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

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

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

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

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

Section 504(b) accords the rights of a transferee to the purchaser at a sale foreclosing a charging order. The same rule should apply to creditors or other purchasers who acquire partnership interests by pursuing UCC remedies or statutory liens under federal or state law.

3. Subsection (c) is based on UPA Section 27(2). It grants to transferees the right to an account of partnership transactions, limited to the period since the date of the last account agreed to by all of the partners.

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

A divorced spouse of a partner who is awarded rights in the partner's partnership interest as part of a property settlement is entitled only to the rights of a transferee. The spouse may instead be granted a money judgment in the amount of the property award, enforceable by a charging order in the same manner as any other money judgment against a partner. In neither case, however, would the spouse become a partner by virtue of the property settlement or succeed to any of the partner's management rights. *See, e.g., Warren v. Warren*, 12 Ark. App. 260, 675 S.W.2d 371 (1984).

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

6. Subsection (f) is new and provides that a transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in a partnership agreement is ineffective as to a person with timely notice of the restriction. Under Section 103(a), the partners may agree among themselves to restrict the right to transfer their partnership interests. Subsection (f) makes explicit that a transfer in violation of such a restriction is ineffective as to a transferee with notice of the restriction. See Section 102(b) for the meaning of "notice." RUPA leaves to general law and the UCC the issue of whether a transfer in violation of a valid restriction is effective as to a transferee without notice of the restriction.

Whether a particular restriction will be enforceable, however, must be considered in light of other law. *See* 11 U.S.C. § 541(c)(1) (property owned by bankrupt passes to trustee regardless of restrictions on transfer); UCC § 9-318(4) (agreement between account debtor and assignor prohibiting creation of security interest in a general intangible or requiring account debtor's consent is ineffective); *Battista v. Carlo*, 57 Misc. 2d 495, 293 N.Y.S.2d 227 (1968) (restriction on transfer of partnership interest subject to rules against unreasonable restraints on alienation of property) (dictum); *Tupper v. Kroc*, 88 Nev. 146, 494 P.2d 1275 (1972) (partnership interest subject to charging order even if partnership agreement prohibits assignments). *Cf. Tu-Vu Drive-In Corp. v. Ashkins*, 61 Cal. 2d 283, 38 Cal. Rptr. 348, 391 P.2d 828 (1964) (restraints on transfer of corporate stock must be reasonable). Even if a restriction on the transfer of a partner's transferable interest in a partnership were held to be unenforceable, the transfer might be grounds for expelling the partner-transferor from the partnership under Section 601(5)(ii).

7. Other rules that apply in the case of transfers include Section 601(4)(ii) (expulsion of partner who transfers substantially all of partnership interest); Section 601(6) (dissociation of partner who makes an assignment for benefit of creditors); and Section 801(6) (transferee has standing to seek judicial winding up).

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

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

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

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

(1) by the judgment debtor;

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

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

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

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

Comment

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

2. Subsection (b) is new and codifies the case law under the UPA holding that a charging order constitutes a lien on the debtor's transferable interest. The lien may be foreclosed by the court at any time, and the purchaser at the foreclosure sale has the Section 503(b) rights of a transferee. For a general discussion of the charging order remedy, see *I Alan R. Bromberg & Larry E. Ribstein, Partnership* (1988), at 3:69.

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

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

5. Subsection (e) provides that the charging order is the judgment creditor's exclusive remedy. Although the UPA nowhere states that a charging order is the exclusive process for a partner's individual judgment creditor, the courts have generally so interpreted it. *See, e.g., Matter of Pischke*, 11 B.R. 913 (E.D. Va. 1981); *Baum v. Baum*, 51 Cal. 2d 610, 335 P.2d 481 (1959); *Atlantic Mobile Homes, Inc. v. LeFever*, 481 So. 2d 1002 (Fla. App. 1986).

Notwithstanding subsection (e), there may be an exception for the enforcement of family support orders. Some States have unique statutory procedures for the enforcement of support orders. In Florida, for example, a court may issue an "income deduction order" requiring any person or entity providing "income" to the obligor of a support order to remit to the obligee or a depository, as directed by the court, a specified portion of the income. Fla. Stat. § 61.1301 (1993). "Income" is broadly defined to include any form of payment to the obligor, including wages, salary, compensation as an independent contractor, dividends, interest, or other payment, regardless of source. Fla. Stat. § 61.046(4) (1993). That definition includes distributions payable to an obligor partner. A charging order under RUPA would still be necessary to reach the obligor's entire partnership interest, however.

## [ARTICLE] 6

## PARTNER'S DISSOCIATION

**SECTION 601. EVENTS CAUSING PARTNER'S DISSOCIATION.** A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) the partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

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

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

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

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

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

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

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

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

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

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

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

(6) the partner's:

(i) becoming a debtor in bankruptcy;

(ii) executing an assignment for the benefit of creditors;

(iii) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

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

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

(i) the partner's death;

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

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

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

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

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

Comment

1. RUPA dramatically changes the law governing partnership breakups and dissolution. An entirely new concept, "dissociation," is used in lieu of the UPA term "dissolution" to denote the change in the relationship caused by a partner's ceasing to be associated in the carrying on of the business. "Dissolution" is retained but with a different meaning. See Section 802. The entity theory of partnership provides a conceptual basis for continuing the firm itself despite a partner's withdrawal from the firm.

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

A dissociated partner remains a partner for some purposes and still has some residual rights, duties, powers, and liabilities. Although Section 601 determines when a partner is dissociated from the partnership, the consequences of the partner's dissociation do not all occur at the same time. Thus, it is more useful to think of a dissociated partner as a partner for some purposes, but as a former partner for others. For example, see Section 403(b) (former partner's access to partnership books and records). The consequences of a partner's dissociation depend on whether the partnership continues or is wound up, as provided in Articles 6, 7, and 8.

Section 601 enumerates all of the events that cause a partner's dissociation. Section 601 is similar in approach to RULPA Section 402, which lists the events resulting in a general partner's withdrawal from a limited partnership.

2. Section 601(1) provides that a partner is dissociated when the partnership has notice of the partner's express will to withdraw as a partner, unless a later date is specified by the partner. If a future date is specified by the partner, other partners may dissociate before that date; specifying a future date does not bind the others to remain as partners until that date. See also Section 801(2)(i).

Section 602(a) provides that a partner has the power to withdraw at any time. The power to withdraw is immutable under Section 103(b)(6), with the exception that the partners may agree the notice must be in writing. This continues the present rule that a partner has the power to withdraw at will, even if not the right. See UPA Section 31(2). Since no writing is required to create a partner relationship, it was felt unnecessarily formalistic, and a trap for the unwary, to require a writing to end one. If a written notification is given, Section 102(d) clarifies when it is deemed received.

RUPA continues the UPA "express will" concept, thus preserving existing case law. Section 601(1) clarifies existing law by providing that the partnership must have notice of the partner's expression of will before the dissociation is effective. See Section 102(b) for the meaning of "notice."

3. Section 601(2) provides expressly that a partner is dissociated upon an event agreed to in the partnership agreement as causing dissociation. There is no such provision in the UPA, but that result has been assumed.

4. Section 601(3) provides that a partner may be expelled by the other partners pursuant to a power of expulsion contained in the partnership agreement. That continues the basic rule of UPA Section 31(1)(d). The expulsion can be with or without cause. As under existing law, the obligation of good faith under Section

404(d) does not require prior notice, specification of cause, or an opportunity to be heard. *See Holman v. Coie*, 11 Wash. App. 195, 522 P.2d 515, *cert. denied*, 420 U.S. 984 (1974).

5. Section 601(4) empowers the partners, by unanimous vote, to expel a partner for specified causes, even if not authorized in the partnership agreement. This changes the UPA Section 31(1)(d) rule that authorizes expulsion only if provided in the partnership agreement. A partner may be expelled from a term partnership, as well as from a partnership at will. Under Section 103(a), the partnership agreement may change or abolish the partners' power of expulsion.

Subsection (4)(i) is derived from UPA Section 31(3). A partner may be expelled if it is unlawful to carry on the business with that partner. Section 801(4), on the other hand, provides that the partnership itself is dissolved and must be wound up if substantially all of the business is unlawful.

Subsection (4)(ii) provides that a partner may be expelled for transferring substantially all of his transferable interest in the partnership, other than as security for a loan. (He may, however, be expelled upon foreclosure.) This rule is derived from UPA Section 31(1)(c). To avoid the presence of an unwelcome transferee, the remaining partners may dissolve the partnership under Section 801(2)(ii), after first expelling the transferor partner. A transfer of a partner's entire interest may, in some circumstances, evidence the transferor's intention to withdraw under Section 601(1).

Subsection (4)(iii) provides for the expulsion of a corporate partner if it has filed a certificate of dissolution, its charter has been revoked, or its right to conduct business has been suspended, unless cured within 90 days after notice. This provision is derived from RULPA Section 402(9). The cure proviso is important because charter revocation is very common in some States and partner status should not end merely because of a technical noncompliance with corporate law that can easily be cured. Withdrawal of a voluntarily filed notice of dissolution constitutes a cure.

Subsection (4)(iv) is the partnership analogue of paragraph (iii) and is suggested by RULPA Section 402(8). It provides that a partnership that is a partner may be expelled if it has been dissolved and its business is being wound up. It is intended that the right of expulsion not be triggered solely by the dissolution event, but only upon commencement of the liquidation process.

6. Section 601(5) empowers a court to expel a partner if it determines that the partner has engaged in specified misconduct. The enumerated grounds for judicial expulsion are based on the UPA Section 32(1) grounds for judicial dissolution. The application for expulsion may be brought by the partnership or any

partner. The phrase "judicial determination" is intended to include an arbitration award, as well as any final court order or decree.

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

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

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

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

Subsection (6)(i) is derived from UPA Section 31(5), which provides for dissolution upon a partner's bankruptcy. *Accord* RULPA § 402(4)(ii). There is some doubt as to whether UPA Section 31(1) is limited to so-called "straight bankruptcy" under Chapter 7 or includes other bankruptcy relief, such as Chapter 11. Under RUPA Section 101(2), however, "debtor in bankruptcy" includes a person who files a voluntary petition, or against whom relief is ordered in an involuntary case, under any chapter of the Bankruptcy Code.

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

The application of various provisions of the federal Bankruptcy Code to Section 601(6)(i) is unclear. In particular, there is uncertainty as to the validity of UPA Section 31(5), and thus its RUPA counterpart, under Sections 365(e) and 541(c)(1) of the Bankruptcy Code. Those sections generally invalidate so-called *ipso facto* laws that cause a termination or modification of the debtor's contract or property rights because of the bankruptcy filing. As a consequence, RUPA Section 601(6)(i), which provides for a partner's dissociation by operation of law upon becoming a debtor in bankruptcy, may be invalid under the Supremacy Clause. *See, e.g.*, *In the Matter of Phillips*, 966 F.2d 926 (5th Cir. 1992); *In re Cardinal Industries, Inc.*, 105 B.R. 385 (Bankr. S.D. Ohio 1989), 116 B.R. 964 (Bankr. S.D. Ohio 1990); *In re Corky Foods Corp.*, 85 B.R. 903 (Bankr. S.D. Fla. 1988). *But see*, *In re Catron*, 158 B.R. 629 (E.D. Va. 1993) (partnership agreement could not be assumed by debtor under Bankruptcy Code § 365(c)(1) because other partners excused by UPA from accepting performance by or rendering performance to party other than debtor and buyout option not invalid *ipso facto* clause under Code § 365 (e)), *aff'd per curiam*, 25 F.3d 1038 (4th Cir. 1994). RUPA reflects the policy choice, as a matter of state partnership law, that a partner be dissociated upon becoming a debtor in bankruptcy.

Subsection (6)(ii) is new and provides for dissociation upon a general assignment for the benefit of a partner's creditors. The UPA says nothing about an assignment for the benefit of creditors or the appointment of a trustee, receiver, or liquidator. Subsection (6)(iii) and (iv) cover the latter and are based substantially on RULPA Section 402(4) and (5).

8. UPA Section 31(4) provides for the dissolution of a partnership upon the death of any partner, although by agreement the remaining partners may continue the partnership business. RUPA Section 601(7)(i), on the other hand, provides for dissociation upon the death of a partner who is an individual, rather than dissolution of the partnership. That changes existing law, except in those States previously adopting a similar non-uniform provision, such as California, Georgia, and Texas. Normally, under RUPA, the deceased partner's transferable interest in the partnership will pass to his estate and be bought out under Article 7.

Section 601(7)(ii) replaces UPA Section 32(1)(a) and provides for dissociation upon the appointment of a guardian or general conservator for partner who is an individual. The appointment itself operates as the event of dissociation, and no further order of the court is necessary.

Section 601(7)(iii) is based on UPA Section 32(1)(b) and provides for dissociation upon a judicial determination that an individual partner has in any other way become incapable of performing his duties under the partnership agreement. The intent is to include physical incapacity.

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

10. Section 601(9) is new and provides for the dissociation of a partner that is an estate, or is acting as a partner by virtue of being a personal representative

of an estate, upon the distribution of the estate's entire transferable interest in the partnership, but not merely the substitution of a successor personal representative. It is based on RULPA Section 402(10). Under Section 601(7), a partner is dissociated upon death, however, and the estate normally becomes a transferee, not a partner.

11. Section 601(10) is new and provides that a partner that is not an individual, partnership, corporation, trust, or estate is dissociated upon its termination. It is the comparable "death" analogue for other types of entity partners, such as a limited liability company.

**SECTION 602. PARTNER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION.**

(a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to Section 601(1).

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

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

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

(i) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under Section 601(6) through (10) or wrongful dissociation under this subsection;

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

(iii) the partner is dissociated by becoming a debtor in bankruptcy; or

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

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

Comment

1. Subsection (a) states explicitly what is implicit in UPA Section 31(2) and RUPA Section 601(1) – that a partner has the power to dissociate at any time by expressing a will to withdraw, even in contravention of the partnership agreement. The phrase "rightfully or wrongfully" reflects the distinction between a partner's **power** to withdraw in contravention of the partnership agreement and a partner's **right** to do so. In this context, although a partner can not be enjoined from exercising the power to dissociate, the dissociation may be wrongful under subsection (b).

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

Under subsection (b), a partner's dissociation is wrongful if (1) it breaches an express provision of the partnership agreement or (2), in a term partnership, before the expiration of the term or the completion of the undertaking (i) the partner voluntarily withdraws by express will, except a withdrawal following **another** partner's wrongful dissociation or dissociation by death or otherwise under Section 601(6) through (10); (ii) the partner is expelled for misconduct under Section 601(5); (iii) the partner becomes a debtor in bankruptcy (see Section 101(2)); or (iv) a partner that is an entity (other than a trust or estate) is expelled or otherwise dissociated because its dissolution or termination was willful. Since subsection (b) is merely a default rule, the partnership agreement may eliminate or expand the dissociations that are wrongful or modify the effects of wrongful dissociation.

The exception in subsection (b)(2)(i) is intended to protect a partner's reactive withdrawal from a term partnership after the premature departure of another partner, such as the partnership's rainmaker or main supplier of capital, under the same circumstances that may result in the dissolution of the partnership under Section 801(2)(i). Under that section, a term partnership is dissolved 90 days after the bankruptcy, incapacity, death (or similar dissociation of a partner that is an entity), or wrongful dissociation of any partner, unless a majority in interest (see Comment 5(i) to Section 801 for a discussion of the term "majority in interest") of the remaining partners agree to continue the partnership. Under Section 602(b)(2)(i), a partner's exercise of the right of withdrawal by express will under those circumstances is rendered "rightful," even if the partnership is continued by others, and does not expose the withdrawing partner to damages for wrongful dissociation under Section 602(c).

A partner wishing to withdraw prematurely from a term partnership for any other reason, such as another partner's misconduct, can avoid being treated as a wrongfully dissociating partner by applying to a court under Section 601(5)(iii) to have the offending partner expelled. Then, the partnership could be dissolved under Section 801(2)(i) or the remaining partners could, by unanimous vote, dissolve the partnership under Section 801(2)(ii).

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

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

Under UPA Section 38(2)(c)(II), in addition to an offset for damages, the goodwill value of the partnership is excluded in determining the value of a wrongfully dissociating partner's partnership interest. Under RUPA, however, unless the partnership's goodwill is damaged by the wrongful dissociation, the value of the wrongfully dissociating partner's interest will include any goodwill value of the partnership. If the firm's goodwill is damaged, the amount of the damages suffered by the partnership and the remaining partners will be offset against the buyout price. See Section 701 and Comments.

## SECTION 603. EFFECT OF PARTNER'S DISSOCIATION.

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

(b) Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in Section 803;

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

(3) the partner's duty of loyalty under Section 404(b)(1) and (2) and duty of care under Section 404(c) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to Section 803.

Comment

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

By contrast, under the UPA, every partner dissociation results in the dissolution of the partnership, most of which trigger a right to have the business wound up unless the partnership agreement provides otherwise. *See* UPA § 38. The only exception in which the remaining partners have a statutory right to continue the business is when a partner wrongfully dissolves the partnership in breach of the partnership agreement. *See* UPA § 38(2)(b).

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

Subsection (b)(2) and (3) clarify a partner's fiduciary duties upon dissociation. No change from current law is intended. With respect to the duty of loyalty, the Section 404(b)(3) duty not to compete terminates upon dissociation, and the dissociated partner is free immediately to engage in a competitive business, without any further consent. With respect to the partner's remaining loyalty duties under Section 404(b) and duty of care under Section 404(c), a withdrawing partner has a continuing duty after dissociation, but it is limited to matters that arose or events that occurred before the partner dissociated. For example, a partner who leaves a brokerage firm may immediately compete with the firm for new clients, but must exercise care in completing on-going client transactions and must account to the firm for any fees received from the old clients on account of those transactions. As the last clause makes clear, there is no contraction of a dissociated partner's duties under subsection (b)(3) if the partner thereafter participates in the dissolution and winding up the partnership's business.

## [ARTICLE] 7

## PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

**SECTION 701. PURCHASE OF DISSOCIATED PARTNER'S INTEREST.**

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

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under Section 807(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

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

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 702.

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

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

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

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

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

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

(4) written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the

dissociated partner commences an action to determine the buyout price, any offsets under subsection (c), or other terms of the obligation to purchase.

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

(i) A dissociated partner may maintain an action against the partnership, pursuant to Section 405(b)(2)(ii), to determine the buyout price of that partner's interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g).

Comment

1. Article 7 is new and provides for the buyout of a dissociated partner's interest in the partnership when the partner's dissociation does not result in a dissolution and winding up of its business under Article 8. *See* Section 603(a). If there is no dissolution, the remaining partners have a right to continue the business and the dissociated partner has a right to be paid the value of his partnership interest. These rights can, of course, be varied in the partnership agreement. *See* Section 103. A dissociated partner has a continuing relationship with the partnership and third parties as provided in Sections 603(b), 702, and 703. See also Section 403(b) (former partner's access to partnership books and records).

2. Subsection (a) provides that, if a partner's dissociation does not result in a windup of the business, the partnership shall cause the interest of the dissociating partner to be purchased for a buyout price determined pursuant to subsection (b). The buyout is mandatory. The "cause to be purchased" language is intended to accommodate a purchase by the partnership, one or more of the remaining partners, or a third party.

For federal income tax purposes, a payment to a partner for his interest can be characterized either as a purchase of the partner's interest or as a liquidating distribution. The two have different tax consequences. RUPA permits either option by providing that the payment may come from either the partnership, some or all of the continuing partners, or a third party purchaser.

3. Subsection (b) provides how the "buyout price" is to be determined. The terms "fair market value" or "fair value" were not used because they are often considered terms of art having a special meaning depending on the context, such as in tax or corporate law. "Buyout price" is a new term. It is intended that the term be developed as an independent concept appropriate to the partnership buyout situation, while drawing on valuation principles developed elsewhere.

Under subsection (b), the buyout price is the amount that would have been distributable to the dissociating partner under Section 807(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of liquidation value or going concern value without the departing partner. Liquidation value is not intended to mean distress sale value. Under general principles of valuation, the hypothetical selling price in either case should be the price that a willing and informed buyer would pay a willing and informed seller, with neither being under any compulsion to deal. The notion of a minority discount in determining the buyout price is negated by valuing the business as a going concern. Other discounts, such as for a lack of marketability or the loss of a key partner, may be appropriate, however.

Since the buyout price is based on the value of the business at the time of dissociation, the partnership must pay interest on the amount due from the date of dissociation until payment to compensate the dissociating partner for the use of his interest in the firm. Section 104(b) provides that interest shall be at the legal rate unless otherwise provided in the partnership agreement. The UPA Section 42 option of electing a share of the profits in lieu of interest has been eliminated.

UPA Section 38(2)(c)(II) provides that the good will of the business not be considered in valuing a wrongfully dissociating partner's interest. The forfeiture of good will rule is implicitly rejected by RUPA. See Section 602(c) and Comment 3.

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

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

It is not intended that the partnership's right of setoff be construed to limit the amount of the damages for the partner's wrongful dissociation and any other amounts owing to the partnership to the value of the dissociated partner's interest. Those amounts may result in a net sum due to the partnership from the dissociated partner.

5. Subsection (d) follows the UPA Section 38 rule and provides that the partnership must indemnify a dissociated partner against all partnership liabilities, whether incurred before or after the dissociation, except those incurred by the dissociated partner under Section 702.

6. Subsection (e) provides that, if no agreement for the purchase of the dissociated partner's interest is reached within 120 days after the dissociated partner's written demand for payment, the partnership must pay, or cause to be paid, in cash the amount it estimates to be the buyout price, adjusted for any offsets allowed and accrued interest. Thus, the dissociating partner will receive in cash within 120 days of dissociation the undisputed minimum value of the partner's partnership interest. If the dissociated partner claims that the buyout price should be

higher, suit may thereafter be brought as provided in subsection (i) to have the amount of the buyout price determined by the court. This is similar to the procedure for determining the value of dissenting shareholders' shares under RMBCA Sections 13.20-13.28.

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

7. Subsection (f) provides that, when deferred payment is authorized in the case of a wrongfully dissociating partner, a written offer stating the amount the partnership estimates to be the purchase price should be tendered within the 120-day period, even though actual payment of the amount may be deferred, possibly for many years. See Comment 8. The dissociated partner is entitled to know at the time of dissociation what amount the remaining partners think is due, including the estimated amount of any damages allegedly caused by the partner's wrongful dissociation that may be offset against the buyout price.

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

Those disclosures should serve to identify and narrow substantially the items of dispute between the dissociated partner and the partnership over the valuation of the partnership interest. They will also serve to pin down the parties as to their claims of partnership assets and values and as to the existence and amount of all known liabilities. See Comment 4. Lastly, it will force the remaining partners to consider thoughtfully the difficult and important questions as to the appropriate method of valuation under the circumstances, and in particular, whether they should use going concern or liquidation value. Simply getting that information on the record in a timely fashion should increase the likelihood of a negotiated resolution of the parties' differences during the 120-day period within which the dissociated partner must bring suit.

9. Subsection (h) replaces UPA Section 38(2)(c) and provides a somewhat different rule for payment to a partner whose dissociation before the expiration of a definite term or the completion of a particular undertaking is wrongful under Section 602(b). Under subsection (h), a wrongfully dissociating partner is not entitled to

receive any portion of the buyout price before the expiration of the term or completion of the undertaking, unless the dissociated partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. In all other cases, there must be an immediate payment in cash.

10. Subsection (i) provides that a dissociated partner may maintain an action against the partnership to determine the buyout price, any offsets, or other terms of the purchase obligation. The action must be commenced within 120 days after the partnership tenders payment of the amount it estimates to be due or, if deferred payment is authorized, its written offer. This provision creates a 120-day "cooling off" period. It also allows the parties an opportunity to negotiate their differences after disclosure by the partnership of its financial statements and other required information.

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

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

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

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

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

(1) reasonably believed that the dissociated partner was then a partner;

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

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

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

Comment

1. Section 702 deals with a dissociated partner's lingering apparent authority to bind the partnership in ordinary course partnership transactions and the partner's liability to the partnership for any loss caused thereby. It also applies to partners who withdraw incident to a merger under Article 9. *See* Section 906(e).

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

Under Section 301, every partner has **apparent** authority to bind the partnership by any act for carrying on the partnership business in the ordinary course, unless the other party knows that the partner has no actual authority to act for the partnership or has received a notification of the partner's lack of authority. Section 702(a) continues that general rule for two years after a partner's dissociation, subject to three modifications.

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

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

The third modification of the general apparent authority rule under Section 702(a) involves the effect of a statement of dissociation. Section 704(c) provides that, for the purposes of Sections 702(a)(3) and 703(b)(3), third parties are deemed to have notice of a partner's dissociation 90 days after the filing of a statement of dissociation. Thus, the filing of a statement operates as constructive notice of the dissociated partner's lack of authority after 90 days, conclusively terminating the dissociated partner's Section 702 apparent authority.

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

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

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

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

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

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under [Article] 9, within two years after the partner's dissociation, only if the partner is liable for the obligation under Section 306 and at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated partner was then a partner;

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

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

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

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

Comment

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

Section 703(b) is new and deals with the problem of protecting third parties who extend credit to the partnership after a partner's dissociation, believing that he is still a partner. It provides that the dissociated partner remains liable as a partner for transactions entered into by the partnership within two years after departure, if the other party does not have notice of the partner's dissociation and reasonably believes when entering the transaction that the dissociated partner is still a partner. The dissociated partner is not personally liable, however, if the other party is deemed to know of the dissociation under Section 303(e) or to have notice thereof under Section 704(c). Also, a dissociated partner is not personally liable for limited liability partnership obligations for which the partner is not personally liable under Section 306.

Section 703(b) operates similarly to Section 702(a) in that it requires reliance on the departed partner's continued partnership status, as well as lack of notice. Under Section 704(c), a statement of dissociation operates conclusively as constructive notice 90 days after filing for the purposes of Section 703(b)(3) and, under Section 704(b), as constructive knowledge when recorded for the purposes of Section 303(d) and (e).

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

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

In general under RUPA, as a result of the adoption of the entity theory, relationships between a partnership and its creditors are not affected by the dissociation of a partner or by the addition of a new partner, unless otherwise agreed. Therefore, there is no need under RUPA, as there is under the UPA, for an elaborate provision deeming the new partnership to assume the liabilities of the old partnership. See UPA Section 41.

The "dual priority" rule in UPA Section 36(4) is eliminated to reflect the abolition of the "jingle rule," providing that separate debts have first claim on separate property, in order to conform to the Bankruptcy Code. See Comment 2 to Section 807. A deceased partner's estate, and thus all of his individual property, remains liable for partnership obligations incurred while he was a partner, however.

**SECTION 704. STATEMENT OF DISSOCIATION.**

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of Section 303(d) and (e).

(c) For the purposes of Sections 702(a)(3) and 703(b)(3), a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

Comment

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

Filing or recording a statement of dissociation has threefold significance:

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

partner to transfer real property held in the partnership name, if the statement is properly recorded in the real property records.

(2) Ninety days after the statement is filed, nonpartners are deemed to have notice of the dissociation and thus conclusively bound for purposes of cutting off the partner's apparent authority under Sections 301 and 702(a)(3).

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

**SECTION 705. CONTINUED USE OF PARTNERSHIP NAME.**

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

Comment

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

## [ARTICLE] 8

## WINDING UP PARTNERSHIP BUSINESS

**SECTION 801. EVENTS CAUSING DISSOLUTION AND WINDING UP OF PARTNERSHIP BUSINESS.** A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

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

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

(i) within 90 days after a partner's dissociation by death or otherwise under Section 601(6) through (10) or wrongful dissociation under Section 602(b), the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to Section 602(b)(2)(i) constitutes the expression of that partner's will to wind up the partnership business;

(ii) the express will of all of the partners to wind up the partnership business; or

(iii) the expiration of the term or the completion of the undertaking;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business;

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

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

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

(ii) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

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

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

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

Comment

1. Under UPA Section 29, a partnership is dissolved every time a partner leaves. That reflects the aggregate nature of the partnership under the UPA. Even if the business of the partnership is continued by some of the partners, it is technically a new partnership. The dissolution of the old partnership and creation of a new partnership causes many unnecessary problems.

Under RULPA, limited partnerships dissolve far less readily than do general partnerships under the UPA. A limited partnership does not dissolve on the withdrawal of a limited partner, nor does it necessarily dissolve on the withdrawal of a general partner. *See* RULPA § 801(4).

RUPA's move to the entity theory is driven in part by the need to prevent a technical dissolution or its consequences. Under RUPA, not every partner dissociation causes a dissolution of the partnership. Only certain departures trigger a dissolution. The basic rule is that a partnership is dissolved, and its business must be wound up, only upon the occurrence of one of the events listed in Section 801. All other dissociations result in a buyout of the partner's interest under Article 7 and a continuation of the partnership entity and business by the remaining partners. *See* Section 603(a).

With only three exceptions, the provisions of Section 801 are merely default rules and may by agreement be varied or eliminated as grounds for dissolution. The first exception is dissolution under Section 801(4) resulting from carrying on an illegal business. The other two exceptions cover the power of a court to dissolve a partnership under Section 801(5) on application of a partner and under Section 801(6) on application of a transferee. See Comments 6-8 for further explanation of these provisions.

2. Under RUPA, "dissolution" is merely the commencement of the winding up process. The partnership continues for the limited purpose of winding up the business. In effect, that means the scope of the partnership business contracts to completing work in process and taking such other actions as may be necessary to wind up the business. Winding up the partnership business entails selling its assets, paying its debts, and distributing the net balance, if any, to the partners in cash according to their interests. The partnership entity continues, and the partners are associated in the winding up of the business until winding up is completed. When the winding up is completed, the partnership entity terminates.

3. Section 801 continues two basic rules from the UPA. First, it continues the rule that any member of an **at-will** partnership has the right to force a liquidation. Second, by negative implication, it continues the rule that the partners who wish to continue the business of a **term** partnership can not be forced to liquidate the business by a partner who withdraws prematurely in violation of the partnership agreement.

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

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

4. Section 801(1) provides that a partnership at will is dissolved and its business must be wound up upon the partnership's having notice of a partner's express will to withdraw as a partner, unless a later effective date is specified by the partner. A partner at will who has already been dissociated in some other manner, such as a partner who has been expelled, does not thereafter have a right to cause the partnership to be dissolved and its business wound up.

If, after dissolution, none of the partners wants the partnership wound up, Section 802(b) provides that, with the consent of all the partners, including the withdrawing partner, the remaining partners may continue the business. In that event, although there is a technical dissolution of the partnership and, at least in theory, a temporary contraction of the scope of the business, the partnership entity continues and the scope of its business is restored. See Section 802(b) and Comment 2.

5. Section 801(2) provides three ways in which a term partnership may be dissolved before the expiration of the term:

**(i)** Subsection (2)(i) provides for dissolution after a partner's dissociation by death or otherwise under Section 601(6) to (10) or wrongful dissociation under Section 602(b), if within 90 days after the dissociation at least half of the remaining partners express their will to dissolve the partnership. Thus if a term partnership had six partners and one of the partners dies or wrongfully dissociates before the end of the term, the partnership will, as a result of the dissociation, be dissolved only if three of the remaining five partners affirmatively vote in favor of dissolution within 90 days after the dissociation.* This reactive dissolution of a term

* Prior to August 1997, Section 801(2)(i) provided that upon the dissociation of a partner in a term partnership by death or otherwise under Section 601(6) through (10) or wrongful dissociation under 602(b) the partnership would dissolve unless "a majority in interest of the remaining partners (including partners who have rightfully dissociated pursuant to Section 602(b)(2)(i)) agree to continue the partnership." This language was thought to be necessary for a term partnership to lack continuity of life under the Internal Revenue Act tax classification regulations. These regulations were repealed effective January 1, 1997. The current language, approved at the 1997 annual meeting of the National Conference of Commissioners on Uniform State Laws, allows greater continuity in a term partnership than the prior version of this subsection and UPA Section 38(2)(b).

partnership protects the remaining partners where the dissociating partner is crucial to the successful continuation of the business. The corresponding UPA Section 38(2)(b) rule requires unanimous consent of the remaining partners to continue the business, thus giving each partner an absolute right to a reactive liquidation. Under UPA 1994, if the partnership is continued by the majority, any dissenting partner who wants to withdraw may do so rightfully under the exception to Section 602(b)(2)(i), in which case his interest in the partnership will be bought out under Article 7. By itself, however, a partner's vote not to continue the business is not necessarily an expression of the partner's will to withdraw, and a dissenting partner may still elect to remain a partner and continue in the business.

The Section 601 dissociations giving rise to a reactive dissolution are: (6) a partner's bankruptcy or similar financial impairment; (7) a partner's death or incapacity; (8) the distribution by a trust-partner of its entire partnership interest; (9) the distribution by an estate-partner of its entire partnership interest; and (10) the termination of an entity-partner. Any dissociation during the term of the partnership that is wrongful under Section 602(b), including a partner's voluntary withdrawal, expulsion or bankruptcy, also gives rise to a reactive dissolution. Those statutory grounds may be varied by agreement or the reactive dissolution may be abolished entirely.

Under Section 601(6)(i), a partner is dissociated upon becoming a debtor in bankruptcy. The bankruptcy of a partner or of the partnership is not, however, an event of dissolution under Section 801. That is a change from UPA Section 31(5). A partner's bankruptcy does, however, cause dissolution of a term partnership under Section 801(2)(i), unless a majority in interest of the remaining partners thereafter agree to continue the partnership. Affording the other partners the option of buying out the bankrupt partner's interest avoids the necessity of winding up a term partnership every time a partner becomes a debtor in bankruptcy.

Similarly, under Section 801(2)(i), the death of any partner will result in the dissolution of a term partnership, only if at least half of the remaining partners express their will to wind up the partnership's business. If dissolution does occur, the deceased partner's transferable interest in the partnership passes to his estate and must be bought out under Article 7. See Comment 8 to Section 601.

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

UPA Section 31(1)(c) provides that a term partnership may be wound up by the express will of all the partners whose transferable interests have not been assigned or charged for a partner's separate debts. That rule reflects the belief that the remaining partners may find transferees very intrusive. This provision has been deleted, however, because the liquidation is easily accomplished under Section 801(2)(ii) by first expelling the transferor partner under Section 601(4)(ii).

**(iii)** Section 801(2)(iii) is based on UPA Section 31(1)(a) and provides for winding up a term partnership upon the expiration of the term or the completion of the undertaking.

Subsection (2)(iii) must be read in conjunction with Section 406. Under Section 406(a), if the partners continue the business after the expiration of the term or the completion of the undertaking, the partnership will be treated as a partnership at will. Moreover, if the partners continue the business without any settlement or liquidation of the partnership, under Section 406(b) they are presumed to have agreed that the partnership will continue, despite the lack of a formal agreement. The partners may also agree to ratify all acts taken since the end of the partnership's term.

6. Section 801(3) provides for dissolution upon the occurrence of an event specified in the partnership agreement as resulting in the winding up of the partnership business. The partners may, however, agree to continue the business and to ratify all acts taken since dissolution.

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

8. Section 801(5) provides for judicial dissolution on application by a partner. It is based in part on UPA Section 32(1), and the language comes in part from RULPA Section 802. A court may order a partnership dissolved upon a judicial determination that: (i) the economic purpose of the partnership is likely to be unreasonably frustrated; (ii) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or (iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement. The court's power to wind up the partnership under Section 801(5) cannot be varied in the partnership agreement. *See* Section 103(b)(8).

RUPA deletes UPA Section 32(1)(e) which provides for dissolution when the business can only be carried on at a loss. That provision might result in a dissolution contrary to the partners' expectations in a start-up or tax shelter situation, in which case "book" or "tax" losses do not signify business failure. Truly poor financial performance may justify dissolution under subsection (5)(i) as a frustration of the partnership's economic purpose.

RUPA also deletes UPA Section 32(1)(f) which authorizes a court to order dissolution of a partnership when "other circumstances render a dissolution equitable." That provision was regarded as too open-ended and, given RUPA's expanded remedies for partners, unnecessary. No significant change in result is intended, however, since the interpretation of UPA Section 32(1)(f) is comparable to the specific grounds expressed in subsection (5). *See, e.g., Karber v. Karber*, 145 Ariz. 293, 701 P.2d 1 (Ct. App. 1985) (partnership dissolved on basis of suspicion and ill will, citing UPA §§ 32(1)(d) and (f)); *Fuller v. Brough*, 159 Colo. 147, 411 P.2d 18 (1966) (not equitable to dissolve partnership for trifling causes or temporary grievances that do not render it impracticable to carry on partnership business); *Lau v. Wong*, 1 Haw. App. 217, 616 P.2d 1031 (1980) (partnership dissolved where business operated solely for benefit of managing partner).

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

## SECTION 802. PARTNERSHIP CONTINUES AFTER DISSOLUTION.

(a) Subject to subsection (b), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

(1) the partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(2) the rights of a third party accruing under Section 804(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

Comment

1. Section 802(a) is derived from UPA Section 30 and provides that a partnership continues after dissolution only for the purpose of winding up its business, after which it is terminated. RUPA continues the concept of "termination" to mark the completion of the winding up process. Since no filing or other formality is required, the date will often be determined only by hindsight. No legal rights turn on the partnership's termination or the date thereof. Even after termination, if a previously unknown liability is asserted, all of the partners are still liable.

2. Section 802(b) makes explicit the right of the remaining partners to continue the business after an event of dissolution if all of the partners, including the dissociating partner or partners, waive the right to have the business wound up and the partnership terminated. Only those "dissociating" partners whose dissociation was the immediate cause of the dissolution must waive the right to have the business wound up. The consent of wrongfully dissociating partners is not required.

3. Upon waiver of the right to have the business wound up, Paragraph (1) of the subsection provides that the partnership entity may resume carrying on its business as if dissolution had never occurred, thereby restoring the scope of its business to normal. "Resumes" is intended to mean that acts appropriate to winding up, authorized when taken, are in effect ratified, and the partnership remains liable for those acts, as provided explicitly in paragraph (2).

If the business is continued following a waiver of the right to dissolution, any liability incurred by the partnership or a partner after the dissolution and before the waiver is to be determined as if dissolution had never occurred. That has the effect of validating transactions entered into after dissolution that might not have been appropriate for winding up the business, because, upon waiver, any liability incurred by either the partnership or a partner in those transactions will be determined under Sections 702 and 703, rather than Sections 804 and 806.

As to the liability for those transactions among the partners themselves, the partners by agreement may provide otherwise. Thus, a partner who, after dissolution, incurred an obligation appropriate for winding up, but **not** appropriate for continuing the business, may protect himself by conditioning his consent to the continuation of the business on the ratification of the transaction by the continuing partners.

Paragraph (2) of the subsection provides that the rights of third parties accruing under Section 804(1) before they knew (or were notified) of the waiver may not be adversely affected by the waiver. That is intended to mean the partnership is bound, notwithstanding a subsequent waiver of dissolution and resumption of its business, by a transaction entered into after dissolution that was appropriate for winding up the partnership business, even if **not** appropriate for continuing the business. Similarly, any rights of a third party arising out of conduct in reliance on the dissolution are protected, absent knowledge (or notification) of the waiver. Thus, for example, a partnership loan, callable upon dissolution, that has been called is not reinstated by a subsequent waiver. If the loan has not been called before the lender learns (or is notified) of the waiver, however, it may not thereafter be called because of the dissolution. On the other hand, a waiver does not reinstate a lease that is terminated by the dissolution itself.

**SECTION 803. RIGHT TO WIND UP PARTNERSHIP BUSINESS.**

(a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the [designate the appropriate court], for good cause shown, may order judicial supervision of the winding up.

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

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 807, settle disputes by mediation or arbitration, and perform other necessary acts.

Comment

Section 803(a) is drawn from UPA Section 37. It provides that the partners who have not wrongfully dissociated may participate in winding up the partnership business. Wrongful dissociation is defined in Section 602. On application of any partner, a court may for good cause judicially supervise the winding up.

Section 803(b) continues the rule of UPA Section 25(2)(d) that the legal representative of the last surviving partner may wind up the business. It makes clear that the representative of the last surviving partner will not be forced to go to court for authority to wind up the business. On the other hand, the legal representative of a deceased partner, other than the last surviving partner, has only the rights of a transferee of the deceased partner's transferable interest. See Comment 8 to Section 601.

Section 803(c) is new and provides further guidance on the powers of a person who is winding up the business. It is based on Delaware Laws, Title 6, Section 17-803. The powers enumerated are not intended to be exclusive.

Subsection (c) expressly authorizes the preservation of the partnership's business or property as a going concern for a reasonable time. Some courts have reached that result without benefit of statutory authority. *See, e.g.*, *Paciaroni v. Crane*, 408 A.2d 946 (Del. Ch. 1979). An agreement to continue the partnership business in order to preserve its going-concern value until sale is not a waiver of a partner's right to have the business liquidated.

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

A partner's fiduciary duties of care and loyalty under Section 404 extend to winding up the business, except as modified by Section 603(b).

**SECTION 804. PARTNER'S POWER TO BIND PARTNERSHIP AFTER DISSOLUTION.** Subject to Section 805, a partnership is bound by a partner's act after dissolution that:

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

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

Comment

Section 804 is the successor to UPA Sections 33(2) and 35, which wind down the authority of partners to bind the partnership to third persons.

Section 804(1) provides that partners have the authority to bind the partnership after dissolution in transactions that are appropriate for winding-up the partnership business. Section 804(2) provides that partners also have the power after dissolution to bind the partnership in transactions that are inconsistent with winding up. The partnership is bound in a transaction not appropriate for winding up, however, only if the partner's act would have bound the partnership under Section 301 before dissolution and the other party to the transaction did not have notice of the dissolution. *See* Section 102(b) (notice). Compare Section 301(1) (partner has apparent authority unless other party knows or has received a notification of lack of authority).

Section 804(2) attempts to balance the interests of the partners to terminate their mutual agency authority against the interests of outside creditors who have no notice of the partnership's dissolution. Even if the partnership is not bound under Section 804, the faithless partner who purports to act for the partnership after dissolution may be liable individually to an innocent third party under the law of agency. See Section 330 of the Restatement (Second) of Agency (agent liable for misrepresentation of authority), applicable under RUPA as provided in Section 104(a).

RUPA eliminates the special and confusing UPA rules limiting the authority of partners after dissolution. The special protection afforded by UPA Section 35(1)(b)(I) to former creditors and the lesser special protection afforded by UPA Section 35(1)(b)(II) to other parties who knew of the partnership before dissolution are both abolished. RUPA eschews these cumbersome notice provisions in favor of the general apparent authority rules of Section 301, subject to the effect of a filed or recorded statement of dissolution under Section 805. This enhances the protection of innocent third parties and imposes liability on the partnership and the partners who choose their fellow partner-agents and are in the best position to protect others by providing notice of the dissolution.

Also deleted are the special rules for unknown partners in UPA Section 35(2) and for certain causes of dissolution in UPA Section 35(3). Those, too, are inconsistent with RUPA's policy of adhering more closely to the general agency rules of Section 301.

Section 804 should be contrasted with Section 702, which winds down the power of a partner being bought out. The power of a dissociating partner is limited to transactions entered into within two years after the partner's dissociation. Section 804 has no time limitation. However, the apparent authority of partners in both situations is now subject to the filing of a statement of dissociation or dissolution, as the case may be, which operates to cut off such authority after 90 days.

**SECTION 805. STATEMENT OF DISSOLUTION.**

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

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

(c) For the purposes of Sections 301 and 804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

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

Comment

1. Section 805 is new. Subsection (a) provides that, after an event of dissolution, any partner who has not wrongfully dissociated may file a statement of dissolution on behalf of the partnership. The filing and recording of a statement of dissolution is optional. The execution, filing, and recording of the statement is

governed by Section 105. The legal consequences of filing a statement of dissolution are similar to those of a statement of dissociation under Section 704.

2. Subsection (b) provides that a statement of dissolution cancels a filed statement of partnership authority for the purposes of Section 303(d), thereby terminating any extraordinary grant of authority contained in that statement.

A statement of dissolution also operates as a limitation on authority for the purposes of Section 303(e). That section provides that third parties are deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the statement containing the limitation is recorded with the real estate records. In effect, a properly recorded statement of dissolution restricts the authority of all partners to real property transfers that are appropriate for winding up the business. Thus, third parties must inquire of the partnership whether a contemplated real property transfer is appropriate for winding up. After dissolution, the partnership may, however, file and record a new statement of authority that will bind the partnership under Section 303(d).

3. Subsection (c) operates in conjunction with Sections 301 and 804 to wind down partners' apparent authority after dissolution. It provides that, for purposes of those sections, 90 days after the filing of a statement of dissolution nonpartners are deemed to have notice of the dissolution and the corresponding limitation on the authority of all partners. Sections 301 and 804 provide that a partner's lack of authority is binding on persons with notice thereof. Thus, after 90 days the statement of dissolution operates as constructive notice conclusively limiting the apparent authority of partners to transactions that are appropriate for winding up the business.

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

## SECTION 806. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER DISSOLUTION.

(a) Except as otherwise provided in subsection (b) and Section 306, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 804.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under Section 804(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

Comment

Section 806 is the successor to UPA Sections 33(1) and 34, which govern the rights of partners among themselves with respect to post-dissolution liability.

Subsection (a) provides that, except as provided in Section 306(a) and subsection (b), after dissolution each partner is liable to the other partners by way of contribution for his share of any partnership liability incurred under Section 804. That includes not only obligations that are appropriate for winding up the business, but also obligations that are inappropriate if within the partner's apparent authority. Consistent with other provisions of this Act, Section 806(a) makes clear that a partner does not have a contribution obligation with regard to limited liability partnership obligations for which the partner is not liable under Section 306. See Comments to Section 401(b).

Subsection (a) draws no distinction as to the cause of dissolution. Thus, as among the partners, their liability is treated alike in all events of dissolution. That is a change from UPA Section 33(l).

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

Section 806 is merely a default rule and may be varied in the partnership agreement. *See* Section 103(a).

## SECTION 807. SETTLEMENT OF ACCOUNTS AND CONTRIBUTIONS AMONG PARTNERS.

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

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under Section 306.

(c) If a partner fails to contribute the full amount required under subsection (b), all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under Section 306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under Section 306.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under Section 306.

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

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

Comment

1. Section 807 provides the default rules for the settlement of accounts and contributions among the partners in winding up the business. It is derived in part from UPA Sections 38(1) and 40.

2. Subsection (a) continues the rule in UPA Section 38(l) that, in winding up the business, the partnership assets must first be applied to discharge partnership liabilities to creditors. For this purpose, any required contribution by the partners is treated as an asset of the partnership. After the payment of all partnership liabilities, any surplus must be applied to pay in cash the net amount due the partners under subsection (b) by way of a liquidating distribution.

RUPA continues the "in-cash" rule of UPA Section 38(1) and is consistent with Section 402, which provides that a partner has no right to receive, and may not be required to accept, a distribution in kind, unless otherwise agreed. The in-cash rule avoids the valuation problems that afflict unwanted in-kind distributions.

The partnership must apply its assets to discharge the obligations of partners who are creditors on a parity with other creditors. See Section 404(f) and Comment 6. In effect, that abolishes the priority rules in UPA Section 40(b) and (c) which subordinate the payment of inside debt to outside debt. Both RULPA and the RMBCA do likewise. *See* RULPA § 804; RMBCA §§ 6.40(f), 14.05(a). Ultimately, however, a partner whose "debt" has been repaid by the partnership is personally liable, as a partner, for any outside debt remaining unsatisfied, unlike a limited partner or corporate shareholder. Accordingly, the obligation to contribute sufficient funds to satisfy the claims of outside creditors may result in the equitable subordination of inside debt when partnership assets are insufficient to satisfy all obligations to non-partners.

RUPA in effect abolishes the "dual priority" or "jingle" rule of UPA Section 40(h) and (i). Those sections gave partnership creditors priority as to partnership property and separate creditors priority as to separate property. The jingle rule has already been preempted by the Bankruptcy Code, at least as to Chapter 7 partnership liquidation proceedings. Under Section 723(c) of the Bankruptcy Code, and under RUPA, partnership creditors share pro rata with the partners' individual creditors in the assets of the partners' estates.

3. Subsection (b) provides that each partner is entitled to a settlement of all partnership accounts upon winding up. It also establishes the default rules for closing out the partners' accounts. First, the profits and losses resulting from the liquidation of the partnership assets must be credited or charged to the partners' accounts, according to their respective shares of profits and losses. Then, the partnership must make a final liquidating distribution to those partners with a positive account balance. That distribution should be in the amount of the excess of credits over the charges in the account. Any partner with a negative account balance must contribute to the partnership an amount equal to the excess of charges over the credits in the account provided the excess relates to an obligation for which the partner is personally liable under Section 306. The partners may, however, agree that a negative account does not reflect a debt to the partnership and need not be repaid in settling the partners' accounts.

Section 807(b) makes clear that a partner's contribution obligation to a partnership in dissolution only considers the partner's share of obligations for which the partner was personally liable under Section 306 ("unshielded obligations"). See Comments to Section 401(b) (partner contribution obligation to an operating partnership). Properly determined under this Section, the total required partner contributions will be sufficient to satisfy the partnership's total unshielded obligations. In special circumstances where a partnership has both shielded and unshielded obligations and the partner required contributions are used to first pay shielded partnership obligations, the partners may be required to make further contributions to satisfy the partnership unpaid unshielded obligations. The proper resolution of this matter is left to debtor-creditor law as well as the law governing the fiduciary obligations of the partners. See Section 104(a).

RUPA eliminates the distinction in UPA Section 40(b) between the liability owing to a partner in respect of capital and the liability owing in respect of profits. Section 807(b) speaks simply of the right of a partner to a liquidating distribution. That implements the logic of RUPA Sections 401(a) and 502 under which contributions to capital and shares in profits and losses combine to determine the right to distributions. The partners may, however, agree to share "operating" losses differently from "capital" losses, thereby continuing the UPA distinction.

4. Subsection (c) continues the UPA Section 40(d) rule that solvent partners share proportionately in the shortfall caused by insolvent partners who fail to contribute their proportionate share. The partnership may enforce a partner's obligation to contribute. *See* Section 405(a). A partner is entitled to recover from the other partners any contributions in excess of that partner's share of the partnership's liabilities. *See* Section 405(b)(iii).

5. Subsection (d) provides that, after settling the partners' accounts, each partner must contribute, in the proportion in which he shares losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement. That continues the basic rule of UPA Section 40(d) and underscores that the obligation to contribute exists independently of the partnership's books of account. It specifically covers the situation of a partnership liability that was unknown when the partnership books were closed.

6. Under subsection (e), the estate of a deceased partner is liable for the partner's obligation to contribute to partnership losses. That continues the rule of UPA Section 40(g).

7. Subsection (f) provides that an assignee for the benefit of creditors of the partnership or of a partner (or other court appointed creditor representative) may enforce any partner's obligation to contribute to the partnership. That continues the rules of UPA Sections 36(4) and 40(e).

# [ARTICLE] 9

# CONVERSIONS AND MERGERS

**SECTION 901. DEFINITIONS.** In this [article]:

(1) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(2) "Limited partner" means a limited partner in a limited partnership.

(3) "Limited partnership" means a limited partnership created under the [State Limited Partnership Act], predecessor law, or comparable law of another jurisdiction.

(4) "Partner" includes both a general partner and a limited partner.

Comment

1. Article 9 is new. The UPA is silent with respect to the conversion or merger of partnerships, and thus it is necessary under the UPA to structure those types of transactions as asset transfers. RUPA provides specific statutory authority for conversions and mergers. It provides for continuation of the partnership entity, thereby simplifying those transactions and adding certainty to the legal consequences.

A number of States currently authorize the merger of limited partnerships, and some authorize them to merge with other business entities such as corporations and limited liability companies. A few States currently authorize the merger of a general and a limited partnership or the conversion of a general to a limited partnership.

2. As Section 908 makes clear, the requirements of Article 9 are not mandatory, and a partnership may convert or merge in any other manner provided by law. Article 9 is merely a "safe harbor." If the requirements of the article are followed, the conversion or merger is legally valid. Since most States have no other established procedure for the conversion or merger of partnerships, it is likely that the Article 9 procedures will be used in virtually all cases.

3. Article 9 does not restrict the provisions authorizing conversions and mergers to domestic partnerships. Since no filing is required for the creation of a partnership under RUPA, it is often unclear where a partnership is domiciled. Moreover, a partnership doing business in the State satisfies the definition of a partnership created under this Act since it is an association of two or more co-owners carrying on a business for profit. Even a partnership clearly domiciled in another State could easily amend its partnership agreement to provide that its internal affairs are to be governed by the laws of a jurisdiction that has enacted Article 9 of RUPA. No harm is likely to result from extending to foreign partnerships the right to convert or merge under local law.

4. Because Article 9 deals with the conversion and merger of both general and limited partnerships, Section 901 sets forth four definitions distinguishing between the two types of partnerships solely for the purposes of Article 9. "Partner" includes both general and limited partners, and "general partner" includes general partners in both general and limited partnerships.

**SECTION 902. CONVERSION OF PARTNERSHIP TO LIMITED PARTNERSHIP.**

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

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

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

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

(2) its former name; and

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

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

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

Comment

Section 902(a) authorizes the conversion of a "partnership" to a "limited partnership." Section 202(b) limits the usual RUPA definition of "partnership" to general partnerships. That definition is applicable to Article 9. If a limited partnership is contemplated, Article 9 uses the term "limited partnership." See Section 901(3).

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

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

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

Subsection (e) establishes the partners' liabilities following a conversion. A partner who becomes a limited partner as a result of the conversion remains fully liable as a general partner for any obligation arising before the effective date of the conversion, both to third parties and to other partners for contribution. Third parties who transact business with the converted partnership unaware of a partner's new status as a limited partner are protected for 90 days after the conversion. Since RULPA Section 201(a)(3) requires the certificate of limited partnership to name all of the general partners, and under RUPA Section 902(c) the certificate must also include a statement of the conversion, parties transacting business with the converted partnership can protect themselves by checking the record of the State where the limited partnership is formed (the State where the conversion takes place). A former general partner who becomes a limited partner as a result of the conversion can avoid the lingering 90-day exposure to liability as a general partner by notifying those transacting business with the partnership of his limited partner status.

Although Section 902 does not expressly provide that a partner's withdrawal upon a term partnership's conversion to a limited partnership is rightful, it was assumed that the unanimity requirement for the approval of a conversion would afford a withdrawing partner adequate opportunity to protect his interest as a condition of approval. This question is left to the partnership agreement if it provides for conversion without the approval of all the partners.

**SECTION 903. CONVERSION OF LIMITED PARTNERSHIP TO PARTNERSHIP.**

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

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

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

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

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in Section 306, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

Comment

Section 903(a) authorizes the conversion of a limited partnership to a general partnership.

Subsection (b) provides that the conversion must be approved by all of the partners, even if the partnership agreement provides to the contrary. That includes all of the general and limited partners. *See* Section 901(4). The purpose of the unanimity requirement is to protect a limited partner from exposure to personal liability as a general partner without clear and knowing consent at the time of conversion. Despite a general voting provision to the contrary in the partnership agreement, conversion to a general partnership may never have been contemplated by the limited partner when the partnership investment was made.

Subsection (c) provides that, after approval of the conversion, the converted partnership must cancel its certificate of limited partnership. *See* RULPA § 203.

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

Subsection (e) provides that a limited partner who becomes a general partner is liable as a general partner for all partnership obligations for which a general partner would otherwise be personally liable for if incurred after the effective date of the conversion, but still has only limited liability for obligations incurred before the conversion.

**SECTION 904. EFFECT OF CONVERSION; ENTITY UNCHANGED.**

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

(b) When a conversion takes effect:

(1) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

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

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

Comment

Section 904 sets forth the effect of a conversion on the partnership. Subsection (a) provides that the converted partnership is for all purposes the same entity as before the conversion.

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

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

**SECTION 905. MERGER OF PARTNERSHIPS.**

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

(b) The plan of merger must set forth:

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

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

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

(4) the terms and conditions of the merger;

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

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

(c) The plan of merger must be approved:

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

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

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

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

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

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

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

Comment

Section 905 provides a "safe harbor" for the merger of a general partnership and one or more general or limited partnerships. The surviving entity may be either a general or a limited partnership.

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

Subsection (c) provides that the plan of merger must be approved: (1) by all the partners of each general partnership that is a party to the merger, unless its partnership agreement specifically provides otherwise for mergers; and (2) by all the partners, including both general and limited partners, of each limited partnership that is a party to the merger, notwithstanding a contrary provision in its partnership agreement, unless specifically authorized by the law of the jurisdiction in which that limited partnership is organized. Like Section 902(b), the purpose of the unanimity requirement is to protect limited partners from exposure to liability as general partners without their clear and knowing consent.

Subsection (d) provides that the plan of merger may be amended or abandoned at any time before the merger takes effect, if the plan so provides.

Subsection (e) provides that the merger takes effect on the later of: (1) approval by all parties to the merger; (2) filing of all required documents; or (3) the effective date specified in the plan. The surviving entity must file all notices and documents relating to the merger required by other applicable statutes governing the entities that are parties to the merger, such as articles of merger or a certificate of limited partnership. It may also amend or cancel a statement of partnership authority previously filed by any party to the merger.

**SECTION 906. EFFECT OF MERGER.**

(a) When a merger takes effect:

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

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

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

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

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

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

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

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

(3) except as otherwise provided in Section 306, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in Section 807 or in the [Limited Partnership Act] of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

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

Comment

Section 906 states the effect of a merger on the partnerships that are parties to the merger and on the individual partners.

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

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

Subsection (c) provides that a general partner of the surviving entity is liable for (1) all obligations for which the partner was personally liable before the merger; (2) all other obligations of the surviving entity incurred before the merger by a party to the merger, which obligations may be satisfied only out of the surviving entity's partnership property; and (3) all obligations incurred by the surviving entity after the merger, limited to the surviving entity's property in the case of limited partners and also limited to obligations of the partnership for which the partner was personally liable under Section 306.

This scheme of liability is similar to that of an incoming partner under Section 306(b). Only the surviving partnership itself is liable for all obligations, including obligations incurred by every constituent party before the merger. A general partner of the surviving entity is personally liable for obligations of the surviving entity incurred before the merger by the partnership of which he was a partner and those incurred by the surviving entity after the merger. Thus, a general partner of the surviving entity is liable only to the extent of his partnership interest for obligations incurred before the merger by a constituent party of which he was not a general partner.

Subsection (d) requires general partners to contribute the amount necessary to satisfy all obligations for which they were personally liable before the merger, if such obligations are not satisfied out of the partnership property of the surviving entity, in the same manner as provided in Section 807 or the limited partnership act of the applicable jurisdiction, as if the merged party were then dissolved. *See* RULPA §§ 502, 608.

Subsection (e) provides for the dissociation of a partner of a party to the merger who does not become a partner in the surviving entity. The surviving entity must buy out that partner's interest in the partnership under Section 701 or other specifically applicable statute. If the state limited partnership act has a dissenter's rights provision providing a different method of determining the amount due a dissociating limited partner, it would apply, rather than Section 701, since the two statutes should be read *in pari materia*.

Although subsection (e) does not expressly provide that a partner's withdrawal upon the merger of a term partnership is rightful, it was assumed that the unanimity requirement for the approval of a merger would afford a withdrawing partner adequate opportunity to protect his interest as a condition of approval. This question is left to the partnership agreement if it provides for merger without the approval of all the partners.

Under subsection (e), a dissociating general partner's lingering agency power is wound down, pursuant to Section 702, the same as in any other dissociation. Moreover, a dissociating general partner may be liable, under Section 703, for obligations incurred by the surviving entity for up to two years after the merger. A dissociating general partner can, however, limit to 90 days his exposure to liability by filing a statement of dissociation under Section 704.

**SECTION 907. STATEMENT OF MERGER.**

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

(b) A statement of merger must contain:

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

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

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

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

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

(d) For the purposes of Section 302, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

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

Comment

Section 907(a) provides that the surviving entity may file a statement of merger. The execution, filing, and recording of the statement are governed by Section 105.

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

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

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

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

**SECTION 908. NONEXCLUSIVE.** This [article] is not exclusive.

Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

Comment

Section 908 provides that Article 9 is not exclusive. It is merely a "safe harbor." Partnerships may be converted or merged in any other manner provided by statute or common law. Existing statutes in a few States already authorize the conversion or merger of general partnerships and limited partnerships. See Comment 1 to Section 901. Those procedures may be followed in lieu of Article 9.

## [ARTICLE] 10

## LIMITED LIABILITY PARTNERSHIP

**SECTION 1001. STATEMENT OF QUALIFICATION.**

(a) A partnership may become a limited liability partnership pursuant to this section.

(b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(c) After the approval required by subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain:

(1) the name of the partnership;

(2) the street address of the partnership's chief executive office and, if different, the street address of an office in this State, if any;

(3) if the partnership does not have an office in this State, the name and street address of the partnership's agent for service of process;

(4) a statement that the partnership elects to be a limited liability partnership; and

(5) a deferred effective date, if any.

(d) The agent of a limited liability partnership for service of process must be an individual who is a resident of this State or other person authorized to do business in this State.

(e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 105(d) or revoked pursuant to Section 1003.

(f) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c).

(g) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

Comment

Any partnership may become a limited liability partnership by filing a statement of qualification. See Comments to Sections 101(6) and 202(b) regarding a limited partnership filing a statement of qualification to become a limited liability limited partnership. Section 1001 sets forth the required contents of a statement of qualification. The section also sets forth requirements for the approval of a statement of qualification, establishes the effective date of the filing (and any amendments) which remains effective until canceled or revoked, and provides that the liability of the partners of a limited liability partnership is not affected by errors or later changes in the statement information.

Subsection (b) provides that the terms and conditions on which a partnership becomes a limited liability partnership must be generally be approved by the vote necessary to amend the partnership agreement. This means that the act of becoming a limited liability partnership is equivalent to an amendment of the partnership agreement. Where the partnership agreement is silent as to how it may be amended, the subsection (b) vote requires the approval of every partner. Since the limited liability partnership rules are not intended to increase the vote necessary to amend the partnership agreement, where the partnership agreement specifically sets forth an amendment process, that process may be used. Where a partnership agreement sets forth several amendment procedures depending upon the nature of the amendment, the required vote will be that necessary to amend the contribution obligations of the partners. The specific "contribution" vote is preferred because the filing of the statement directly affects partner contribution obligations. Therefore, the language "considers contribution" should be broadly interpreted to include any amendment vote that indirectly affects any partner's contribution obligation such as a partner's obligation to "indemnify" other partners.

The unanimous vote default rule reflects the significance of a partnership becoming a limited liability partnership. In general, upon such a filing each partner is released from the personal contribution obligation imposed under this Act in exchange for relinquishing the right to enforce the contribution obligations of other partners under this Act. See Comments to Sections 306(c) and 401(b). The wisdom of this bargain will depend on many factors including the relative risks of the partners' duties and the assets of the partnership.

Subsection (c) sets forth the information required in a statement of qualification. The must include the name of the partnership which must comply with Section 1002 to identify the partnership as a limited liability partnership. The statement must also include the address of the partnership's chief executive office and, if different, the street address of any other office in this State. A statement must include the name and street address of an agent for service of process only if it does not have any office in this State.

As with other statements, a statement of qualification must be filed in the office of the Secretary of State. See Sections 101(13) and 105(a). Accordingly, a statement of qualification is executed, filed, and otherwise regarded as a statement under this Act. For example, a copy of a filed statement must be sent to every nonfiling partner unless otherwise provided in the partnership agreement. See Sections 105(e) and 103(b)(1). A statement of qualification must be executed by at least two partners under penalties of perjury that the contents of the statement are accurate. See Section 105(c). A person who files the statement must promptly send a copy of the statement to every nonfiling partner but failure to send the copy does not limit the effectiveness of the filed statement to a nonpartner. Section 105(e). The filing must be accompanied by the fee required by the Secretary of State. Section 105(f).

Subsection (d) makes clear that once a statement is filed and effective, the status of the partnership as a limited liability partnership remains effective until the partnership status is either canceled or revoked "regardless of changes in the partnership." Accordingly, a partnership that dissolves but whose business is continued under a business continuation agreement retains its status as a limited liability partnership without the need to refile a new statement. Also, limited liability partnership status remains even though a partnership may be dissolved, wound up, and terminated. Even after the termination of the partnership, the former partners of a terminated partnership would not be personally liable for partnership obligations incurred while the partnership was a limited liability partnership.

Subsection (d) also makes clear that limited liability partnership status remains effective until actual cancellation under Section 1003 or revocation under Section 105(d). Ordinarily the terms and conditions of becoming a limited liability partnership must be approved by the vote necessary to amend the partnership agreement. See Sections 1001(b), 306(c), and 401(j). Since the statement of cancellation may be filed by a person authorized to file the original statement of qualification, the same vote necessary to approve the filing of the statement of qualification must be obtained to file the statement of cancellation. See Section 105(d).

Subsection (f) provides that once a statement of qualification is executed and filed under subsection (c) and Section 105, the partnership assumes the status of a limited liability partnership. This status is intended to be conclusive with regard to third parties dealing with the partnership. It is not intended to affect the rights of partners. For example, a properly executed and filed statement of qualification conclusively establishes the limited liability shield described in Section 306(c). If the partners executing and filing the statement exceed their authority, the internal abuse of authority has no effect on the liability shield with regard to third parties. Partners may challenge the abuse of authority for purposes of establishing the liability of the culpable partners but may not effect the liability shield as to third parties. Likewise, third parties may not challenge the existence of the liability shield because the decision to file the statement lacked the proper vote. As a result, the filing of the statement creates the liability shield even when the required subsection (b) vote is not obtained.

**SECTION 1002. NAME.** The name of a limited liability partnership must end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP," or "LLP".

Comment

The name provisions are intended to alert persons dealing with a limited liability partnership of the presence of the liability shield. Because many jurisdictions have adopted the naming concept of a "registered" limited liability partnership, this aspect has been retained. These name requirements also distinguish limited partnerships and general partnerships that become limited liability partnerships because the new name must be at the end of and in addition to the general or limited partnership's regular name. See Comments to Section 101(6). Since the name identification rules of this section do not alter the regular name of the partnership, they do not disturb historic notions of apparent authority of partners in both general and limited partnerships.

## SECTION 1003. ANNUAL REPORT.

(a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this State, shall file an annual report in the office of the [Secretary of State] which contains:

(1) the name of the limited liability partnership and the State or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any; and

(3) if the partnership does not have an office in this State, the name and street address of the partnership's current agent for service of process.

(b) An annual report must be filed between [January 1 and April 1] of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this State.

(c) The [Secretary of State] may revoke the statement of qualification of a partnership that fails to file an annual report when due or pay the required filing fee. To do so, the [Secretary of State] shall provide the partnership at least 60 days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

(d) A revocation under subsection (c) only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(e) A partnership whose statement of qualification has been revoked may apply to the [Secretary of State] for reinstatement within two years after the effective date of the revocation. The application must state:

(1) the name of the partnership and the effective date of the revocation; and

(2) that the ground for revocation either did not exist or has been corrected.

(f) A reinstatement under subsection (e) relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

Comment

Section 1003 sets forth the requirements of an annual report that must be filed by all limited liability partnerships and any foreign limited liability partnership authorized to transact business in this State. See Sections 101(5)(definition of a limited liability partnership) and 101(4)(definition of a foreign limited liability partnership). The failure of a limited liability partnership to file an annual report is a basis for the Secretary of State to administratively revoke its statement of qualification. See Section 1003(c). A foreign limited liability partnership that fails to file an annual report may not maintain an action or proceeding in this State. See Section 1103(a).

Subsection (a) generally requires that an annual report contain the same information required in a statement of qualification. Compare Sections 1001(a) and 1003(a). The differences are that the annual report requires disclosure of the State of formation of a foreign limited liability partnership but deletes the delayed effective date and limited liability partnership election statement provisions of a statement of qualification. As such, the annual report serves to update the information required in a statement of qualification. Under subsection (b), the annual report must be filed between January 1 and April 1 of each calendar year following the year in which a statement of qualification was filed or a foreign limited liability partnership becomes authorized to transact business. This timing requirement means that a limited liability partnership must make an annual filing and may not prefile multiple annual reports in a single year.

Subsection (c) sets forth the procedure for the Secretary of State to administratively revoke a partnership's statement of qualification for the failure to file an annual report when due or pay the required filing fee. The Secretary of State must provide a partnership at least 60 days' written notice of the intent to revoke the statement. The notice must be mailed to the partnership at the address of its chief executive office set forth in the last filed statement or annual report and must state the grounds for revocation as well as the effective date of revocation. The revocation is not effective if the stated problem is cured before the stated effective date.

Under subsection (d), a revocation only terminates the partnership's status as a limited liability partnership but is not an event of dissolution of the partnership itself. Where revocation occurs, a partnership may apply for reinstatement under subsection (e) within two years after the effective date of the revocation. The application must state that the grounds for revocation either did not exist or have been corrected. The Secretary of State may grant the application on the basis of the statements alone or require proof of correction. Under subsection (f), when the application is granted, the reinstatement relates back to and takes effect as of the effective date of the revocation. The relation back doctrine prevents gaps in a reinstated partnership's liability shield. See Comments to Section 306(c).

## [ARTICLE] 11

## FOREIGN LIMITED LIABILITY PARTNERSHIP

**SECTION 1101. LAW GOVERNING FOREIGN LIMITED LIABILITY PARTNERSHIP.**

(a) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this State.

(c) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this State as a limited liability partnership.

Comment

Section 1101 provides that the laws where a foreign limited liability partnership is formed rather than the laws of this State govern both the internal relations of the partnership and liability of its partners for the obligations of the partnership. See Section 101(4)(definition of a foreign limited liability partnership). Section 106(b) provides that the laws of this State govern the internal relations of a domestic limited liability and the liability of its partners for the obligations of the partnership. See Sections 101(5)(definition of a domestic limited liability partnership). A partnership may therefore chose the laws of a particular jurisdiction by filing a statement of qualification in that jurisdiction. But there are limitations on this choice.

Subsections (b) and (c) together make clear that although a foreign limited liability partnership may not be denied a statement of foreign qualification simply because of a difference between the laws of its foreign jurisdiction and the laws of this State, it may not engage in any business or exercise any power in this State that a domestic limited liability partnership may not engage in or exercise. Under subsection (c), a foreign limited liability partnership that engages in a business or exercises a power in this State that a domestic may not engage in or exercise, does so only as a ordinary partnership without the benefit of the limited liability partnership liability shield set forth in Section 306(c). In this sense, a foreign limited liability partnership is treated the same as a domestic limited liability partnership. Also, the Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting an unauthorized business in this State. See Section 1105.

**SECTION 1102. STATEMENT OF FOREIGN QUALIFICATION.**

(a) Before transacting business in this State, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(1) the name of the foreign limited liability partnership which satisfies the requirements of the State or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP," or "LLP";

(2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any;

(3) if there is no office of the partnership in this State, the name and street address of the partnership's agent for service of process; and

(4) a deferred effective date, if any.

(b) The agent of a foreign limited liability company for service of process must be an individual who is a resident of this State or other person authorized to do business in this State.

(c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 105(d) or revoked pursuant to Section 1003.

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

Comment

Section 1102 provides that a foreign limited liability partnership must file a statement of foreign qualification before transacting business in this State. The section also sets forth the information required in the statement. As with other statements, a statement of foreign qualification must be filed in the office of the Secretary of State. See Sections 101(13), 105(a), and 1001(c). Accordingly, a statement of foreign qualification is executed, filed, and otherwise regarded as a statement under this Act. See Section 101(13)(definition of a statement includes a statement of foreign qualification).

Subsection (a) generally requires the same information in a statement of foreign qualification as is required in a statement of qualification. Compare Section 1001(c). The statement of foreign qualification must include a name that complies with the requirements for domestic limited liability partnership under Section 1002 and must include the address of the partnership's chief executive office and, if different, the street address of any other office in this State. If a foreign limited liability partnership does not have any office in this State, the statement of foreign qualification must include the name and street address of an agent for service of process.

As with a statement of qualification, a statement of foreign qualification (and amendments) is effective when filed or at a later specified filing date. Compare Sections 1102(b) and (c) with Sections 1001(e) and (h). Likewise, a statement of foreign qualification remains effective until canceled by the partnership or revoked by the Secretary of State, regardless of changes in the partnership. See Sections 105(d) (statement cancellation) and Section 1003 (revocation for failure to file annual report or pay annual filing fee) and Compare Sections 1102(b) and 1001(e). Statement of qualification provisions regarding the relationship of the status of a foreign partnership relative to its initial filing of a statement are governed by foreign law and are therefore omitted from this section. See Sections 1001(f)(effect of errors and omissions) and (g)(filing establishes all conditions precedent to qualification).

### SECTION 1103. EFFECT OF FAILURE TO QUALIFY.

(a) A foreign limited liability partnership transacting business in this State may not maintain an action or proceeding in this State unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this State without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this State without a statement of foreign qualification, the [Secretary of State] is its agent for service of process with respect to a right of action arising out of the transaction of business in this State.

Comment

Section 1103 makes clear that the only consequence of a failure to file a statement of foreign qualification is that the foreign limited liability partnership will not be able to maintain an action or proceeding in this State. The partnership's contracts remain valid, it may defend an action or proceeding, personal liability of the partners is not waived, and the Secretary of State is the agent for service of process with respect to claims arising out of transacting business in this State. Sections 1103(b)-(d). Once a statement of foreign qualification is filed, the Secretary of State may revoke the statement for failure to file an annual report but the partnership has the right to cure the failure for two years. See Section 1003(c) and (e). Since the failure to file a statement of foreign qualification has no impact on the liability shield of the partners, a revocation of a statement of foreign qualification also has no impact on the liability shield created under foreign laws. Compare Sections 1103(c) and 1003(f)(revocation of the statement of qualification of a domestic limited liability partnership removes partner liability shield unless filing problems cured within two years).

**SECTION 1104. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.**

(a) Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this [article] include:

(1) maintaining, defending, or settling an action or proceeding;

(2) holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;

(7) creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;

(8) collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(9) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions; and

(10) transacting business in interstate commerce.

(b) For purposes of this [article], the ownership in this State of income-producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this State.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State.

Comment

Because the Attorney General may restrain a foreign limited liability partnership from transacting an unauthorized business in this State and a foreign partnership may not maintain an action or proceeding in this State, the concept of "transacting business" in this State is important. To provide more certainty, subsection (a) sets forth ten separate categories of activities that do not constitute transacting business. Subsection (c) makes clear that the section only considers the definition of "transacting business" and as no impact on whether a foreign limited liability partnership's activities in this State subject it to service of process, taxation, or regulation under any other law of this State.

**SECTION 1105. ACTION BY [ATTORNEY GENERAL].** The [Attorney General] may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this [article].

Comment

Section 1105 makes clear that the Attorney General may restrain a foreign limited liability from transacting an unauthorized business in this State. As a threshold matter, a foreign limited liability partnership must be "transacting business" in this State within the meaning of Section 1104. Secondly, the business transacted in this State must be that which could not be engaged in by a domestic limited liability partnership. See Section 1101(c). The fact that a foreign limited liability partnership has a statement of foreign qualification does not permit it to engage in any unauthorized business in this State or impair the power of the Attorney General to restrain the foreign partnership from engaging in the unauthorized business. See Section 1101(c).

## [ARTICLE] 12

## MISCELLANEOUS PROVISIONS

**SECTION 1201. 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 1202. SHORT TITLE.** This [Act] may be cited as the Uniform Partnership Act (1997).

**SECTION 1203. 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 1204. EFFECTIVE DATE.** This [Act] takes effect

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Comment

The effective date of the Act established by an adopting State has operative effects under Section 1206, which defers mandatory application of the Act to existing partnerships.

**SECTION 1205. REPEALS.** Effective January 1, 199___, the following acts and parts of acts are repealed: [the State Partnership Act as amended and in effect immediately before the effective date of this [Act]].

Comment

This section repeals the adopting State's present general partnership act. The effective date of the repealer should not be any earlier than the date selected by that State in Section 1206(b) for the application of the Act to all partnerships.

**SECTION 1206. APPLICABILITY.**

(a) Before January 1, 199___, this [Act] governs only a partnership formed:

(1) after the effective date of this [Act], except a partnership that is continuing the business of a dissolved partnership under [Section 41 of the superseded Uniform Partnership Act]; and

(2) before the effective date of this [Act], that elects, as provided by subsection (c), to be governed by this [Act].

(b) On and after January 1, 199___, this [Act] governs all partnerships.

(c) Before January 1, 199___, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this [Act]. The provisions of this [Act] relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year before the partnership's election to be governed by this [Act] only if the third party knows or has received a notification of the partnership's election to be governed by this [Act].

Comment

This section provides for a transition period in the applicability of the Act to existing partnerships, similar to that provided in the revised Texas partnership act. *See* Tex. Rev. Civ. Stat. Ann. art. 6132b-10.03 (Vernon Supp. 1994). Subsection (a) makes application of the Act mandatory for all partnerships formed after the effective date of the Act and permissive, by election, for existing partnerships. That affords existing partnerships and partners an opportunity to consider the changes effected by RUPA and to amend their partnership agreements, if appropriate.

Under subsection (b), application of the Act becomes mandatory for all partnerships, including existing partnerships that did not previously elect to be governed by it, upon a future date to be established by the adopting State. Texas, for example, deferred for five years mandatory compliance by existing partnerships.

Subsection (c) provides that an existing partnership may voluntarily elect to be governed by RUPA in the manner provided for amending its partnership agreement. Under UPA Section 18(h), that requires the consent of all the partners, unless otherwise agreed. Third parties doing business with the partnership must know or be notified of the election before RUPA's rules limiting a partner's liability become effective as to them. Those rules would include, for example, the provisions of Section 704 limiting the liability of a partner 90 days after the filing of a statement of dissociation. Without knowledge of the partnership's election, third parties would not be aware that they must check the record to ascertain the extent of a dissociated partner's personal liability.

**SECTION 1207. SAVINGS CLAUSE.** This [Act] does not affect an action or proceeding commenced or right accrued before this [Act] takes effect.

Comment

This section continues the prior law after the effective date of the Act with respect to a pending action or proceeding or a right accrued at the time of the effective date. Since courts generally apply the law that exists at the time an action is commenced, in many circumstances the new law of this Act would displace the old law, but for this section.

Almost all States have general savings statutes, usually as part of their statutory construction acts. These are often very broad. Compare Uniform Statute and Rule Construction Act § 16(a) (narrow savings clause). As RUPA is remedial, the more limited savings provisions in Section 1207 are more appropriate than the broad savings provisions of the usual general savings clause. *See generally*, Comment to Uniform Statute and Rule Construction Act § 16.

Pending "action" refers to a judicial proceeding, while "proceeding" is broader and includes administrative proceedings. Although it is not always clear whether a right has "accrued," the term generally means that a cause of action has matured and is ripe for legal redress. *See, e.g., Estate of Hoover v. Iowa Dept. of Social Services*, 299 Iowa 702, 251 N.W.2d 529 (1977); *Nielsen v. State of Wisconsin*, 258 Wis. 1110, 141 N.W.2d 194 (1966). An inchoate right is not enough, and thus, for example, there is no accrued right under a contract until it is breached.

*[Sections 1208 through 1211 are necessary only for jurisdictions adopting Uniform Limited Liability Partnership Act Amendments after previously adopting Uniform Partnership Act (1994)]*

**SECTION 1208. EFFECTIVE DATE.** These [Amendments] take effect

....................................... .

**SECTION 1209. REPEALS.** Effective January 1, 199__, the following acts and parts of acts are repealed: [the Limited Liability Partnership amendments to the State Partnership Act as amended and in effect immediately before the effective date of these [Amendments]].

**SECTION 1210. APPLICABILITY.**

(a) Before January 1, 199__, these [Amendments] govern only a limited liability partnership formed:

(1) on or after the effective date of these [Amendments], unless that partnership is continuing the business of a dissolved limited liability partnership; and

(2) before the effective date of these [Amendments], that elects, as provided by subsection (c), to be governed by these [Amendments].

(b) On and after January 1, 199__, these [Amendments] govern all partnerships.

(c) Before January 1, 199__, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by these [Amendments]. The provisions of these [Amendments] relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year before the partnership's election to be governed by these [Amendments], only if the third party knows or has received a notification of the partnership's election to be governed by these [Amendments].

(d) The existing provisions for execution and filing a statement of qualification of a limited liability partnership continue until either the limited liability partnership elects to have this [Act] apply or January 1, 199__.

**SECTION 1211. SAVINGS CLAUSE.** These [Amendments] do not affect an action or proceeding commenced or right accrued before these [Amendments] take effect.