something to limit them other than the fact that partnership is intended, parties negotiating to that end deal with each other at arm’s length." Although some cases recognize a duty to disclose pre-formation transactions, such disclosure is required only in connection with a transaction occurring after the partnership has begun and the parties are already fiduciaries. The duty in these cases arises in connection with the conduct of the business. Referring to an additional fiduciary duty in formation of the partnership is unnecessary and confusing.

3. The Fiduciary Duty May Not be Eliminated.

The proposed ban against freedom to contract away the fiduciary duty makes definition of the scope of that duty all the more important. We seriously question, however, the wisdom of any ban against contracting away the duty.

Preliminarly, we note that § 404(a) is directly contrary to existing Delaware limited partnership law on this subject. Thus, we start with the understanding that § 404(a)'s proposed prohibition would probably ensure non-uniformity on this point.
More importantly, however, we point out that we are not now considering a default provision that will apply if the parties do not have a written agreement. We are addressing here a very fundamental provision that would only be debated if the partners specifically addressed the matter, presumably in writing. Most of our Subcommittee's deliberations have been focused on the smaller partnership where the default rules are more likely to apply. This discussion is focused more on major commercial transactions, structured with the assistance of sophisticated business counsel, which are the only situations where it is likely the partnership agreement will specifically contract away or severely limit partner fiduciary duties.

It would appear that when the legislature denies contracting parties the power to specify the terms of their agreement, the legislature bears a heavy burden of proof to substantiate why such power is being denied. Put another way, when the legislature imposes a particular protection on persons who do not desire that protection, there must be an overriding state policy reason why that imposition is appropriate. And in the commercial context, the instances where that state policy can be demonstrated must be rare, indeed.

Again, we must return to our Subcommittee's constant touchstone -- eliminating, or at least minimizing, litigation as a post-transaction renegotiating lever. Here we refer you to the cases cited in the Endnotes. In each case, we submit, the fiduciary claim was injected as a wild card to boost the plaintiff's litigation posture but with no legitimate influence on the outcome. In this regard, we include even Eisenbaum, which essentially abrogates statutes of limitation in limited partnership securities law cases.

It is this litigation-spawning minefield that businessmen and women may wish to avoid by contracting away fiduciary duty obligations. In addition to the cases cited above, innumerable citations can be made to partnership disputes which drag on long past any useful or legitimate resolution because of the fiduciary duty claims. A good example is Wilson v. Button, where the aggrieved partner claimed that his partner's enforcement of a right to a salary as set forth in the partnership agreement was a breach of fiduciary duty! The Commissioners were apparently aware of this recurring type of problem since they permit identification of "specific conduct that does not violate the duty if the conduct is not manifestly unreasonable." Where does Wilson fit into this? We submit that the § 404(a) formulation allows litigation over every...
agreement, and litigation regarding a matter of fact which is where lawyers get rich and the business people get frustrated.

II. Suggested Alternative Language

Enclosed with this letter as Exhibit A are suggested provisions for various sections in draft RUPA that will resolve the difficulties we discussed above. The following discussion relates to Exhibit A.

We have revised § 404 by deleting subparagraph (b) which deals with the duty of "good faith and fair dealing." As will be discussed, we have suggested that this concept be deleted from the Act, but we suggest that if it is desired to include it specifically in RUPA, the proper place would be in Section 401.

A further change to Section 404 is suggested in draft RUPA subparagraph (c) which we have relettered (b) in Exhibit A. One change proposed in subparagraph (b)(1) is deletion of the word "informed" preceding consent (a change also suggested for subparagraph (b)(3)). It would seem that if the applicable standard is "informed consent," there will be litigation generated over the type and level of information the charged partner must have given to the other partners before their consent will be deemed given. Certainly, the requirement of consent requires the other partners' knowledge that the charged partner is acting and/or benefitting in a way that would be a breach of the duty of loyalty without such consent. Injecting the adjective "informed" imposes a standard that cannot be satisfied by reference to any objective criteria. Generally speaking, in commercial relationships one assumes knowledge of a set of facts constitutes acceptance or consent to the activity unless the aggrieved party gives some notice or takes some action. That should be sufficient in a partnership context as well. If one person knows his partner is developing a property adjoining the partnership property, is that not sufficient to require the first partner to voice his objection? Or must he first know all of the costs involved, his partner's overall plans, the possible uses of the property, etc.? How far must one go for informed consent? We submit this formulation will be another litigation-generating excuse for post-transaction renegotiations and should, therefore, be deleted from RUPA.
A second proposed change to Section 404(b)(1) is to define the scope of applicability as "from a transaction connected with the conduct or winding-up of the business of the partnership." We have addressed above the problems of implying that fiduciary duties may apply in the pre-formation period. To make it clear that such duties arise only upon formation of the partnership, we believe the word "formation" must be deleted from Section 404. The other suggested changes are to conform the language more closely with that used in other places in RUPA.

We have deleted subparagraph (b)(2) [(c)(2) in draft RUPA], because it appears redundant with subparagraph (1). Moreover, we were concerned that it might be used as a hammer against a partner who has a legitimate complaint or claim against his partners or the partnership. In this regard, it appears to prohibit a partner from suing the partnership although we understand that the archaic notion, that an aggrieved partner's only remedy is to dissolve and seek an accounting, has long since been rejected by the Drafting Committee. Finally, we noticed that the proposed official comments regarding subparagraph (2) state that it is derived for the law of agency which requires an extremely high standard of loyalty toward the principal. Again, we are struck by the danger of relying too heavily on agency law where the agent is also a principal, as in a partnership relationship. Further, the sentence would appear to be in direct conflict with subparagraph (d) which specifically contemplates some level of adverse interest.

Exhibit A suggests reversing the order of subparagraphs (d) and (e) of Draft RUPA Section 404. This puts the subparagraph defining "duty of care" before the paragraph explaining conduct that does not constitute a violation of that duty.

The changes we have suggested to Exhibit A subparagraph (d) are merely to add words that conform the scope of the duty (conduct and winding up of the business) (gross negligence or willful misconduct) with the rest of Section 404.

Finally, as to the former subparagraph (d) which is also subparagraph (d) in Exhibit A, the changes in the first section are merely to make it consistent with the remainder of Section 404 as discussed above. The second sentence has been deleted because it may be used to argue that other conduct not mentioned is, therefore, not permitted. Indeed, the sentence in Draft RUPA sets up an argument against a partner's right to initiate a foreclosure action. One of the issues upon which it is impossible to opine today is whether a partner who holds a mortgage on partnership
property, or who leases property to the partnership, may enforce against the partnership his rights as mortgagee or lessor without being met by a claim that such action is a breach of fiduciary duty. Inserting the sentence relating to bidding on assets in a foreclosure sale would be a very powerful argument that initiating the foreclosure action is going too far and, therefore, a breach of fiduciary duty. Since there are hundreds of actions which should be permissible, inserting one example only serves to provide the "pregnant affirmative" argument against all others.

With regard to our proposed revision of Section 401, we begin by observing that we do not really propose that the new subparagraph (l) be added. Our firm conviction is, as discussed in Part I of this letter, that the duty of good faith need not be explicitly included in RUPA. Courts have long since implied this duty in contract relationships; therefore, to add it now to RUPA may support an argument that the law is being changed. (We do not understand the Drafting Committee to be suggesting a change in the law in this regard; if a change is being suggested, we are unable to discern what it is.) However, if the Committee believes it is necessary to include specific reference to the duty of good faith, we believe it must be removed from Section 404 for the reasons discussed in Part I, and the most logical place to put it is in Section 401.

Our final proposed change in Exhibit A is to Section 403, which we found to be closely related to the matters discussed above. We have two problems with the Draft Rupa version of subparagraph 403(c). First, we believe that in addition to the partnership’s duty, the duty to furnish information should apply to the partners as well. If the duty is only on the partnership, we see endless arguments on the question of whether any actual person ever had the duty to provide information. Secondly, we strongly believe the duty to furnish information is an ongoing duty, not one that arises only when a demand is made. In many cases, only one or a limited number of partners may have access to valuable or important information concerning the partnership. How is the uninformed partner to know that she or he should make a demand for it? Or should the prudent partner give a note to each other partner every Monday morning demanding all important information? Simply put, partners possessed of important information germane to the partnership should be expected to pass it on without demand. Of course, the corollary is that they clearly would also be obligated to provide that information on demand.
We trust the foregoing will be helpful in the Drafting Committee's deliberations of these most important aspects of partnership law. Questions regarding this letter should be addressed to Gerald Niesar ((415) 243-9100) or Marty Lubaroff ((302) 651-7610). Gerald Niesar plans to attend that part of the Drafting Committee session during which the fiduciary duty questions will be discussed in order to answer any questions that may arise concerning the deliberation of the Subcommittee.

Very truly yours,

Gerald V. Niesar
for
Subcommittee on RUPA

GVN:cmn
Section 404. Partner's Limited Fiduciary Duties.

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

(b) [Delete - see comment letter and/or possible new § 401(1).]

(b) A partner's duty of loyalty to the partnership and to 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 consent of the other partners, from a transaction connected with the conduct or winding-up of the business of the partnership or from a use by the partner of the partnership property; and

(2) to refrain from competing with the partnership without the consent of the other partners.

(d) A partner owes a duty of care to the partnership and the other partners to act in the conduct and winding-up 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 is not gross negligence or willful misconduct.

(c) A partner does not violate the duty of loyalty or the duty of care merely because the partner's conduct furthers the partner's individual interest. [Delete second sentence from March 3, 1992 draft.]

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

Section 401. Rules Determining Partner's Rights and Duties.

(a)-(k) [March 3, 1992 draft]
[New]   (l) A partner owes to the partnership and the other partners a duty of good faith in the conduct and winding-up of the business of the partnership. The duty of good faith means honesty in fact in the conduct or transaction concerned. The duty of good faith may not be disclaimed by agreement, but the partners may by agreement determine the standards by which the performance of such duty is to be measured if such standards are not manifestly unreasonable.

   (m)   [March 13, 1992 draft as (l)]

[The changes above would require a change to Section 105(b)(2) so that it reads: "(2) disclaim the duty of good faith under Section 401(l);"]

Section 403. Partner’s Right to Information.

(a) March 3, 1992 draft.

(b) March 3, 1992 draft.

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


3. Waite, Winslow and Phoenix; Walker v. Patterson, 166 Minn. 215, 208 N.W. 3 (1926); Densmore Oil Co. v. Densmore, 64 Pa. 43 (1870).

4. 166 Minn. at 220-21; 208 N.W. at 3.


   (c) It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of partnership agreements.

   (d) To the extent that, at law or in equity, a partner has duties (including fiduciary duties) and liabilities relating thereto to a limited partnership or to another partner, (1) any such partner acting under a partnership agreement shall not be liable to the limited partnership or to any such other partner for the partner's good faith reliance on the provisions of such partnership agreement, and (2) the partner's duties and liabilities may be expanded or restricted by provisions in a partnership agreement.

SECTION 801. EVENTS CAUSING DISSOLUTION AND WINDING UP
OF PARTNERSHIP BUSINESS. Except as provided in Section
802, a partnership is dissolved, and its business must be
wound up, only upon:

(1) in a partnership at will, receipt by the
partnership of notice, or upon any later date specified in
the notice:

(a) from a majority of the partners of their
express will to wind up the partnership business; or

(b) from a partner, other than a partner who
is dissociated under Sections 601(2) through (10), of that
partner's express will to withdraw as a partner;

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

(i) within 90 days after a partner's wrongful
dissociation under Section 602 or a partner's dissociation
by death or otherwise under Sections 601(6) through (10),
receipt by the partnership of notice:

(a) from a majority of the other partners
of their express will to wind up the partnership business;
or

(b) from another partner of that partner's
express will to withdraw as a partner;
(ii) 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 for security purposes, or those whose interest is subject to a charging order that has not been foreclosed; or

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

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

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but 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;

(5) a court's decree, on application by a partner, that:
(i) the economic purpose of the partnership is likely to be unreasonably frustrated;

(ii) another 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; or

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

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

(ii) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order.
ARTICLE 9
CONVERSIONS AND MERGERS

Section 901. Conversion of Partnership to Limited Partnership.

Section 902. Conversion of Limited Partnership to General Partnership.

Section 903. Effect of Conversion; Entity Unchanged.

Section 904. Merger of Partnerships.

Section 905. Effect of Merger.

Section 906. Statement of Merger.

SECTION 901. CONVERSION OF PARTNERSHIP TO LIMITED PARTNERSHIP.

(a) A partnership formed under this [Act] or any predecessor partnership act may convert to a limited partnership pursuant to this section.

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

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership that satisfies the requirements of [Section 201 of the Revised Uniform Limited Partnership Act] and includes:

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

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

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

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

SECTION 902. CONVERSION OF LIMITED PARTNERSHIP TO
GENERAL PARTNERSHIP.

(a) A limited partnership formed under the [State]
Limited Partnership Act or any predecessor limited
(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a general partnership must be approved by the unanimous vote of all the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership pursuant to Section [203 of the Revised Uniform Limited Partnership Act].

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

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

SECTION 903. EFFECT OF CONVERSION; ENTITY UNCHANGED.

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

(b) When a conversion takes effect:

(1) Title to all property owned by the converting partnership remains vested in the converted partnership
without further act or deed and without reversion or impairment;

(2) All liabilities of the converting partnership continue as liabilities of the converted partnership; and

(3) Any proceeding pending against the partnership may be continued as if the conversion did not occur.

SECTION 904. MERGER OF PARTNERSHIPS.

(a) Pursuant to a plan of merger approved as provided in subsection (c), partnerships may be merged as follows:

(1) One or more general partnerships formed under this [Act], or any predecessor partnership act, may merge with one or more other general partnerships formed under this [Act], or any predecessor partnership act, or the general partnership statute of another state or foreign jurisdiction;

(2) One or more general partnerships formed under this [Act], or any predecessor partnership act, may merge with one or more limited partnerships formed under the provisions of the [State] Limited Partnership Act, or any predecessor limited partnership act, or the limited partnership statute of another state or foreign jurisdiction.

[Recommendation: (a) Pursuant to a plan of merger approved as provided in subsection (c), a general}
(b) The plan of merger must set forth:

(1) the name of each partnership that is a party to the merger;
(2) the name of the surviving partnership into which the other partnerships will merge;
(3) whether the surviving partnership is a general or a limited partnership and the status of each partner;
(4) the terms and conditions of the merger;
(5) the manner and basis of converting the interests of each party to the merger into partnership interests or debt obligations, or other interests, of the surviving partnership, or into cash or other property in whole or part; and
(6) the address of the surviving partnership's principal place of business.

(c) The plan of merger must be approved:

(1) in the case of a general partnership that is a party to the merger, by the unanimous vote of all the partners, or any lesser vote specified for merger in the partnership agreement; and
(2) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the applicable statute of the state or foreign
jurisdiction where the other partnership is organized, and, in the absence of a specifically applicable statute, by the unanimous vote of all the partners, notwithstanding a provision to the contrary in the partnership agreement.

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

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

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

(2) the filing by each party to the merger of any documents required by statute to be filed as a precondition to the effectiveness of the merger; or

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

SECTION 905. EFFECT OF MERGER.

(a) When a merger takes effect:

(1) Every partnership that is a party to the merger other than the surviving partnership is deemed to be dissolved;

(2) Title to all property owned by each of the merged partnerships vests in the surviving partnership without further act or deed and without reversion or impairment;
(3) All liabilities of every partnership that is a party to the merger become the liabilities of the surviving partnership; and

(4) Any proceeding pending against a partnership that is a party to the merger may be continued as if the merger did not occur or the surviving partnership may be substituted as a party to the proceeding.

(b) A surviving foreign partnership is deemed to appoint irrevocably the [Secretary of State] of this State as its agent for service of process in any proceeding to enforce an obligation of a domestic partnership that is a party to the merger. The partnership shall promptly notify the [Secretary of State] of its current mailing address and of any future change of address. Upon receipt of process, the [Secretary of State] shall mail a copy of the process to the surviving foreign partnership.

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

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

(2) all obligations of the surviving partnership incurred before the merger by a party to the merger, other than those for which the partner is personally liable under paragraph (1), but the liability may be satisfied only out of partnership property; and
(3) all obligations of the surviving partnership
incurred after the merger takes effect.

(d) If the liabilities incurred before the merger by
a party to the merger are not satisfied out of the
surviving partnership's property, the former partners of
that party shall contribute, pursuant to Section 401(b),
the amount necessary to satisfy that party's partnership
liabilities. If any partner fails to contribute, the other
former partners of that party shall contribute their share
of the liabilities and, in the proportions in which they
shared losses, the additional amount necessary to satisfy
the liabilities.

[Alternative: (d) If the liabilities incurred before
the merger by a party to the merger are not satisfied out
of the surviving partnership's property, the former
partners of that party shall contribute the amount
necessary to satisfy that party's partnership liabilities
in the manner provided in Section 808(b) as if the merged
party were dissolved.]

(e) A partner of a party to the merger who does not
become a partner of the surviving partnership is, for the
purposes of Article 7, deemed dissociated from the
partnership of which that partner was a partner before the
merger.
SECTION 906. STATEMENT OF MERGER.

(a) The surviving partnership in a merger may execute and file in the office of the Secretary of State a statement that one or more partnerships have merged and may record a certified copy of the statement in the place for recording transfers of real property.

(b) A statement of merger shall include:

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

(2) the name of the surviving partnership into which the other partnerships are merged;

(3) the address of the surviving partnership's principal place of business; and

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

(c) Title to real property of the surviving partnership which before the merger was held in the name of another party to the merger is, for the purposes of Section 302, deemed held in the surviving partnership's name if a certified copy of the statement of merger, or other indicia of the surviving partnership's interest, is recorded in the place for recording transfers of that property.
SECTION 906. STATEMENT OF MERGER.

(a) At least two partners of the surviving partnership in a merger may execute, declare to be accurate under penalty of perjury, and file in the office of the Secretary of State a statement that one or more partnerships have merged into the surviving partnership and may record a certified copy of the statement in the place for recording transfers of real property.

(b) A statement of merger shall include:

(1) the name of each partnership that is a party to the merger;
(2) the name of the surviving partnership into which the other partnerships are merged;
(3) the address of the surviving partnership's principal place of business; and
(4) whether the surviving partnership is a general or a limited partnership.

(c) Title to real property of the surviving partnership which before the merger was held in the name of another party to the merger may, for the purposes of Section 302, be converted into property held in the surviving partnership's name by recording a certified copy of the statement of merger in the place for recording transfers of that property.
(a) At least two partners of the surviving partnership may execute, declare to be accurate under penalty of perjury and file, in the office of [the Secretary of State], a statement that one or more partnerships have merged into the surviving partnership. The statement shall include the name of each partnership which is a party to the merger and the name and the address of the chief executive office of the surviving partnership.

(b) The statement of merger shall have the same effect as a statement of dissolution under Section 806 for all general partnerships who are parties to the merger other than the surviving partnership.

(c) Title to real property of the surviving partnership which was held in the name of one of the other general partnership parties prior to the merger may, for the purposes of Section 302, be converted into property held in the surviving partnership’s name by recording a certified copy of the statement of merger in the place for recording transfers of that real property.

2/asm/0736K
3.18.92
March 17, 1992

Mr. H. Lane Kneedler
Office of the Attorney General
101 North Eighth Street
Richmond, Virginia 23219

Re: Revised Uniform Partnership Act Sections 101-309 - ABA Subcommittee Comments

Dear Lane:

I'm writing to provide some additional comments on Sections 101-309 of the March 3, 1992 draft of the Revised Uniform Partnership Act ("RUPA") to be presented to the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). These comments have been prepared by members of the Ad hoc Subcommittee on RUPA (the "Subcommittee") of the ABA Committee on Partnerships and Unincorporated Business Organizations (Section of Business Law) and reflect the general agreement of the majority of the members of the Subcommittee that attended its meetings in Washington, D.C. on November 8, 1991 and in Denver, Colorado on January 10-11, 1992.

This letter supplements both the October 29, 1990 letter and the July 26, 1991 letter (together the "Prior Letters") previously submitted on behalf of the Subcommittee regarding this portion of RUPA. A number of suggestions made in the Prior Letters have been incorporated into the current draft of RUPA; the NCCUSL Drafting Committee has decided not to adopt other suggestions made in the Prior Letters. Two of the comments made in the Prior Letters are remade in this letter due to the Subcommittee's strong feeling that they should be incorporated into RUPA. Other points not adopted by the Drafting Committee that the Subcommittee feels would improve RUPA but are not central to it are not remade herein.

As a final introductory note, we continue to believe that a number of style changes could be made to improve RUPA. However, we understand that RUPA will undergo a comprehensive review for
style and will reserve our style comments, at least as to Articles 1 through 3, for a later time. If our understanding is incorrect, please let me know.

1. Foreign Partnerships. At the Subcommittee’s discussions in Washington, it became clear that practitioners disagree as to the application of general partnership law to partnerships that operate in more than one state. Some Subcommittee members believe that a multistate partnership can select a state of formation and be confident that that state’s laws will govern its internal affairs and its relationships with third parties. Other members believe that the law that applies to a multistate partnership can vary in each state in which the partnership operates. Preservation in RUPA of the lack of statutory clarity on this issue present in the UPA could create confusing and inappropriate results, particularly as the state-by-state process of adopting RUPA is taking place and if and when non-uniform provisions are incorporated into RUPA as adopted by the various states. We feel strongly that a general partnership with multistate operations should be entitled to rely on one state’s law applying to relations among its partners and with third parties. In light of our discussions, we believe it is extremely important that RUPA include a provision based upon Revised Uniform Limited Partnership Act Section 901(1) that would read as follows:

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

2. Freedom of Contract. The primacy of the partnership agreement in governing partner and partnership relations is traditional in American partnership law and is memorialized in RUPA Section 105. Given the importance of this principle, we suggest that it be established more definitively by inclusion of one additional RUPA subsection and amendment of RUPA Section 105(a).

First, we suggest that the following subsection be added to RUPA Section 104:
"(c) It is the policy of this [Act] to give maximum effect to the principle of freedom of contract and to the enforceability of partnership agreements."

This subsection is based on Section 17-1101(c) of the Delaware Revised Uniform Limited Partnership Act, which has been very well received by practitioners.

Second, we suggest that Section 105(a) be revised to read in its entirety as follows:

"(a) Except as provided in Section 105(b), the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not provide, this [Act] governs relations among the partners and between the partners and the partnership."

These two provisions would help assure that, except as otherwise required by RUPA Section 105(b), the partners' wishes as to how their relationship should be structured will be respected.

3. Liability of Purported Partners. We believe that the relationship between Sections 307 and 308 with respect to purported partners should be clarified.

We believe that a purported partner who is liable together with a partnership through application of Sections 308(a) and 308(b) should have the benefit of the "exhaustion" requirement of Section 307. If a partnership accepts credit based on a representation made by or with the consent of a purported partner and all partners approve, it is appropriate for the recipient of the credit (the partnership) to have primary liability. Under RUPA, this will be consistent with the expectation of those who extend credit to a partnership. Although a comment to Section 308 states that Section 307 applies to Section 308(b), we feel that a strong possibility of different interpretations in different states will be present if the ability of purported partners to rely on Section 307 under these circumstances is not mentioned specifically in the statute.
We suggest that the following language be added to Section 308 as a new Section 308(c) (with relettering of existing subsections (c) and (d)).

"(c) If a partnership liability or obligation results under Section 308(b), the provisions of Section 307 shall apply to liabilities or obligations of both actual and purported partners."

We hope that these comments will be helpful to the Drafting Committee. Please contact me at 312-902-5293 or one of our Subcommittee's liaisons to the Drafting Committee if you would like clarification of the matters covered in this letter.

Respectfully,

James L. Jerue
on behalf of the
Ad hoc Subcommittee on RUPA

JLJ:pls
cor036/571-2/99000/rho

cc: Allan G. Donn
    Harry J. Haynsworth IV
    Edward S. Merrill
    Gregory P. L. Pierce
    John H. Small
    Donald J. Weidner

AD HOC SUBCOMMITTEE MEMBERS:

Gerald V. Niesar, Chairman
Norwood B. Beveridge
Michael L. Gravelle
George C. Hook
Alan Kailer
Robert R. Keatinge
Martin I. Lubaroﬀ
Thurston R. Moore

Paul McCarthy
William G. Pusch
Lauris G. L. Rall
Larry E. Ribstein
Frederic A. Rubenstein
Anthony Van Westrum
Robert H. Zimmerman
April 1, 1992

TO: Distribution List -- RUPA Subcommittee

FROM: Gerald V. Niesar

RE: Report; Schedule; Trivia

We held a two-day meeting in Dallas which was very productive. Our host, Alan Kailer, not only provided an excellent array of fine foods, he produced Alan Bromberg. Professor Bromberg was very complimentary and I think it fair to summarize his views as a conclusion that we are on the right track and doing a good job. We certainly appreciate Alan Kailer's and his firm's hospitality and the participation and support of Professor Bromberg.

Next Meeting. We have decided against the Saturday session in Orlando for two principal reasons. First, the session conflicts with an all-day meeting of the Ad Hoc Committee on Partnerships in Bankruptcy. Second, we were not, and still are not, sure we could accomplish much in Orlando since no final draft RUPA is available. Therefore, we will be part of the full Partnership Committee meeting Friday morning, April 10, and we will not have a separate working session at Orlando.

Enclosed are the following:

1. Summary: "What Was Accomplished in Dallas." (Note: the extensive "Fiduciary issue" comment letter was sent to you earlier.)

2. Copy of Lauris Ralls' typically thorough report on the Chicago deliberation of the Drafting Committee (March 19-22).

3. Copy of final Jerue/Gravelle letter on certain issues in Sections 101-301.

At this point, it appears that we should await the final version of the Draft RUPA to be submitted to the full NCCUSL, and then hold a Friday/Saturday meeting to formulate a position on that Draft as a whole. Possibly by the time we meet in Orlando we will have enough information to schedule that meeting.

Hope to see you in Orlando.
WHAT WAS ACCOMPLISHED IN DALLAS
RUPA Subcommittee Meeting
March 13-14, 1992

1. Formulated a position on fiduciary connection and closely related provisions, e.g., "duty of good faith" to be deleted from RUPA and moved to other section. The letter will be finalized and sent on March 16 or 17. (Niesar/Lubaroff)

2. Discussed Sections 801 and 802 and closely related matters relating to the "break-up" provisions. Rejected the "compromise;" concluded we could not support it or the previous RUPA draft giving each partner a "license to kill." (Rall)

3. Discussed the Statement of Dissociation (§ 704) and relationship of this to § 303 (Statement of Partnership Authority) and overall choice of law and conflict of law issues. (Van Westrum)

4. Discussed the concept of "capital accounts" (or any other specific accounting methodology) being included in RUPA. This was stimulated by Doc Merrill’s memo and proposed language. The unanimous agreement was that no specific accounting procedures should be included in RUPA because it adds a level of complication. For instance, it requires integrating into the "capital account" section(s) all financial impact provisions such as provisions for contribution to cover shortfalls (§ 807(b)(3)), accounting for unliquidated liabilities and appreciated assets, etc. No one could articulate a benefit that would result from adding this new concept to the statute. (Rall – when the subject comes up for discussion at Drafting Committee).

5. The January 1992 draft letter on § 101-301 by Jim Jerue was discussed, especially with respect to the "foreign partnership" issues. Mike Gravelle will review comments from the discussion with Jim Jerue and get the letter completed and sent in time for the March 19-22 Drafting Committee meeting. (Gravelle/Jerue).

6. It was decided that in Orlando we will have no separate meeting, but a good portion of the full Partnership Committee meeting (10:00-12:30 Friday morning, April 10) will be devoted to discussion of where this Subcommittee’s deliberations are and what should be its future activities.

7. In Chicago, Lauris Rall will be at the whole meeting March 19-22. Mike Gravelle will attend when the Section 101-301 issues will be covered. Gerry Niesar will attend for discussion of the fiduciary duty issues. Thurston Moore will attend at least part of the meeting, probably March 21-22.
8. We discussed the draft merger/conversion provisions. This will be the subject of a comment letter. (Pusch)

9. We decided that an overall "style review" was not useful at the Dallas meeting because there are still so many major portions of the Act unresolved that the effort might be largely academic. Regarding this comment, it should be noted that our use of "style review" refers to a comprehensive review of the entire act for internal consistency, minor substantive matters not previously addressed, review to determine whether redrafting properly and fully addressed the matters at issue, and spelling.
Memorandum

TO: Gerald V. Niesar, Chairman
ABA Subcommittee on the Revised Uniform Partnership Act

FROM: Lauris G. L. Rall

DATE: March 27, 1992

RE: Meetings of NCCUSL RUPA Drafting Committee in Chicago, Illinois on March 19-22, 1992

As you requested, I attended the above-referenced meetings on behalf of our RUPA Subcommittee. Thurston Moore attended the meetings on March 19th and Michael Gravelle attended the meetings on March 21st.

The following is a brief summary report of the actions taken by the NCCUSL Drafting Committee during these meetings, organized by topics discussed, generally in the order discussed, together with my observations on some of these actions.

Section 801: Events of Dissolution

The meetings began with a discussion of the alternatives proposed by our Subcommittee and NCCUSL with respect to the dissolution framework for at will partnerships and term partnerships in which a partner leaves before the end of the term (by death or otherwise wrongfully), together with the views of the NCCUSL Review Committee on this subject. As we discussed in our Dallas meetings, the Review Committee was not in favor of the so-called Allan Donn compromise adopted by the NCCUSL Drafting Committee in Richmond. (That compromise provided for the deferral of dissolution for 90 days following a partner withdrawal under the circumstances described above, but with the absolute right of the single partner to cause dissolution at the end of that period.) The Review Committee believes that either the original UPA approach under which the partnership dissolves immediately or the ABA Subcommittee approach permitting continuation by the remaining partners would be preferable to the compromise rule.

I indicated that the Subcommittee had discussed the compromise in our Dallas meetings and found the new rule to be illusory, that the power of the single partner to destroy the partnership was not sufficiently diluted by deferral, and that the continuation rule continued to be the correct solution. Thurston Moore reported that the Subcommittee had acted in part with the understanding that the recommendations of the NCCUSL Review Committee would cause a reconsideration of the Donn compromise. After a limited amount of further discussion, the NCCUSL Committee agreed to continue its support of the Donn compromise. NCCUSL leadership, present at the meeting, suggested that the draft RUPA which is to be submitted to the NCCUSL annual conference this August for adoption contain alternative provisions...
embodying the ABA approach. This suggestion was rejected by the Chairman of the NCCUSL Drafting Committee. However, it appears that some effort will be made to inform the NCCUSL members of the ABA Subcommittee position so that there will be some debate of the proposals at the annual conference.

Section 404: "Fiduciary" Duties

The Subcommittee's comment letter to this section was introduced and Thurston Moore discussed some of the Subcommittee's reasoning and analysis. The NCCUSL Committee was generally receptive to the Subcommittee's proposed new draft: the "duty of good faith" was moved out of the "fiduciary" duties section; neither that duty nor the duty of loyalty are applicable to "formation"; the subsection forbidding acting adversely to the partnership was revised to restrict only acting on behalf of another person having an interest adverse to the partnership; the word "informed" was dropped before the word "consent"; the sentence describing certain mortgagee actions as an example of activity which merely furthers self-interest was deleted, and in its place language similar to RULPA Section 107 was adopted.

The new subsection relating to "good faith" in Section 401 adopted by NCCUSL on March 19th was not as favorable as the proposed draft of that section in the Subcommittee's comment letter. The concept of fair dealing was linked with good faith and the narrow definition of "honesty in fact" was not adopted. The opposition to the Subcommittee's draft was based on the principle that good faith among partners was a stronger duty than good faith in UCC commercial dealings. Thurston Moore objected to the broader formulation of good faith as an independent duty (even if not a fiduciary duty), arguing that the relevant cases indicated that good faith was a dependent duty, obligating a partner to discharge his duties of loyalty and due care, and otherwise under the partnership agreement, in good faith. He drafted a revised Section 404 which I previously sent to you. This revised section was taken up by the NCCUSL Drafting Committee on March 22nd, the last day of these meetings, under considerable time pressure. Although the title of Section 404 was changed to "Standards of Conduct", the approach taken was similar to that in previous drafts of this section. There will be a statement that the only two fiduciary duties are the duty of loyalty and the duty of care. The "obligation" to discharge these duties and to exercise the rights and perform the duties in the partnership agreement, all in good faith, will also be included in Section 404. But it is framed as a dependent obligation and not as an independent fiduciary duty. The other positive changes described in the previous paragraph were continued in this "final" draft of Section 404.

Article 9: Mergers and Conversions

Certain significant changes were made to the merger and conversion provisions, since we last reviewed them, and these changes were adopted by the NCCUSL Committee in Chicago. First, the merger provision will permit a general partnership to merge with either a limited or general partnership in a state which adopts this version of RUPA, without regard to the state of formation of either of the constituent partnerships. There was substantial discussion concerning
the need for the laws of any foreign state in which one of the partnerships is organized (particularly limited partnerships) to permit a merger, but a provision to this effect was not adopted, even though other provisions in Article 9 refer to domestic and foreign partnerships. Secondly, the liabilities of the partners of the constituent partnerships in a merger have been clarified in Section 905(c): a partner of the surviving partnership will be liable for the obligations of a non-surviving constituent partnership (of which he was not a member) incurred before the merger only to the extent of the surviving partnership's property. This is the position our Subcommittee believed to be correct following our discussions in Dallas. This section will need additional changes to clarify that limited partners of a surviving or constituent partnership will receive different treatment than that set forth therein. Finally, in response to our comment, a new section will be added to draft Article 9 to clarify that the statutory conversion and merger procedures described therein are not exclusive, and thus partnerships may merge and convert under common law, to the extent permitted.

In general, there seems to be significant uncertainty as to the procedures for mergers and conversions, especially as they would apply to multistate partnerships and mergers between partnerships located in different jurisdictions. I believe we should focus on the "final" draft of RUPA to be presented to the NCCUSL convention this summer, and prepare commentary which would be available to NCCUSL concerning any defects in these provisions, in advance of their consideration of RUPA for adoption.

**Articles 1, 2 and 3**

A considerable amount of time was spent on these Articles. Our Subcommittee's comment letter, prepared by Jim Jerue and presented by Mike Gravelle, fared relatively well. First, Section 105(a) was rewritten, to reflect the supremacy of the partnership agreement, as we had suggested. However, our proposed addition to Section 104, formally adopting the policy of freedom of contract, will not be reflected in the statute, but may be included in the Official Commentary for the section. Also, our addition to Section 308, clarifying that a purported partner is allowed the benefits of the "jingle" rule with respect to exhaustion of partnership assets (contained in Section 307) was accepted. Finally, the NCCUSL Committee did adopt a new Section 107 to the effect that the laws of the state in which the partnership has its "chief executive office" (a term borrowed from the UCC), will govern its organization and internal affairs. There was significant discussion as to which state's laws would determine the rights of creditors and other third parties with respect to the partnership. NCCUSL's position at this time is for the statute to remain silent on this subject except to the extent of the rules relating to the filing and effect of the various statements which a partner or the partnership may file now under RUPA. A new section proposed by the NCCUSL Property Subcommittee will provide that a Statement of Partnership Authority, Denial of Status as a Partner or Authority, Dissociation, Dissolution, Merger or any amendment or cancellation of the foregoing will have effect only with respect to partnership property located in or transactions which take place in the state where filed (or where a certified copy of the statement is filed).
In addition, the NCCUSL Property Subcommittee proposed numerous other changes to these sections. Among the most active members of this Subcommittee are Doc Merrill, Greg Pierce and Carlyl Welborn, all either active Partnership Committee members or ABA Real Property Section members. I do not believe we need to make substantial additional commentary at this time to the sections reviewed by this group.

**Article 4**

Following significant debate, the NCCUSL Committee adopted the proposal by the California State Bar representatives to include provisions in Section 401 for a capital account for each partner. These changes resulted in additional changes to Section 808, settlement of partners' accounts, to reflect the use of capital accounts. I expressed our Subcommittee's view that the inclusion of capital accounts for allocations and liquidations as a default rule seemed overly complicated and unnecessary.

The change suggested by our Subcommittee to Section 403(c), adding the duty of each partner to furnish information concerning the partnership, was approved by the NCCUSL Subcommittee. However, deleting the requirement that there be a "demand" for the information was not approved.

There was considerable discussion as to whether Section 407(a) conflicted with Section 801(2)(iv), providing for the dissolution of a term partnership at the expiration of the term. Section 407 could be interpreted to provide a contrary result. We should consider whether commentary to this section would be appropriate. We have previously suggested that Section 801(2)(iv) be deleted.

The changes made to Section 404 have been previously discussed herein.

**General**

There were numerous drafting and technical changes made throughout RUPA, including revisions to Articles 5, 6 and 7 not discussed above. It would be appropriate to review the next draft of RUPA, prior to promulgation of the draft to be used at the annual NCCUSL Convention, and make some additional drafting and technical changes which the Reporters could at least consider for inclusion.

The NCCUSL Drafting Committee apparently will not meet again until just prior to presentation of RUPA to the annual convention in San Francisco. NCCUSL leadership announced at the Chicago meetings that the Drafting Committee would have the floor for one and a half days, starting on a Friday and continuing into Saturday night, if needed (will there be anyone on the floor for Articles 6, 7 and 8?). Then, if amendments proposed by the floor need to be drafted, the Drafting Committee will be given time at the Monday session to present them. NCCUSL leadership also indicated that the Drafting Committee would be required to
begin with Article 1 of RUPA and read the Act in its entirety, even though last summer's "final" reading reached Section 308. The Drafting Committee agreed with this decision, although it was clear that they did not like it.

As a result of those decisions, and based upon the objections raised by the NCCUSL Review Committee, the level of debate on the first three Articles at last year’s convention (which accorded a little less than half the time to RUPA than will apparently be allocated this year), and my participation in the NCCUSL Drafting Committee meetings this past year, I do not believe that the Act can be completed within the time frame proposed by NCCUSL leadership for this year’s convention. Certainly there may be changes to the convention schedule if the RUPA reading starts slowly. And, as stated many times in my reports to you, this is my first experience with the NCCUSL process. NCCUSL leadership believes that they cannot afford another year of drafting RUPA. I do not know the annual budget for this process (for example, compensation for Reporters). I guess only time will tell.

Meanwhile, as noted herein, I believe we should encourage close review of the proposed RUPA by all members of the Partnership Committee, and, to the extent possible, we should collect drafting and technical changes to forward to the Reporters. I do not believe that the Reporters or the NCCUSL Style Committee will make all of the changes to RUPA which the collective wisdom of our Subcommittee would believe to be necessary or appropriate. In addition, given the announced intention of NCCUSL to make the ABA position known at the time of the convention, consideration should be given to preparing a "final" comment letter which would be sent by the Partnership Committee (at the recommendation of the RUPA Subcommittee?) to NCCUSL on or before July 1st (assuming that is early enough).

I look forward to seeing you in Orlando.

xc: John Small
Thurston Moore
Michael Gravelle
March 17, 1992

Mr. H. Lane Kneedler
Office of the Attorney General
101 North Eighth Street
Richmond, Virginia 23219

Re: Revised Uniform Partnership Act Sections 101-109 - ABA Subcommittee Comments

Dear Lane:

I am writing to provide some additional comments on Sections 101-309 of the March 3, 1992 draft of the Revised Uniform Partnership Act ("RUPA") to be presented to the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). These comments have been prepared by members of the Ad hoc Subcommittee on RUPA (the "Subcommittee") of the ABA Committee on Partnerships and Unincorporated Business Organizations (Section of Business Law) and reflect the general agreement of the majority of the members of the Subcommittee that attended its meetings in Washington, D.C. on November 8, 1991 and in Denver, Colorado on January 10-11, 1992.

This letter supplements both the October 29, 1990 letter and the July 26, 1991 letter (together the "Prior Letters") previously submitted on behalf of the Subcommittee regarding this portion of RUPA. A number of suggestions made in the Prior Letters have been incorporated into the current draft of RUPA; the NCCUSL Drafting Committee has decided not to adopt other suggestions made in the Prior Letters. Two of the comments made in the Prior Letters are remade in this letter due to the Subcommittee's strong feeling that they should be incorporated into RUPA. Other points not adopted by the Drafting Committee that the Subcommittee feels would improve RUPA but are not central to it are not remade herein.

As a final introductory note, we continue to believe that a number of style changes could be made to improve RUPA. However, we understand that RUPA will undergo a comprehensive review for
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style and will reserve our style comments, at least as to Articles 1 through 3, for a later time. If our understanding is incorrect, please let me know.

1. Foreign Partnerships. At the Subcommittee's discussions in Washington, it became clear that practitioners disagree as to the application of general partnership law to partnerships that operate in more than one state. Some Subcommittee members believe that a multistate partnership can select a state of formation and be confident that that state's laws will govern its internal affairs and its relationships with third parties. Other members believe that the law that applies to a multistate partnership can vary in each state in which the partnership operates. Preservation in RUPA of the lack of statutory clarity on this issue present in the UPA could create confusing and inappropriate results, particularly as the state-by-state process of adopting RUPA is taking place and if and when non-uniform provisions are incorporated into RUPA as adopted by the various states. We feel strongly that a general partnership with multistate operations should be entitled to rely on one state's law applying to relations among its partners and with third parties. In light of our discussions, we believe it is extremely important that RUPA include a provision based upon Revised Uniform Limited Partnership Act Section 901(3) that would read as follows:

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

2. Freedom of Contract. The primacy of the partnership agreement in governing partner and partnership relations is traditional in American partnership law and is memorialized in RUPA Section 105. Given the importance of this principle, we suggest that it be established more definitively by inclusion of one additional RUPA subsection and amendment of RUPA Section 105(a).

First, we suggest that the following subsection be added to RUPA Section 104:
"(c) It is the policy of this [Act] to give maximum effect to the principle of freedom of contract and to the enforceability of partnership agreements."

This subsection is based on Section 17-101(c) of the Delaware Revised Uniform Limited Partnership Act, which has been very well received by practitioners.

Second, we suggest that Section 105(a) be revised to read in its entirety as follows:

"(a) Except as provided in Section 105(b), the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not provide, this [Act] governs relations among the partners and between the partners and the partnership."

These two provisions would help assure that, except as otherwise required by RUPA Section 105(b), the partners' wishes as to how their relationship should be structured will be respected.

3. Liability of Purported Partners. We believe that the relationship between Sections 307 and 308 with respect to purported partners should be clarified.

We believe that a purported partner who is liable together with a partnership through application of Sections 308(a) and 308(b) should have the benefit of the "exhaustion" requirement of Section 307. If a partnership accepts credit based on a representation made by or with the consent of a purported partner and all partners approve, it is appropriate for the recipient of the credit (the partnership) to have primary liability. Under RUPA, this will be consistent with the expectation of those who extend credit to a partnership. Although a comment to Section 308 states that Section 307 applies to Section 308(b), we feel that a strong possibility of different interpretations in different states will be present if the ability of purported partners to rely on Section 307 under these circumstances is not mentioned specifically in the statute."
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We suggest that the following language be added to Section 308 as a new Section 308(e) (with renumbering of existing subsections (c) and (d)).

"(c) If a partnership liability or obligation results under Section 308(b), the provisions of Section 307 shall apply to liabilities or obligations of both actual and purported partners."

We hope that these comments will be helpful to the Drafting Committee. Please contact me at 312-902-8293 or one of our Subcommittee's liaisons to the Drafting Committee if you would like clarification of the matters covered in this letter.

Respectfully,

James A. Jerue
on behalf of the
Ad hoc Subcommittee on RUPA

JLJ:plz
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