

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1609

S.P. 591

In Senate, April 28, 2005

An Act To Establish the Uniform Partnership Act

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOBBS of York.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **PART A**

6 **Sec. A-1. 31 MRSA c. 9, as amended, is repealed.**

8 **Sec. A-2. 31 MRSA c. 17 is enacted to read:**

10 **PREFATORY NOTE**

12 The National Conference of Commissioners on Uniform State
14 Laws first considered a uniform law of partnership in 1902.
16 Although early drafts had proceeded along the mercantile or
18 "entity" theory of partnerships, later drafts were based on the
20 common-law "aggregate" theory. The resulting Uniform Partnership
22 Act ("UPA"), which embodied certain aspects of each theory, was
finally approved by the Conference in 1914. The UPA governs
general partnerships, and also governs limited partnerships
except where the limited partnership statute is inconsistent.
The UPA has been adopted in every State other than Louisiana and
has been the subject of remarkably few amendments in those States
over the past 80 years.

24 In January of 1986, an American Bar Association subcommittee
26 issued a detailed report that recommended extensive revisions to
28 the UPA. See UPA Revision Subcommittee of the Committee on
Partnerships and Unincorporated Business Organizations, Section
of Business Law, American Bar Association, Should the Uniform
Partnership Act be Revised?, 43 Bus. Law. 121 (1987) ("ABA
30 Report"). The ABA Report recommended that the entity theory
"should be incorporated into any revision of the UPA whenever
32 possible." Id. at 124.

34 In 1987, the Conference appointed a Drafting Committee to
36 Revise the Uniform Partnership Act and named a Reporter. The
Committee held its initial meeting in January of 1988 and a first
reading of the Committee's draft was begun at the Conference's
38 1989 Annual Meeting in Kauai, Hawaii. The first reading was
completed at the 1990 Annual Meeting in Milwaukee. The second
40 reading was begun at Naples, Florida, in 1991 and completed at
San Francisco in 1992. The Revised Uniform Partnership Act
42 (1992) was adopted unanimously by a vote of the States on August
6, 1992. The following year, in response to suggestions from
44 various groups, including an American Bar Association
subcommittee and several state bar associations, the Drafting
46 Committee recommended numerous revisions to the Act. Those were
adopted at the Charleston, South Carolina, Annual Meeting in
48 1993, and the Act was restyled as the Uniform Partnership Act
(1993). Subsequently, a final round of changes was incorporated,
50 and the Conference unanimously adopted the Uniform Partnership

2 Act (1994) at its 1994 Annual Meeting in Chicago. The Revised
Act was approved by the American Bar Association House of
Delegates in August, 1994.

4
6 The Uniform Partnership Act (1994) ("Revised Act" or "RUPA")
gives supremacy to the partnership agreement in almost all
8 situations. The Revised Act is, therefore, largely a series of
"default rules" that govern the relations among partners in
10 situations they have not addressed in a partnership agreement.
The primary focus of RUPA is the small, often informal,
12 partnership. Larger partnerships generally have a partnership
agreement addressing, and often modifying, many of the provisions
of the partnership act.

14
16 The Revised Act enhances the entity treatment of
partnerships to achieve simplicity for state law purposes,
particularly in matters concerning title to partnership
18 property. RUPA does not, however, relentlessly apply the entity
approach. The aggregate approach is retained for some purposes,
20 such as partners' joint and several liability.

22 The Drafting Committee spent significant effort on the rules
governing partnership breakups. RUPA's basic thrust is to
24 provide stability for partnerships that have continuation
agreements. Under the UPA, a partnership is dissolved every time
26 a member leaves. The Revised Act provides that there are many
departures or "dissociations" that do not result in a dissolution.

28
30 Under the Revised Act, the withdrawal of a partner is a
"dissociation" that results in a dissolution of the partnership
only in certain limited circumstances. Many dissociations result
32 merely in a buyout of the withdrawing partner's interest rather
than a winding up of the partnership's business. RUPA defines
34 both the substance and procedure of the buyout right.

36 Article 6 of the Revised Act covers partner dissociations;
Article 7 covers buyouts; and Article 8 covers dissolution and
38 the winding up of the partnership business. See generally Donald
J. Weidner & John W. Larson, *The Revised Uniform Partnership Act:
40 The Reporters' Overview*, 49 *Bus. Law.* 1 (1993).

42 The Revised Act also includes a more extensive treatment of
the fiduciary duties of partners. Although RUPA continues the
44 traditional rule that a partner is a fiduciary, it also makes
clear that a partner is not required to be a disinterested
46 trustee. Provision is made for the legitimate pursuit of
self-interest, with a counterbalancing irreducible core of
48 fiduciary duties.

2 Another significant change introduced by RUPA is provision
4 for the public filing of statements containing basic information
6 about a partnership, such as the agency authority of its
8 partners. Because of the informality of many partnerships, and
the inadvertence of some, mandatory filings were eschewed in
favor of a voluntary regime. It was the Drafting Committee's
belief, however, that filings would become routine for
sophisticated partnerships and would be required by lenders and
others for major transactions.

10
12 Another innovation is found in Article 9. For the first
14 time, the merger of two or more partnerships and the conversion
16 of partnerships to limited partnerships (and the reverse) is
expressly authorized, and a "safe harbor" procedure for effecting
such transactions is provided.

18 One final change deserves mention. Partnership law no
20 longer governs limited partnerships pursuant to the provisions of
22 RUPA itself. First, limited partnerships are not "partnerships"
24 within the RUPA definition. Second, UPA Section 6(2), which
26 provides that the UPA governs limited partnerships in cases not
28 provided for in the Uniform Limited Partnership Act (1976) (1985)
("RULPA") has been deleted. No substantive change in result is
intended, however. Section 1105 of RULPA already provides that
the UPA governs in any case not provided for in RULPA, and thus
the express linkage in RUPA is unnecessary. Structurally, it is
more appropriately left to RULPA to determine the applicability
of RUPA to limited partnerships. It is contemplated that the
Conference will review the linkage question carefully, although
no changes in RULPA may be necessary despite the many changes in
RUPA.

32
34 Finally, the Drafting Committee wishes to express its deep
36 appreciation for the extraordinary time and effort that has been
38 devoted to this project by its Reporter, Donald J. Weidner, Dean
40 of the Florida State University College of Law; by its Assistant
42 Reporter, Professor John W. Larson of the Florida State
44 University College of Law; by its American Bar Association
46 Advisors Allan G. Donn, of Norfolk, Virginia (ABA Section of
48 Taxation and later the ABA Advisor, and a member of the original
50 ABA subcommittee that recommended revising the UPA), Harry J.
Haynsworth, Dean of the Southern Illinois University School of
Law (the original ABA Advisor until he became a Commissioner and
member of the Drafting Committee in 1992 and who was also a
member of the original ABA subcommittee), S. Stacy Eastland, of
Houston, Texas (Probate and Trust Division of the ABA Section of
Real Property, Probate and Trust Law), and Caryl B. Welborn, of
San Francisco, California (Real Property Division of the ABA
Section of Real Property, Probate and Trust Law); and by a number
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6 California at Davis School of Law, John Goode of Richmond,
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8 Gary S. Rosin of the South Texas College of Law, James F. Fotenos
of San Francisco, California, and Joel S. Adelman of Detroit,
10 Michigan (who also was a member of the original ABA
subcommittee). The Drafting Committee also would like to express
12 its appreciation to the members of the ABA Committee on
Partnerships and Unincorporated Business Organizations, and its
14 chairs, Thurston R. Moore of Richmond, Virginia, and John H.
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16 devoted to this project, and to that Committee's special
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of that subcommittee, Lauris G.L. Rall of New York, New York, and
18 Gerald V. Niesar of San Francisco, California, and its members,
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20 Larry E. Ribstein of the George Mason University School of Law,
and Anthony van Westrum of Denver, Colorado. Each of these
22 individuals added immeasurably to the Drafting Committee's
discussion and consideration of both the major policy issues and
24 the technical drafting issues raised by the Act.

26 **Addendum**

28 In 1995, the Conference appointed a Drafting Committee to
add provisions to RUPA authorizing the creation of a new form of
30 general partnership called a limited liability partnership
(LLP). At the time RUPA was first approved in 1992, only two
32 states had adopted limited liability partnership legislation. By
the time the LLP amendments to RUPA were approved by the
34 Conference at the 1996 Annual Meeting, over forty states had
adopted limited liability partnership provisions to their general
36 partnership statutes.

38 The LLP amendments to RUPA deal with four major issues: (1)
scope of a partner's liability shield; (2) the voting requirement
40 to become an LLP; (3) the effect of becoming an LLP on the
partnership agreement; and (4) the annual filing requirement.

42 1. Scope of a Partner's Liability Shield

44 The amendments to add LLP provisions to RUPA include a new
46 Section 306(c) providing for a corporate-styled liability shield
which protects partners from vicarious personal liability for all
48 partnership obligations incurred while a partnership is a limited
liability partnership. The complete liability shield comports
50 with the modern trend among the states. Most states, however,

2 have adopted a partial liability shield protecting the partners
3 only from vicarious personal liability for all partnership
4 obligations arising from negligence, wrongful acts or misconduct,
5 whether characterized as tort, contract or otherwise, committed
6 while the partnership is an LLP. The Act does not alter a
7 partner's liability for personal misconduct and does not alter
8 the normal partnership rules regarding a partner's right to
9 indemnification from the partnership (Section 401(c)).
10 Therefore, the primary effect of the new liability shield is to
11 sever a partner's personal liability to make contributions to the
12 partnership when partnership assets are insufficient to cover its
13 indemnification obligation to a partner who incurs a partnership
14 obligation in the ordinary course of the partnership's business.

15 2. Voting Requirement to Become an LLP

16 The Act includes a new Section 1001(b) which provides that
17 the decision to become an LLP is a major partnership event
18 equivalent to an amendment of the partnership agreement.
19 Therefore, the required vote equals the vote required to amend
20 the partnership agreement. When the agreement is silent on these
21 matters, the required vote would be unanimous. Where the
22 agreement includes several amendment votes depending on the
23 nature of the amendment, the required vote is that which
24 considers contribution obligations since those obligations are
25 the most affected by the amendments. Most states currently
26 consider the required vote to become a limited liability
27 partnership to be an ordinary partnership decision requiring only
28 a majority consent.

29 In becoming an LLP, each partner should consider a personal
30 liability calculus. Where partnership assets are insufficient to
31 indemnify a partner for an LLP obligation, each partner forfeits
32 a right to receive contributions from other partners in exchange
33 for being relieved of the obligation to contribute to the
34 personal liability of other partners. This calculus will be
35 different for each partner and will vary, for example, depending
36 on the size and business of the partnership, the number of
37 partners, the amount of insurance, and the relative risk of each
38 partner's business practice compared to fellow partners. To
39 adequately consider these varying interests, the Act adopts the
40 vote required to amend the partnership agreement in special and
41 general cases.

42 3. Effect of Becoming an LLP on the Partnership Agreement

43 The last sentence in new Section 306(c) provides that when a
44 partnership becomes an LLP, the resulting liability shield
45 applies notwithstanding inconsistent provisions of the
46 partnership agreement existing immediately before the vote to
47

2 become an LLP was taken. When the partners vote to become an
LLP, they obviously intend to sever their personal responsibility
4 to make contributions to the partnership when partnership assets
are insufficient to cover partnership indemnification obligations
6 to a partner. A partner's contribution obligation may be
enforced not only by a partner (Sections 401 and 405) but also by
8 a partner's creditors (Section 807(f)). In essence, the new
Section 306(c) automatically "amends" the partnership agreement
to remove personal liability for contribution obligations that
10 may exist under the terms of the partnership agreement as it
exists immediately before the vote. However, the partners are
12 not prohibited from thereafter amending the partnership agreement
again to reestablish contribution obligations (see Section
14 103(b)).

16 4. Annual Filing Requirement

18 The Act includes new Section 1001(d) which provides that a
partnership's status as an LLP remains effective until it is
20 revoked by a vote of the partners or is canceled by the Secretary
of State under new Section 1003(c) for the failure to file an
22 annual report or pay the required annual fees. Most states
provide that unless an LLP timely files an annual registration
24 statement, its LLP status is "automatically" terminated but may
be resurrected prospectively only with a subsequent corrective
26 filing. Under this view, an operating partnership may have
significant "gaps" in its shield which is further complicated by
28 sourcing rules necessary to determine when a partnership
obligation belongs to the shielded LLP or the unshielded
30 partnership. As with corporations and limited liability
companies, the Act preserves the LLP status and the partners'
32 liability shield unless the LLP status is revoked by the partners
or canceled by the Secretary of State. In the latter case,
34 potential gaps in the liability shield are cured with a
retroactive resurrection of the LLP status if a corrective filing
36 is made within two years (Section 1003(e)).

38 The LLP Drafting Committee wishes to express its gratitude
to the Reporter for this project, Professor Carter G. Bishop of
40 Suffolk University Law School. Professor Bishop's comprehensive
knowledge of partnership law and tax and his drafting expertise
42 were instrumental in enabling the Drafting Committee to complete
this project in one year. The Drafting Committee also wishes to
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46 Elizabeth G. Hester of Richmond, Virginia (ABA Advisor); Lou
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16 CHAPTER 17

18 UNIFORM PARTNERSHIP ACT

20 SUBCHAPTER 1

22 GENERAL PROVISIONS

24 §1001. Definitions

26 As used in this chapter, unless the context otherwise
indicates, the following terms have the following meanings.

28 1. Business. "Business" includes every trade, occupation
and profession.

30 2. Debtor in bankruptcy. "Debtor in bankruptcy" means a
32 person who is the subject of:

34 A. An order for relief under 11 United States Code or a
36 comparable order under a successor statute of general
application; or

38 B. A comparable order under federal, state or foreign law
40 governing insolvency.

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

46 4. Foreign limited liability partnership. "Foreign limited
liability partnership" means a partnership that:

48 A. Is formed under laws other than the laws of this State;
50 and

2 B. Has the status of a limited liability partnership under
3 those laws.

4 5. Limited liability partnership. "Limited liability
5 partnership" means a partnership that has registered as a limited
6 liability partnership pursuant to section 821 and does not have a
7 similar statement in effect in any other jurisdiction.

8 6. Partnership. "Partnership" means an association of 2 or
9 more persons to carry on as co-owners a business for profit
10 formed under section 1022, predecessor law or comparable law of
11 another jurisdiction.

12 7. Partnership agreement. "Partnership agreement" means
13 the agreement, whether written, oral or implied, among the
14 partners concerning the partnership, including amendments to the
15 partnership agreement.

16 8. Partnership at will. "Partnership at will" means a
17 partnership in which the partners have not agreed to remain
18 partners until the expiration of a definite term or the
19 completion of a particular undertaking.

20 9. Partnership interest; partner's interest in
21 partnership. "Partnership interest" or "partner's interest in
22 the partnership" means all of a partner's interests in the
23 partnership, including the partner's transferable interest and
24 all management and other rights.

25 10. Person. "Person" means an individual, corporation,
26 limited liability company, business trust, estate, trust,
27 partnership, association, joint venture, government, governmental
28 subdivision, agency or instrumentality or any other legal or
29 commercial entity.

30 11. Property. "Property" means all property, real,
31 personal or mixed, tangible or intangible or any interest therein.

32 12. State. "State" means a state of the United States, the
33 District of Columbia, the Commonwealth of Puerto Rico or any
34 territory or insular possession subject to the jurisdiction of
35 the United States.

36 13. Statement. "Statement" means a statement of
37 dissociation under section 1074, a statement of dissolution under
38 section 1085, a statement of merger under section 1097, a
39 statement electing to be governed by this chapter prior to July
40 1, 2006 or an amendment or cancellation of any of the foregoing.

2 The definition of a "limited liability partnership" makes
3 clear that a partnership may adopt the special liability shield
4 characteristics of a limited liability partnership simply by
5 filing a statement of qualification under Section 1001. A
6 partnership may file the statement in this State regardless of
7 where formed. When coupled with the governing law provisions of
8 Section 106(b), this definition simplifies the choice of law
9 issues applicable to partnerships with multi-state activities and
10 contacts. Once a statement of qualification is filed, a
11 partnership's internal affairs and the liability of its partners
12 are determined by the law of the State where the statement is
13 filed. See Section 106(b). The partnership may not vary this
14 particular requirement. See Section 103(b)(9).

15
16 The reference to a "partnership" in the definition of a
17 limited liability partnership makes clear that the RUPA
18 definition of the term rather than the UPA concept controls for
19 purposes of a limited liability partnership. Section 101(6)
20 defines a "partnership" as "an association of two or more persons
21 to carry on as co-owners a business for profit formed under
22 Section 202, predecessor law or comparable law of another
23 jurisdiction." Section 202(b) further provides that "an
24 association formed under a statute other than this [Act], a
25 predecessor statute, or a comparable statute of another
26 jurisdiction is not a partnership under this [Act]." This
27 language was intended to clarify that a limited partnership is
28 not a RUPA general partnership. It was not intended to preclude
29 the application of any RUPA general partnership rules to limited
30 partnerships where limited partnership law otherwise adopts the
31 RUPA rules. See Comments to Section 202(b) and Prefatory Note.

32 The effect of these definitions leaves the scope and
33 applicability of RUPA to limited partnerships to limited
34 partnership law, not to sever the linkage between the two Acts in
35 all cases. Certain provisions of RUPA will continue to govern
36 limited partnerships by virtue of Revised Uniform Limited
37 Partnership Act (RULPA) Section 1105 which provides that "in any
38 case not provided for in this [Act] the provisions of the Uniform
39 Partnership Act govern." The RUPA partnership definition
40 includes partnerships formed under the UPA. Therefore, the
41 limited liability partnership rules will govern limited
42 partnerships "in any case not provided for" in RULPA. Since
43 RULPA does not provide for any rules applicable to a limited
44 partnership becoming a limited liability partnership, the limited
45 liability partnership rules should apply to limited partnerships
46 that file a statement of qualification.

47
48 Partner liability deserves special mention. RULPA Section
49 403(b) provides that a general partner of a limited partnership
50 "has the liabilities of a partner in a partnership without

2 limited partners." Thus limited partnership law expressly
3 references general partnership law for general partner liability
4 and does not separately consider the liability of such partners.
5 The liability of a general partner of a limited partnership that
6 becomes a LLLP would therefore be the liability of a general
7 partner in an LLP and would be governed by Section 306. The
8 liability of a limited partner in a LLLP is a more complicated
9 matter. RULPA Section 303(a) separately considers the liability
10 of a limited partner. Unless also a general partner, a limited
11 partner is not liable for the obligations of a limited
12 partnership unless the partner participates in the control of the
13 business and then only to persons reasonably believing the
14 limited partner is a general partner. Therefore, arguably
15 limited partners in a LLLP will have the specific RULPA Section
16 303(c) liability shield while general partners will have a
17 superior Section 306(c) liability shield. In order to clarify
18 limited partner liability and other linkage issues, States that
19 have adopted RUPA, these limited liability partnership rules, and
20 RULPA may wish to consider an amendment to RULPA. A suggested
21 form of such an amendment is:

22 SECTION 1107. LIMITED LIABILITY LIMITED PARTNERSHIP.

23 (a) A limited partnership may become a limited liability
24 partnership by:

25 (1) obtaining approval of the terms and conditions of the
26 limited partnership becoming a limited liability limited
27 partnership by the vote necessary to amend the limited
28 partnership agreement except, in the case of a limited
29 partnership agreement that expressly considers contribution
30 obligations, the vote necessary to amend those provisions;

31 (2) filing a statement of qualification under Section
32 1001(c) of the Uniform Partnership Act (1994); and

33 (3) complying with the name requirements of Section 1002 of
34 the Uniform Partnership Act (1994).

35 (b) A limited liability limited partnership continues to be
36 the same entity that existed before the filing of a statement of
37 qualification under Section 1001(c) of the Uniform Partnership
38 Act (1994).

39 (c) Sections 306(c) and 307(b) of the Uniform Partnership
40 Act (1994) apply to both general and limited partners of a
41 limited liability limited partnership.

42 "Partnership" is defined to mean an association of two or
43 more persons to carry on as co-owners a business for profit
44 formed under Section 202 (or predecessor law or comparable law of
45

2 another jurisdiction), that is, a general partnership. Thus, as
3 used in RUPA, the term "partnership" does not encompass limited
4 partnerships, contrary to the use of the term in the UPA.
5 Section 901(3) defines "limited partnership" for the purpose of
6 Article 9, which deals with conversions and mergers of general
7 and limited partnerships.

8 The definition of "partnership agreement" is adapted from
9 Section 101(9) of RULPA. The RUPA definition is intended to
10 include the agreement among the partners, including amendments,
11 concerning either the affairs of the partnership or the conduct
12 of its business. It does not include other agreements between
13 some or all of the partners, such as a lease or loan agreement.
14 The partnership agreement need not be written; it may be oral or
15 inferred from the conduct of the parties.

16 Any partnership in which the partners have not agreed to
17 remain partners until the expiration of a definite term or the
18 completion of a particular undertaking is a "partnership at
19 will." The distinction between an "at-will" partnership and a
20 partnership for "a definite term or the completion of a
21 particular undertaking" is important in determining the rights of
22 dissociating and continuing partners following the dissociation
23 of a partner. See Sections 601, 602, 701(b), 801(a), 802(b), and
24 803.

25 It is sometimes difficult to determine whether a partnership
26 is at will or is for a definite term or the completion of a
27 particular undertaking. Presumptively, every partnership is an
28 at-will partnership. See, e.g., *Stone v. Stone*, 292 So. 2d 686
29 (La. 1974); *Frey v. Hauke*, 171 Neb. 852, 108 N.W.2d 228 (1961).
30 To constitute a partnership for a term or a particular
31 undertaking, the partners must agree (i) that the partnership
32 will continue for a definite term or until a particular
33 undertaking is completed and (ii) that they will remain partners
34 until the expiration of the term or the completion of the
35 undertaking. Both are necessary for a term partnership; if the
36 partners have the unrestricted right, as distinguished from the
37 power, to withdraw from a partnership formed for a term or
38 particular undertaking, the partnership is one at will, rather
39 than a term partnership.
40

41 To find that the partnership is formed for a definite term
42 or a particular undertaking, there must be clear evidence of an
43 agreement among the partners that the partnership (i) has a
44 minimum or maximum duration or (ii) terminates at the conclusion
45 of a particular venture whose time is indefinite but certain to
46 occur. See, e.g., *Stainton v. Tarantino*, 637 F. Supp. 1051 (E.D.
47 Pa. 1986) (partnership to dissolve no later than December 30,
48

2020); *Abel v. American Art Analog, Inc.*, 838 F.2d 691 (3d Cir. 1988) (partnership purpose to market an art book); *68th Street Apts., Inc. v. Lauricella*, 362 A.2d 78 (N.J. Super. Ct. 1976) (partnership purpose to construct an apartment building). A partnership to conduct a business which may last indefinitely, however, is an at-will partnership, even though there may be an obligation of the partnership, such as a mortgage, which must be repaid by a certain date, absent a specific agreement that no partner can rightfully withdraw until the obligation is repaid. See, e.g., *Page v. Page*, 55 Cal. 2d. 192, 359 P.2d 41 (1961) (partnership purpose to operate a linen supply business); *Frey v. Hauke*, supra (partnership purpose to contract and operate a bowling alley); *Girard Bank v. Haley*, 460 Pa. 237, 332 A.2d 443 (1975) (partnership purpose to maintain and lease buildings).

"Partnership interest" or "partner's interest in the partnership" is defined to mean all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights. A partner's "transferable interest" is a more limited concept and means only his share of the profits and losses and right to receive distributions, that is, the partner's economic interests. See Section 502 and Comment. Compare RULPA § 101(10) ("partnership interest" includes partner's economic interests only).

The definition of "person" is the usual definition used by the National Conference of Commissioners on Uniform State Laws (NCCUSL or the Conference). The definition includes other legal or commercial entities such as limited liability companies.

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

The definition of "State" is the Conference's usual definition.

The definition of "statement" is new and refers to one of the various statements authorized by RUPA to enhance or limit the agency authority of a partner, to deny the authority or status of a partner, or to give notice of certain events, such as the dissociation of a partner or the dissolution of the partnership. See Sections 303, 304, 704, 805, and 907. Generally, Section 105 governs the execution, filing, and recording of all statements. The definition also makes clear that a statement of qualification under Section 1001 and a statement of foreign qualification under Section 1102 are considered statements. Both qualification statements are therefore subject to the execution, filing, and recordation rules of Section 105.

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

4 **§1002. Knowledge and notice**

6 **1. Knows.** A person knows a fact if the person has actual
knowledge of it.

8 **2. Has notice.** A person has notice of a fact if the person:

10 **A. Knows of it;**

12 **B. Has received a notification of it; or**

14 **C. Has reason to know it exists from all of the facts known**
16 **to the person at the time in question.**

18 **3. Notifies or gives notification.** A person notifies or
gives a notification to another by taking steps reasonably
20 required to inform the other person in ordinary course, whether
or not the other person learns of it.

22 **4. Receives notification.** A person receives a notification
24 when the notification:

26 **A. Comes to the person's attention; or**

28 **B. Is duly delivered at the person's place of business or**
at any other place held out by the person as a place for
30 receiving communications.

32 **5. Person other than individual; reasonable diligence.**
Except as otherwise provided in subsection 6, a person other than
34 an individual knows, has notice or receives a notification of a
fact for purposes of a particular transaction when the individual
36 conducting the transaction knows, has notice or receives a
notification of the fact or in any event when the fact would have
38 been brought to the individual's attention if the person had
exercised reasonable diligence. The person exercises reasonable
40 diligence if that person maintains reasonable routines for
communicating significant information to the individual
42 conducting the transaction and there is reasonable compliance
with the routines. Reasonable diligence does not require an
44 individual acting for the person to communicate information
unless the communication is part of the individual's regular
46 duties or the individual has reason to know of the transaction
and that the transaction would be materially affected by the
48 information.

50 **6. Effective as to partnership.** A partner's knowledge,
notice or receipt of a notification of a fact relating to the

2 partnership is effective immediately as knowledge by, notice to
3 or receipt of a notification by the partnership except in the
4 case of a fraud on the partnership committed by or with the
5 consent of that partner.

6 **Comment**

8 (This is Section 102 of the Uniform Partnership Act (1997).)

10 The concepts and definitions of "knowledge," "notice," and
11 "notification" draw heavily on Section 1201(25) to (27) of the
12 Uniform Commercial Code (UCC). The UCC text has been altered
13 somewhat to improve clarity and style, but in general no
14 substantive changes are intended from the UCC concepts. "A
15 notification" replaces the UCC's redundant phrase, "a notice or
16 notification," throughout the Act.

18 A person "knows" a fact only if that person has actual
19 knowledge of it. Knowledge is cognitive awareness. That is
20 solely an issue of fact. This is a change from the UPA Section
21 3(1) definition of "knowledge" which included the concept of "bad
22 faith" knowledge arising from other known facts.

24 "Notice" is a lesser degree of awareness than "knows" and is
25 based on a person's: (i) actual knowledge; (ii) receipt of a
26 notification; or (iii) reason to know based on actual knowledge
27 of other facts and the circumstances at the time. The latter is
28 the traditional concept of inquiry notice.

30 Generally, under RUPA, statements filed pursuant to Section
31 105 do not constitute constructive knowledge or notice, except as
32 expressly provided in the Act. See Section 301(1) (generally
33 requiring knowledge of limitations on partner's apparent
34 authority). Properly recorded statements of limitation on a
35 partner's authority, on the other hand, generally constitute
36 constructive knowledge with respect to the transfer of real
37 property held in the partnership name. See Sections 303(d)(1),
38 303(e), 704(b), and 805(b). The other exceptions are Sections
39 704(c) (statement of dissociation effective 90 days after filing)
40 and 805(c) (statement of dissolution effective 90 days after
41 filing).

42 A person "receives" a notification when (i) the notification
43 is delivered to the person's place of business (or other place
44 for receiving communications) or (ii) the recipient otherwise
45 actually learns of its existence.
46

48 The sender "notifies" or gives a notification by making an
49 effort to inform the recipient, which is reasonably calculated to
50 do so in ordinary course, even if the recipient does not actually
learn of it.

2 The Official Comment to UCC Section 1201(26), on which this
3 subsection is based, explains that "notifies" is the word used
4 when the essential fact is the proper dispatch of the notice, not
5 its receipt. When the essential fact is the other party's
6 receipt of the notice, that is stated.

8 A notification is not required to be in writing. That is a
9 change from UPA Section 3(2)(b). As under the UCC, the time and
10 circumstances under which a notification may cease to be
11 effective are not determined by RUPA.

12 Subsection (e) determines when an agent's knowledge or
13 notice is imputed to an organization, such as a corporation. In
14 general, only the knowledge or notice of the agent conducting the
15 particular transaction is imputed to the organization. Organizations
16 are expected to maintain reasonable internal
17 routines to insure that important information reaches the
18 individual agent handling a transaction. If, in the exercise of
19 reasonable diligence on the part of the organization, the agent
20 should have known or had notice of a fact, or received a
21 notification of it, the organization is bound. The Official
22 Comment to UCC Section 1201(27) explains:

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

29 Subsection (e) uses the phrase "person other than an
30 individual" in lieu of the UCC term "organization."

31 Subsection (f) continues the rule in UPA Section 12 that a
32 partner's knowledge or notice of a fact relating to the
33 partnership is imputed to the partnership, except in the case of
34 fraud on the partnership. Limited partners, however, are not
35 "partners" within the meaning of RUPA. See Comment 4 to Section
36 202. It is anticipated that RULPA will address the issue of
37 whether notice to a limited partner is imputed to a limited
38 partnership.

39 **§1003. Effect of partnership agreement; nonwaivable provisions**

40 **1. Partnership agreement governs; default. Except as**
41 **otherwise provided in subsection 2, relations among the partners**
42 **and between the partners and the partnership are governed by the**
43 **partnership agreement. To the extent the partnership agreement**

2 does not otherwise provide, this chapter governs relations among
3 the partners and between the partners and the partnership.

4 2. Nonwaivable provisions of chapter. The partnership
5 agreement may not:

6
7 A. Vary the rights and duties under section 1005 except to
8 eliminate the duty to provide copies of statements to all of
9 the partners;

10
11 B. Unreasonably restrict the right of access to books and
12 records under section 1043, subsection 2;

13
14 C. Eliminate the duty of loyalty under section 1044,
15 subsection 2 or section 1063, subsection 2, paragraph C, but:

16
17 (1) The partnership agreement may identify specific
18 types or categories of activities that do not violate
19 the duty of loyalty if not manifestly unreasonable; or

20
21 (2) All of the partners or a number or percentage
22 specified in the partnership agreement may authorize or
23 ratify, after full disclosure of all material facts, a
24 specific act or transaction that otherwise would
25 violate the duty of loyalty;

26
27 D. Unreasonably reduce the duty of care under section 1044,
28 subsection 3 or section 1063, subsection 2, paragraph C;

29
30 E. Eliminate the obligation of good faith and fair dealing
31 under section 1044, subsection 4, but the partnership
32 agreement may prescribe the standards by which the
33 performance of the obligation is to be measured if the
34 standards are not manifestly unreasonable;

35
36 F. Vary the power to dissociate as a partner under section
37 1062, subsection 1, except to require the notice under
38 section 1061, subsection 1 to be in writing;

39
40 G. Vary the right of a court to expel a partner in the
41 events specified in section 1061, subsection 5;

42
43 H. Vary the requirement to wind up the partnership business
44 in cases specified in section 1081, subsection 4, 5 or 6;

45
46 I. Vary the law applicable to a limited liability
47 partnership under section 1006, subsection 2; or

48 J. Restrict rights of 3rd parties under this chapter.

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Comment

(This is Section 103 of the Uniform Partnership Act (1997).)

1. The general rule under Section 103(a) is that relations among the partners and between the partners and the partnership are governed by the partnership agreement. See Section 101(5). To the extent that the partners fail to agree upon a contrary rule, RUPA provides the default rule. Only the rights and duties listed in Section 103(b), and implicitly the corresponding liabilities and remedies under Section 405, are mandatory and cannot be waived or varied by agreement beyond what is authorized. Those are the only exceptions to the general principle that the provisions of RUPA with respect to the rights of the partners inter se are merely default rules, subject to modification by the partners. All modifications must also, of course, satisfy the general standards of contract validity. See Section 104.

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

3. Subsection (b)(2) provides that the partnership agreement may not unreasonably restrict a partner or former partner's access rights to books and records under Section 403(b). It is left to the courts to determine what restrictions are reasonable. See Comment 2 to Section 403. Other information rights in Section 403 can be varied or even eliminated by agreement.

4. Subsection (b)(3) through (5) are intended to ensure a fundamental core of fiduciary responsibility. Neither the fiduciary duties of loyalty or care, nor the obligation of good faith and fair dealing, may be eliminated entirely. However, the statutory requirements of each can be modified by agreement, subject to the limitation stated in subsection (b)(3) through (5).

There has always been a tension regarding the extent to which a partner's fiduciary duty of loyalty can be varied by agreement, as contrasted with the other partners' consent to a particular and known breach of duty. On the one hand, courts have been loathe to enforce agreements broadly "waiving" in advance a partner's fiduciary duty of loyalty, especially where there is unequal bargaining power, information, or

2 sophistication. For this reason, a very broad provision in a
4 partnership agreement in effect negating any duty of loyalty,
6 such as a provision giving a managing partner complete discretion
8 to manage the business with no liability except for acts and
10 omissions that constitute willful misconduct, will not likely be
 enforced. See, e.g., *Labovitz v. Dolan*, 189 Ill. App. 3d 403,
 136 Ill. Dec. 780, 545 N.E.2d 304 (1989). On the other hand, it
 is clear that the remaining partners can "consent" to a
 particular conflicting interest transaction or other breach of
 duty, after the fact, provided there is full disclosure.

12 RUPA attempts to provide a standard that partners can rely
14 upon in drafting exculpatory agreements. It is not necessary
16 that the agreement be restricted to a particular transaction.
18 That would require bargaining over every transaction or
 opportunity, which would be excessively burdensome. The
 agreement may be drafted in terms of types or categories of
 activities or transactions, but it should be reasonably specific.

20 A provision in a real estate partnership agreement
22 authorizing a partner who is a real estate agent to retain
24 commissions on partnership property bought and sold by that
 partner would be an example of a "type or category" of activity
 that is not manifestly unreasonable and thus should be
26 enforceable under the Act. Likewise, a provision authorizing
 that partner to buy or sell real property for his own account
 without prior disclosure to the other partners or without first
28 offering it to the partnership would be enforceable as a valid
 category of partnership activity.

30 Ultimately, the courts must decide the outer limits of
32 validity of such agreements, and context may be significant. It
34 is intended that the risk of judicial refusal to enforce
36 manifestly unreasonable exculpatory clauses will discourage sharp
 practices while accommodating the legitimate needs of the parties
 in structuring their relationship.

38 5. Subsection (b)(3)(i) permits the partners, in their
40 partnership agreement, to identify specific types or categories
42 of partnership activities that do not violate the duty of
 loyalty. A modification of the statutory standard must not,
44 however, be manifestly unreasonable. This is intended to
 discourage overreaching by a partner with superior bargaining
 power since the courts may refuse to enforce an overly broad
46 exculpatory clause. See, e.g., *Vlases v. Montgomery Ward & Co.*,
 377 F.2d 846, 850 (3d Cir. 1967) (limitation prohibits
48 unconscionable agreements); *PPG Industries, Inc. v. Shell Oil*
 Co., 919 F.2d 17, 19 (5th Cir. 1990) (apply limitation
 differentially to agreements of sophisticated parties).

50

2 Subsection (b)(3)(ii) is intended to clarify the right of
3 partners, recognized under general law, to consent to a known
4 past or anticipated violation of duty and to waive their legal
5 remedies for redress of that violation. This is intended to
6 cover situations where the conduct in question is not
7 specifically authorized by the partnership agreement. It can
8 also be used to validate conduct that might otherwise not satisfy
9 the "manifestly unreasonable" standard. Clause (ii) provides
10 that, after full disclosure of all material facts regarding a
11 specific act or transaction that otherwise would violate the duty
12 of loyalty, it may be authorized or ratified by the partners.
13 That authorization or ratification must be unanimous unless a
14 lesser number or percentage is specified for this purpose in the
15 partnership agreement.

16 6. Under subsection (b)(4), the partners' duty of care may
17 not be unreasonably reduced below the statutory standard set
18 forth in Section 404(d), that is, to refrain from engaging in
19 grossly negligent or reckless conduct, intentional misconduct, or
20 a knowing violation of law.

22 For example, partnership agreements frequently contain
23 provisions releasing a partner from liability for actions taken
24 in good faith and in the honest belief that the actions are in
25 the best interests of the partnership and indemnifying the
26 partner against any liability incurred in connection with the
27 business of the partnership if the partner acts in a good faith
28 belief that he has authority to act. Many partnership agreements
29 reach this same result by listing various activities and stating
30 that the performance of these activities is deemed not to
31 constitute gross negligence or willful misconduct. These types
32 of provisions are intended to come within the modifications
33 authorized by subsection (b)(4). On the other hand, absolving
34 partners of intentional misconduct is probably unreasonable. As
35 with contractual standards of loyalty, determining the outer
36 limit in reducing the standard of care is left to the courts.

38 The standard may, of course, be increased by agreement to
39 one of ordinary care or an even higher standard of care.

40 7. Subsection (b)(5) authorizes the partners to determine
41 the standards by which the performance of the obligation of good
42 faith and fair dealing is to be measured. The language of
43 subsection (b)(5) is based on UCC Section 1102(3). The partners
44 can negotiate and draft specific contract provisions tailored to
45 their particular needs (e.g., five days notice of a partners'
46 meeting is adequate notice), but blanket waivers of the
47 obligation are unenforceable. See, e.g., PPG Indus., Inc. v.
48 Shell Oil Co., 919 F.2d 17 (5th Cir. 1990); First Security Bank
49 v. Mountain View Equip. Co., 112 Idaho 158, 730 P.2d 1078 (Ct.
50

2 App. 1986), aff'd, 112 Idaho 1078, 739 P.2d 377 (1987); American
Bank of Commerce v. Covolo, 88 N.M. 405, 540 P.2d 1294 (1975).

4 8. Section 602(a) continues the traditional UPA Section
6 31(2) rule that every partner has the power to withdraw from the
partnership at any time, which power can not be bargained away.
8 Section 103(b)(6) provides that the partnership agreement may not
10 vary the power to dissociate as a partner under Section 602(a),
except to require that the notice of withdrawal under Section
601(1) be in writing. The UPA was silent with respect to
12 requiring a written notice of withdrawal.

14 9. Under subsection (b)(7), the right of a partner to seek
court expulsion of another partner under Section 601(5) can not
16 be waived or varied (e.g., requiring a 90day notice) by
agreement. Section 601(5) refers to judicial expulsion on such
18 grounds as misconduct, breach of duty, or impracticability.

20 10. Under subsection (b)(8), the partnership agreement may
not vary the right of partners to have the partnership dissolved
and its business wound up under Section 801(4), (5), or (6).
22 Section 801(4) provides that the partnership must be wound up if
its business is unlawful. Section 801(5) provides for judicial
24 winding up in such circumstances as frustration of the firm's
economic purpose, partner misconduct, or impracticability.
26 Section 801(6) accords standing to transferees of an interest in
the partnership to seek judicial dissolution of the partnership
28 in specified circumstances.

30 11. Subsection (b)(9) makes clear that a limited liability
partnership may not designate the law of a State other than the
32 State where it filed its statement of qualification to govern its
internal affairs and the liability of its partners. See Sections
34 101(5), 106(b), and 202(a). Therefore, the selection of a State
within which to file a statement of qualification has important
36 choice of law ramifications, particularly where the partnership
was formed in another State. See Comments to Section 106(b).

38 12. Although stating the obvious, subsection(b)(10)
40 provides expressly that the rights of a third party under the Act
may not be restricted by an agreement among the partners to which
42 the third party has not agreed. A non-partner who is a party to
an agreement among the partners is, of course, bound. Cf.
44 Section 703(c) (creditor joins release).

46 13. The Article 9 rules regarding conversions and mergers
are not listed in Section 103(b) as mandatory. Indeed, Section
48 907 states expressly that partnerships may be converted and
merged in any other manner provided by law. The effect of
50 compliance with Article 9 is to provide a "safe harbor" assuring

2 the legal validity of such conversions and mergers. Although not
3 immune from variation in the partnership agreement, noncompliance
4 with the requirements of Article 9 in effecting a conversion or
5 merger is to deny that "safe harbor" validity to the
6 transaction. In this regard, Sections 903(b) and 905(c)(2)
7 require that the conversion or merger of a limited partnership be
8 approved by all of the partners, notwithstanding a contrary
9 provision in the limited partnership agreement. Thus, in effect,
10 the agreement can not vary the voting requirement without
11 sacrificing the benefits of the "safe harbor."

12 **§1004. Supplemental principles of law**

13 **1. Law and equity.** Unless displaced by particular
14 provisions of this chapter, the principles of law and equity
15 supplement this chapter.

16 **2. Interest rate.** If an obligation to pay interest arises
17 under this chapter and the rate is not specified, the rate is
18 that specified in Title 14, section 1602-B,
19

20
21 **Comment**

22
23 (This is Section 104 of the Uniform Partnership Act (1997).)

24
25 The principles of law and equity supplement RUPA unless
26 displaced by a particular provision of the Act. This broad
27 statement combines the separate rules contained in UPA Sections
28 4(2), 4(3), and 5. These supplementary principles encompass not
29 only the law of agency and estoppel and the law merchant
30 mentioned in the UPA, but all of the other principles listed in
31 UCC Section 1103: the law relative to capacity to contract,
32 fraud, misrepresentation, duress, coercion, mistake, bankruptcy,
33 and other common law validating or invalidating causes, such as
34 unconscionability. No substantive change from either the UPA or
35 the UCC is intended.
36

37
38 It was thought unnecessary to repeat the UPA Section 4(1)
39 admonition that statutes in derogation of the common law are not
40 to be strictly construed. This principle is now so well
41 established that it is not necessary to so state in the Act. No
42 change in the law is intended. See the Comment to RUPA Section
43 1101.
44

45
46 Subsection (b) is new. It is based on the definition of
47 "interest" in Section 1482(5) of the Georgia act and establishes
48 the applicable rate of interest in the absence of an agreement
49 among the partners. Adopting States can select the State's legal
50 rate of interest or other statutory interest rate, such as the
rate for judgments.

1. Section 105 is new. It mandates the procedural rules for the execution, filing, and recording of the various "statements" (see Section 101(11)) authorized by RUPA. Section 101(13) makes clear that a statement of qualification filed by a partnership to become a limited liability partnership is included in the definition of a statement. Therefore, the execution, filing, and recording rules of this section must be followed except that the decision to file the statement of qualification must be approved by the vote of the partners necessary to amend the partnership agreement as to contribution requirements. See Section 1001(b) and Comments.

No filings are mandatory under RUPA. In all cases, the filing of a statement is optional and voluntary. A system of mandatory filing and disclosure for partnerships, similar to that required for corporations and limited partnerships, was rejected for several reasons. First, RUPA is designed to accommodate the needs of small partnerships, which often have unwritten or sketchy agreements and limited resources. Furthermore, inadvertent partnerships are also governed by the Act, as the default form of business organization, in which case filing would be unlikely.

The RUPA filing provisions are, however, likely to encourage the voluntary use of partnership statements. There are a number of strong incentives for the partnership or the partners to file statements or for third parties, such as lenders or transferees of partnership property, to compel them to do so.

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

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

2. Section 105(a) provides for a single, central filing of all statements, as is the case with corporations, limited partnerships, and limited liability companies. The expectation is that most States will assign to the Secretary of State the responsibility of maintaining the filing system for partnership statements. Since a partnership is an entity under RUPA, all

2 statements should be indexed by partnership name, not by the
names of the individual partners.

4 Partnerships transacting business in more than one State
will want to file copies of statements in each State because
6 subsection (a) limits the legal effect of filed statements to
property located or transactions occurring within the State. The
8 filing of a certified copy of a statement originally filed in
another State is permitted, and indeed encouraged, in order to
10 avoid inconsistencies between statements filed in different
States.

12
14 3. Subsection (b), in effect, mandates the use of certified
copies of filed statements for local recording in the real estate
16 records by limiting the legal effect of recorded statements under
the Act to those copies. The reason for recording only certified
18 copies of filed statements is to eliminate the possibility of
inconsistencies affecting the title to real property.

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

28
30 The amendment or cancellation of statements is authorized by
subsection (d).

32 As a further safeguard against inaccurate or unauthorized
filings, subsection (e) requires that a copy of every statement
34 filed be sent to each partner, although the failure to do so does
not limit the effectiveness of the statement. This requirement
36 may, however, be eliminated in the partnership agreement. See
Section 103(b)(1). Partners may also file a statement of denial
38 under Section 304.

40 4. A filed statement may be amended or canceled by any
person authorized by the Act to file an original statement. The
42 amendment or cancellation must state the name of the partnership
so that it can be properly indexed and found, identify the
44 statement being amended or canceled, and the substance of the
amendment or cancellation. An amendment generally has the same
46 operative effect as an original statement. A cancellation of
extraordinary authority terminates that authority. A
48 cancellation of a limitation on authority revives a previous
grant of authority. See Section 303(d). The subsequent filing
50 of a statement similar in kind to a statement already of record

is treated as an amendment, even if not so denominated. Any substantive conflict between filed statements operates as a cancellation of authority under Section 303.

§1006. Governing law

1. Partnership. Except as otherwise provided in a filed statement, in a written partnership agreement or in subsection 2, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

2. Limited liability partnership. The law of this State governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

Comment

(This is Section 106 of the Uniform Partnership Act (1997).)

The subsection (a) internal relations rule is new. Cf. RULPA § 901 (internal affairs governed by law of State in which limited partnership organized).

RUPA looks to the jurisdiction in which a partnership's chief executive office is located to provide the law governing the internal relations among the partners and between the partners and the partnership. The concept of the partnership's "chief executive office" is drawn from UCC Section 9103(3)(d). It was chosen in lieu of the State of organization because no filing is necessary to form a general partnership, and thus the situs of its organization is not always clear, unlike a limited partnership, which is organized in the State where its certificate is filed.

The term "chief executive office" is not defined in the Act, nor is it defined in the UCC. Paragraph 5 of the Official Comment to UCC Section 9103(3)(d) explains:

"Chief executive office" . . . means the place from which in fact the debtor manages the main part of his business operations. . . . Doubt may arise as to which is the "chief executive office" of a multi-state enterprise, but it would be rare that there could be more than two possibilities. . . . [The rule] will be simple to apply in most cases. . . .

In the absence of any other clear rule for determining a partnership's legal situs, it seems convenient to use that rule for choice of law purposes as well.

2 The choice-of-law rule provided by subsection (a) is only a
4 default rule, and the partners may by agreement select the law of
6 another State to govern their internal affairs, subject to
8 generally applicable conflict of laws requirements. For example,
10 where the partners may not resolve a particular issue by an
12 explicit provision of the partnership agreement, such as the
14 rights and duties set forth in Section 103(b), the law chosen
16 will not be applied if the partners or the partnership have no
18 substantial relationship to the chosen State or other reasonable
20 basis for their choice or if application of the law of the chosen
22 State would be contrary to a fundamental policy of a State that
24 has a materially greater interest than the chosen State. See
26 Restatement (Second) of Conflict of Laws § 187(2) (1971). The
28 partners must, however, select only one State to govern their
30 internal relations. They cannot select one State for some
32 aspects of their internal relations and another State for others.

34 Contrasted with the variable choice-of-law rule provided by
36 subsection (a), the law of the State where a limited liability
38 partnership files its statement of qualification applies to such
40 a partnership and may not be varied by the agreement of the
42 partners. See Section 103(b)(9). Also, a partnership that files
44 a statement of qualification in another State is not defined as a
46 limited liability partnership in this State. See Section
48 101(5). Unlike a general partnership which may be formed without
50 any filing, a partnership may only become a limited liability
partnership by filing a statement of qualification. Therefore,
the situs of its organization is clear. Because it is often
unclear where a general partnership is actually formed, the
decision to file a statement of qualification in a particular
State constitutes a choice-of-law for the partnership which
cannot be altered by the partnership agreement. See Comments to
Section 103(b)(9). If the partnership agreement of an existing
partnership specifies the law of a particular State as its
governing law, and the partnership thereafter files a statement
of qualification in another State, the partnership agreement
choice is no longer controlling. In such cases, the filing of a
statement of qualification "amends" the partnership agreement on
this limited matter. Accordingly, if a statement of
qualification is revoked or canceled for a limited liability
partnership, the law of the State of filing would continue to
apply unless the partnership agreement thereafter altered the
applicable law rule.

46 **§1007. Partnership subject to amendment or repeal of chapter**

48 A partnership governed by this chapter is subject to any
50 amendment to or repeal of this chapter.

Comment

(This is Section 107 of the Uniform Partnership Act (1997).)

The reservation of power provision is new. It is adapted from Section 1.02 of the Revised Model Business Corporation Act (RMBCA) and Section 1106 of RULPA.

As explained in the Official Comment to the RMBCA, the genesis of those provisions is Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat) 518 (1819), which held that the United States Constitution prohibits the application of newly enacted statutes to existing corporations, while suggesting the efficacy of a reservation of power provision. Its purpose is to avoid any possible argument that a legal entity created pursuant to statute or its members have a contractual or vested right in any specific statutory provision and to ensure that the State may in the future modify its enabling statute as it deems appropriate and require existing entities to comply with the statutes as modified.

§1008. Forms

The Secretary of State may prescribe and furnish on request forms for any documents required or permitted to be filed by this chapter. If the Secretary of State so requires, use of these forms is mandatory.

§1009. Filing, service and copying fees

1. Filing fees. The following fees must be paid to the Secretary of State.

A. For filing a statement of disassociation under section 1074, the fee is \$20;

B. For filing a statement of dissolution under section 1085, the fee is \$75;

C. For filing a statement of conversion under section 1092 or 1093, the fee is \$150;

D. For filing a statement of merger under section 1095, the fee is \$150;

E. For any other statement required or permitted to be filed by this chapter, the fee is \$35; and

F. For preclearance of any statement for filing, the fee is \$100.

2 2. Process fee. The Secretary of State shall collect a fee
4 of \$20 each time process is served on the Secretary of State
6 under this chapter. The party to a proceeding causing service of
process is entitled to recover this fee as costs if that party
prevails in the proceeding.

8 3. Copying and certifying fees. The Secretary of State
10 shall charge the following fees for copying and certifying the
copy of any filed documents.

12 A. For copying, the fee is \$2 per page.

14 B. For certifying the copy, the fee is \$5.

16 §1010. Expedited service

18 The Secretary of State may provide expedited service for the
20 processing of documents in accordance with this chapter. The
22 Secretary of State shall establish a fee schedule and adopt rules
24 to set forth the procedures governing this expedited service. All
fees collected as provided by this section must be deposited into
a fund for use by the Secretary of State in providing improved
filing service.

26 §1011. Filing duty of Secretary of State

28 1. Duty to file. If a document delivered to the office of
30 the Secretary of State for filing pursuant to this chapter
satisfies the requirements of section 1005, the Secretary of
State shall file the document.

32 2. Recording as filed; acknowledgment. The Secretary of
34 State files a document pursuant to subsection 1 by recording it
as filed on the date of receipt. After filing a document, the
36 Secretary of State shall deliver to the partnership or its
representative a copy of the document with an acknowledgment of
38 the date of filing.

40 3. Refusal to file; written explanation. If the Secretary
of State refuses to file a document, the Secretary of State shall
42 return it to the partnership or its representative within 5 days
after the document was delivered, together with a brief, written
44 explanation of the reason for the refusal.

46 4. Ministerial. The Secretary of State's duty to file a
document under this section is ministerial, and the filing or
48 refusal to file a document does not:

2 this chapter. Rules adopted pursuant to this section are routine
3 technical rules as defined in Title 5, chapter 375, subchapter
4 2-A.

6 **§1016. Access to Secretary of State's database**

8 The Secretary of State may provide public access to the
9 database of the Department of the Secretary of State through a
10 dial-in modem, public terminals and electronic duplicates of the
11 database. If access to the database is provided to the public,
12 the Secretary of State may adopt rules to establish a fee
13 schedule and governing procedures. Rules adopted pursuant to this
14 section are routine technical rules as defined in Title 5,
15 chapter 375, subchapter 2-A.

16 **§1017. Publications**

18 **1. Informational publications.** The Secretary of State may
19 establish by rule a fee schedule to cover the cost of printing
20 and distribution of publications and to set forth the procedures
21 for the sale of these publications. Rules adopted pursuant to
22 this subsection are routine technical rules as defined in Title
23 5, chapter 375, subchapter 2-A.

24 **2. Funds; fees deposited.** All fees collected pursuant to
25 this section must be deposited in a fund for use by the Secretary
26 of State for the purpose of replacing and updating publications
27 offered in accordance with this Title and for funding new
28 publications.

30 **SUBCHAPTER 2**

32 **NATURE OF PARTNERSHIP**

34 **§1021. Partnership as entity**

36 **1. Distinct from partners.** A partnership is an entity
37 distinct from its partners.

38 **2. Limited liability partnership.** A limited liability
39 partnership continues to be the same entity that existed before
40 the filing of a statement of qualification under section 821.

42 **Comment**

44 (This is Section 201 of the Uniform Partnership Act (1997).)

46 RUPA embraces the entity theory of the partnership. In
47 light of the UPA's ambivalence on the nature of partnerships, the
48 explicit statement provided by subsection (a) is deemed
49

2 appropriate as an expression of the increased emphasis on the
entity theory as the dominant model. But see Section 306
4 (partners' liability joint and several unless the partnership has
filed a statement of qualification to become a limited liability
partnership).

6
8 Giving clear expression to the entity nature of a
partnership is intended to allay previous concerns stemming from
the aggregate theory, such as the necessity of a deed to convey
10 title from the "old" partnership to the "new" partnership every
time there is a change of cast among the partners. Under RUPA,
12 there is no "new" partnership just because of membership
changes. That will avoid the result in cases such as Fairway
14 Development Co. v. Title Insurance Co., 621 F. Supp. 120 (N.D.
Ohio 1985), which held that the "new" partnership resulting from
16 a partner's death did not have standing to enforce a title
insurance policy issued to the "old" partnership.

18
20 Subsection (b) makes clear that the explicit entity theory
provided by subsection (a) applies to a partnership both before
and after it files a statement of qualification to become a
22 limited liability partnership. Thus, just as there is no "new"
partnership resulting from membership changes, the filing of a
24 statement of qualification does not create a "new" partnership.
The filing partnership continues to be the same partnership
26 entity that existed before the filing. Similarly, the amendment
or cancellation of a statement of qualification under Section
28 105(d) or the revocation of a statement of qualification under
Section 1003(c) does not terminate the partnership and create a
30 "new" partnership. See Section 1003(d). Accordingly, a
partnership remains the same entity regardless of a filing,
32 cancellation, or revocation of a statement of qualification.

34 **§1022. Formation of partnership**

36 **1. Formation of partnership.** Except as otherwise provided
38 in subsection 2, the association of 2 or more persons to carry on
as co-owners a business for profit forms a partnership, whether
40 or not the persons intend to form a partnership.

42 **2. Not partnership.** An association formed under a statute
other than this chapter, a predecessor statute or a comparable
44 statute of another jurisdiction is not a partnership under this
chapter.

46 **3. Determination of formation: rules.** In determining
48 whether a partnership is formed, the following rules apply.

50 **A. Joint tenancy, tenancy in common, tenancy by the**
entireties, joint property, common property or part

2 ownership does not by itself establish a partnership, even
4 if the co-owners share profits made by the use of the
6 property.

8 B. The sharing of gross returns does not by itself
10 establish a partnership, even if the persons sharing them
12 have a joint or common right or interest in property from
14 which the returns are derived.

16 C. A person who receives a share of the profits of a
18 business is presumed to be a partner in the business, unless
20 the profits were received in payment:

22 (1) Of a debt by installments or otherwise;

24 (2) For services as an independent contractor or of
26 wages or other compensation to an employee;

28 (3) Of rent;

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

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

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

Comment

(This is Section 202 of the Uniform Partnership Act (1997).)

1. Section 202 combines UPA Sections 6 and 7. The traditional UPA Section 6(1) "definition" of a partnership is recast as an operative rule of law. No substantive change in the law is intended. The UPA "definition" has always been understood as an operative rule, as well as a definition. The addition of the phrase, "whether or not the persons intend to form a partnership," merely codifies the universal judicial construction of UPA Section 6(1) that a partnership is created by the association of persons whose intent is to carry on as co-owners a business for profit, regardless of their subjective intention to be "partners." Indeed, they may inadvertently create a

2 partnership despite their expressed subjective intention not to
do so. The new language alerts readers to this possibility.

4 As under the UPA, the attribute of co-ownership
distinguishes a partnership from a mere agency relationship. A
6 business is a series of acts directed toward an end. Ownership
involves the power of ultimate control. To state that partners
8 are co-owners of a business is to state that they each have the
power of ultimate control. See Official Comment to UPA § 6(1).
10 On the other hand, as subsection (c)(1) makes clear, passive
co-ownership of property by itself, as distinguished from the
12 carrying on of a business, does not establish a partnership.

14 2. Subsection (b) provides that business associations
organized under other statutes are not partnerships. Those
16 statutory associations include corporations, limited
partnerships, and limited liability companies. That continues
18 the UPA concept that general partnership is the residual form of
for profit business association, existing only if another form
20 does not.

22 A limited partnership is not a partnership under this
definition. Nevertheless, certain provisions of RUPA will
24 continue to govern limited partnerships because RULPA itself, in
Section 1105, so requires "in any case not provided for" in
26 RULPA. For example, the rules applicable to a limited liability
partnership will generally apply to limited partnerships. See
28 Comment to Section 101(5) (definition of a limited liability
partnership). In light of that RULPA Section 1105, UPA Section
30 6(2), which provides that limited partnerships are governed by
the UPA, is redundant and has not been carried over to RUPA. It
32 is also more appropriate that the applicability of RUPA to
limited partnerships be governed exclusively by RULPA. For
34 example, a RULPA amendment may clarify certain linkage questions
regarding the application of the limited liability partnership
36 rules to limited partnerships. See Comment to Section 101(5) for
a suggested form of such an amendment.

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

44 Relationships that are called "joint ventures" are
partnerships if they otherwise fit the definition of a
46 partnership. An association is not classified as a partnership,
however, simply because it is called a "joint venture."
48

2 An unincorporated nonprofit organization is not a
partnership under RUPA, even if it qualifies as a business,
because it is not a "for profit" organization.

4

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

16

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

24

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

36

38 4. Section 202(e) of the 1993 Act stated that partnerships
formed under RUPA are general partnerships and that the partners
are general partners. That section has been deleted as
40 unnecessary. Limited partners are not "partners" within the
meaning of RUPA, however.

42

§1023. Partnership property

44

46 Property acquired by a partnership is property of the
partnership and not of the partners individually.

48

Comment

50

(This is Section 203 of the Uniform Partnership Act (1997).)

2 All property acquired by a partnership, by transfer or
3 otherwise, becomes partnership property and belongs to the
4 partnership as an entity, rather than to the individual
5 partners. This expresses the substantive result of UPA Sections
6 8(1) and 25.

8 Neither UPA Section 8(1) nor RUPA Section 203 provides any
9 guidance concerning when property is "acquired by" the
10 partnership. That problem is dealt with in Section 204.

12 UPA Sections 25(2)(c) and (e) also provide that partnership
13 property is not subject to exemptions, allowances, or rights of a
14 partner's spouse, heirs, or next of kin. Those provisions have
15 been omitted as unnecessary. No substantive change is intended.
16 Those exemptions and rights inure to the property of the
17 partners, and not to partnership property.

18 **§1024. When property is partnership property**

20 **1. Partnership property.** Property is partnership property
21 if acquired in the name of:

22 **A. The partnership; or**

23 **B. One or more partners with an indication in the**
24 **instrument transferring title to the property of the**
25 **person's capacity as a partner or of the existence of a**
26 **partnership but without an indication of the name of the**
27 **partnership.**

28 **2. Property acquired by partnership.** Property is acquired
29 in the name of the partnership by a transfer to:

30 **A. The partnership in its name; or**

31 **B. One or more partners in their capacity as partners in**
32 **the partnership, if the name of the partnership is indicated**
33 **in the instrument transferring title to the property.**

34 **3. Presumed to be partnership property.** Property is
35 **presumed to be partnership property if purchased with partnership**
36 **assets, even if not acquired in the name of the partnership or of**
37 **one or more partners with an indication in the instrument**
38 **transferring title to the property of the person's capacity as a**
39 **partner or of the existence of a partnership.**

40 **4. Presumed to be separate property.** Property acquired in
41 **the name of one or more of the partners, without an indication in**
42 **the instrument transferring title to the property of the person's**
43 **name.**

2 capacity as a partner or of the existence of a partnership and
3 without use of partnership assets, is presumed to be separate
4 property, even if used for partnership purposes.

6 **Comment**

8 (This is Section 204 of the Uniform Partnership Act (1997).)

10 1. Section 204 sets forth the rules for determining when
11 property is acquired by the partnership and, hence, becomes
12 partnership property. It is based on UPA Section 8(3), as
13 influenced by the recent Alabama and Georgia modifications. The
14 rules govern the acquisition of personal property, as well as
15 real property, that is held in the partnership name. See Section
16 101(9).

18 2. Subsection (a) governs the circumstances under which
19 property becomes "partnership property," and subsection (b)
20 clarifies the circumstances under which property is acquired "in
21 the name of the partnership." The concept of record title is
22 emphasized, although the term itself is not used. Titled
23 personal property, as well as all transferable interests in real
24 property acquired in the name of the partnership, are covered by
25 this section.

26
27 Property becomes partnership property if acquired (1) in the
28 name of the partnership or (2) in the name of one or more of the
29 partners with an indication in the instrument transferring title
30 of either (i) their capacity as partners or (ii) of the existence
31 of a partnership, even if the name of the partnership is not
32 indicated. Property acquired "in the name of the partnership"
33 includes property acquired in the name of one or more partners in
34 their capacity as partners, but only if the name of the
35 partnership is indicated in the instrument transferring title.

36
37 Property transferred to a partner is partnership property,
38 even though the name of the partnership is not indicated, if the
39 instrument transferring title indicates either (i) the partner's
40 capacity as a partner or (ii) the existence of a partnership.
41 This is consonant with the entity theory of partnership and
42 resolves the troublesome issue of a conveyance to fewer than all
43 the partners but which nevertheless indicates their partner
44 status.

46 3. Ultimately, it is the intention of the partners that
47 controls whether property belongs to the partnership or to one or
48 more of the partners in their individual capacities, at least as
among the partners themselves. RUPA sets forth two rebuttable

2 presumptions that apply when the partners have failed to express
their intent.

4 First, under subsection (c), property purchased with
6 partnership funds is presumed to be partnership property,
notwithstanding the name in which title is held. The presumption
8 is intended to apply if partnership credit is used to obtain
financing, as well as the use of partnership cash or property for
10 payment. Unlike the rule in subsection (b), under which property
is deemed to be partnership property if the partnership's name or
12 the partner's capacity as a partner is disclosed in the
instrument of conveyance, subsection (c) raises only a
14 presumption that the property is partnership property if it is
purchased with partnership assets.

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

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

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

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

2 SUBCHAPTER 3

4 RELATIONS OF PARTNERS TO
6 PERSONS DEALING WITH PARTNERSHIP

8 §1031. Partner agent of partnership

10 1. Partner as agent. Each partner is an agent of the
12 partnership for the purpose of its business. An act of a
14 partner, including the execution of an instrument in the
16 partnership name, for apparently carrying on in the ordinary
18 course the partnership business or business of the kind carried
on by the partnership binds the partnership, unless the partner
had no authority to act for the partnership in the particular
matter and the person with whom the partner was dealing knew or
had received a notification that the partner lacked authority.

20 2. Other act binding on partnership if authorized. An act
22 of a partner that is not apparently for carrying on in the
24 ordinary course the partnership business or business of the kind
carried on by the partnership binds the partnership only if the
act was authorized by the other partners.

26 Comment

28 (This is Section 301 of the Uniform Partnership Act (1997).)

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

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

42 2. Section 301(1) retains the basic principles reflected in
44 UPA Section 9(1). It declares that each partner is an agent of
the partnership and that, by virtue of partnership status, each
46 partner has apparent authority to bind the partnership in
ordinary course transactions. The effect of Section 301(1) is to
characterize a partner as a general managerial agent having both
actual and apparent authority co-extensive in scope with the

2 firm's ordinary business, at least in the absence of a contrary
partnership agreement.

4 Section 301(1) effects two changes from UPA Section 9(1).
6 First, it clarifies that a partner's apparent authority includes
8 acts for carrying on in the ordinary course "business of the kind
10 carried on by the partnership," not just the business of the
12 particular partnership in question. The UPA is ambiguous on this
14 point, but there is some authority for an expanded construction
16 in accordance with the so-called English rule. See, e.g., *Burns
v. Gonzalez*, 439 S.W.2d 128, 131 (Tex. Civ. App. 1969) (dictum);
Commercial Hotel Co. v. Weeks, 254 S.W. 521 (Tex. Civ. App.
1923). No substantive change is intended by use of the more
customary phrase "carrying on in the ordinary course" in lieu of
the UPA phrase "in the usual way." The UPA and the case law use
both terms without apparent distinction.

18 The other change from the UPA concerns the allocation of
20 risk of a partner's lack of authority. RUPA draws the line
somewhat differently from the UPA.

22 Under UPA Section 9(1) and (4), only a person with knowledge
24 of a restriction on a partner's authority is bound by it.
26 Section 301(1) provides that a person who has received a
28 notification of a partner's lack of authority is also bound. The
30 meaning of "receives a notification" is explained in Section
32 102(d). Thus, the partnership may protect itself from
34 unauthorized acts by giving a notification of a restriction on a
partner's authority to a person dealing with that partner. A
notification may be effective upon delivery, whether or not it
actually comes to the other person's attention. To that extent,
the risk of lack of authority is shifted to those dealing with
partners.

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

44 With one exception, this result is not affected even if the
46 partnership files a statement of partnership authority containing
48 a limitation on a partner's authority. Section 303(f) makes
50 clear that a person dealing with a partner is not deemed to know
of such a limitation merely because it is contained in a filed
statement of authority. Under Section 303(e), however, all
persons are deemed to know of a limitation on the authority of a

2 partner to transfer real property contained in a recorded
statement. Thus, a recorded limitation on authority concerning
4 real property constitutes constructive knowledge of the
limitation to the whole world.

6 3. Section 301(2) is drawn directly from UPA Section 9(2),
with conforming changes to mirror the new language of subsection
8 (1). Subsection (2) makes it clear that the partnership is bound
by a partner's actual authority, even if the partner has no
10 apparent authority. Section 401(j) requires the unanimous
consent of the partners for a grant of authority outside the
12 ordinary course of business, unless the partnership agreement
provides otherwise. Under general agency principles, the
14 partners can subsequently ratify a partner's unauthorized act.
See Section 104(a).

16 4. UPA Section 9(3) contains a list of five extraordinary
acts that require unanimous consent of the partners before the
18 partnership is bound. RUPA omits that section. That leaves it
to the courts to decide the outer limits of the agency power of a
20 partner. Most of the acts listed in UPA Section 9(3) probably
remain outside the apparent authority of a partner under RUPA,
22 such as disposing of the goodwill of the business, but
elimination of a statutory rule will afford more flexibility in
24 some situations specified in UPA Section 9(3). In particular, it
seems archaic that the submission of a partnership claim to
26 arbitration always requires unanimous consent. See UPA § 9(3)(e).

28 5. Section 301(1) fully reflects the principle embodied in
30 UPA Section 9(4) that the partnership is not bound by an act of a
partner in contravention of a restriction on his authority known
32 to the other party.

34 **§1032. Transfer of partnership property**

36 **1. Transfer of partnership property.** Partnership property
may be transferred as follows.

38 A. Partnership property held in the name of the partnership
40 may be transferred by an instrument of transfer executed by
a partner in the partnership name.

42 B. Partnership property held in the name of one or more
44 partners with an indication in the instrument transferring
the property to those partners of their capacity as partners
46 or of the existence of a partnership, but without an
indication of the name of the partnership, may be

2 transferred by an instrument of transfer executed by the
3 persons in whose name the property is held.

4 C. Partnership property held in the name of one or more
5 persons other than the partnership, without an indication in
6 the instrument transferring the property to those persons of
7 their capacity as partners or of the existence of a
8 partnership, may be transferred by an instrument of transfer
9 executed by the persons in whose name the property is held.

10
11 **2. Recovery of property from transferee.** A partnership may
12 recover partnership property from a transferee only if the
13 partnership proves that execution of the instrument of initial
14 transfer did not bind the partnership under section 1031 and:

15 A. As to a subsequent transferee who gave value for
16 property transferred under subsection 1, paragraph A or B,
17 proves that the subsequent transferee knew or had received a
18 notification that the person who executed the instrument of
19 initial transfer lacked authority to bind the partnership; or
20 initial transfer lacked authority to bind the partnership; or

21 B. As to a transferee who gave value for property
22 transferred under subsection 1, paragraph C, proves that the
23 transferee knew or had received a notification that the
24 property was partnership property and that the person who
25 executed the instrument of initial transfer lacked authority
26 to bind the partnership.

27
28 **3. No recovery.** A partnership may not recover partnership
29 property from a subsequent transferee if the partnership would
30 not have been entitled to recover the property, under subsection
31 2, from any earlier transferee of the property.

32
33 **4. All partners' interests in one person.** If a person
34 holds all of the partners' interests in the partnership, all of
35 the partnership property vests in that person. The person may
36 execute a document in the name of the partnership to evidence
37 vesting of the property in that person and may file or record the
38 document.

39
40
41 **Comment**

42 (This is Section 302 of the Uniform Partnership Act (1997).)

43
44
45 1. Section 302 replaces UPA Section 10 and provides rules
46 for the transfer and recovery of partnership property. The
47 language is adapted in part from Section 14810 of the Georgia
48 partnership statute.

2. Subsection (a)(1) deals with the transfer of partnership property held in the name of the partnership and subsection (a)(2) with property held in the name of one or more of the partners with an indication either of their capacity as partners or of the existence of a partnership. Subsection (a)(3) deals with partnership property held in the name of one or more of the partners without an indication of their capacity as partners or of the existence of a partnership. Like the general agency rules in Section 301, the power of a partner to transfer partnership property under subsection (a)(1) is subject to the effect under Section 303 of the filing or recording of a statement of partnership authority. These rules are intended to foster reliance on record title.

UPA Section 10 covers only real property. Section 302, however, also governs the transfer of partnership personal property acquired by instrument and held in the name of the partnership or one or more of the partners.

3. Subsection (b) deals with the right of the partnership to recover partnership property transferred by a partner without authority. Subsection (b)(1) deals with the recovery of property held in either the name of the partnership or the name of one or more of the partners with an indication of their capacity as partners or of the existence of a partnership, while subsection (b)(2) deals with the recovery of property held in the name of one or more persons without an indication of their capacity as partners or of the existence of a partnership.

In either case, a transfer of partnership property may be avoided only if the partnership proves that it was not bound under Section 301 by the execution of the instrument of initial transfer. Under Section 301, the partnership is bound by a transfer in the ordinary course of business, unless the transferee actually knew or had received a notification of the partner's lack of authority. See Section 102(a) and (d). The reference to Section 301, rather than Section 301(1), is intended to clarify that a partner's actual authority is not revoked by Section 302. Compare UPA § 10(1) (refers to partner's authority under Section 9(1)).

The burden of proof is on the partnership to prove the partner's lack of authority and, in the case of a subsequent transferee, the transferee's knowledge or notification thereof. Thus, even if the transfer to the initial transferee could be avoided, the partnership may not recover the property from a subsequent purchaser or other transferee for value unless it also proves that the subsequent transferee knew or had received a notification of the partner's lack of authority with respect to the initial transfer. Since knowledge is required, rather than

2 notice, a remote purchaser has no duty to inquire as to the
3 authority for the initial transfer, even if he knows it was
4 partnership property.

5 The burden of proof is on the transferee to show that value
6 was given. Value, as used in this context, is synonymous with
7 valuable consideration and means any consideration sufficient to
8 support a simple contract.

9 The burden of proof on all other issues is allocated to the
10 partnership because it is generally in a better position than the
11 transferee to produce the evidence. Moreover, the partnership
12 may protect itself against unauthorized transfers by ensuring
13 that partnership real property is held in the name of the
14 partnership and that a statement of partnership authority is
15 recorded specifying any limitations on the partners' authority to
16 convey real property. Under Section 303(e), transferees of real
17 property held in the partnership name are conclusively bound by
18 those limitations. On the other hand, transferees can protect
19 themselves by insisting that the partnership record a statement
20 specifying who is authorized to transfer partnership property.
21 Under Section 303(d), transferees for value, without actual
22 knowledge to the contrary, may rely on that grant of authority.

23 4. Subsection (b)(2) replaces UPA Section 10(3) and
24 provides that partners who hold partnership property in their own
25 names, without an indication in the record of their capacity as
26 partners or of the existence of a partnership, may transfer good
27 title to a transferee for value without knowledge or a
28 notification that it was partnership property. To recover the
29 property under this subsection, the partnership has the burden of
30 proving that the transferee knew or had received a notification
31 of the partnership's interest in the property, as well as of the
32 partner's lack of authority for the initial transfer.

33 5. Subsection (c) is new and provides that property may not
34 be recovered by the partnership from a remote transferee if any
35 intermediate transferee of the property would have prevailed
36 against the partnership. Cf. Uniform Fraudulent Transfer Act, §§
37 8(a) (subsequent transferee from bona fide purchaser protected),
38 8(b)(2) (same).

39 6. Subsection (d) is new. The UPA does not have a
40 provision dealing with the situation in which all of the
41 partners' interests in the partnership are held by one person,
42 such as a surviving partner or a purchaser of all the other
43 partners' interests. Subsection (d) allows for clear record
44 title, even though the partnership no longer exists as a
45 technical matter. When a partnership becomes a sole
46 proprietorship by reason of the dissociation of all but one of
47
48
49
50

2 the partners, title vests in the remaining "partner," although
3 there is no "transfer" of the property. The remaining "partner"
4 may execute a deed or other transfer of record in the name of the
5 non-existent partnership to evidence vesting of the property in
6 that person's individual capacity.

7. UPA Section 10(2) provides that, where title to real
8 property is in the partnership name, a conveyance by a partner in
9 his own name transfers the partnership's equitable interest in
10 the property. It has been omitted as was done in Georgia and
11 Florida. In this situation, the conveyance is clearly outside
12 the chain of title and so should not pass title or any interest
13 in the property. UPA Section 10(2) dilutes, albeit slightly, the
14 effect of record title and is, therefore, inconsistent with
15 RUPA's broad policy of fostering reliance on the record.

16 UPA Section 10(4) and (5) have also been omitted. Those
17 situations are now adequately covered by Section 302(a).

20 §1033. Partnership liable for partner's actionable conduct

21 1. Partnership liable for loss, injury or penalty. A
22 partnership is liable for loss or injury caused to a person, or
23 for a penalty incurred, as a result of a wrongful act or
24 omission, or other actionable conduct, of a partner acting in the
25 ordinary course of business of the partnership or with authority
26 of the partnership.

27 2. Partnership liable for misapplication. If, in the
28 course of the partnership's business or while acting with
29 authority of the partnership, a partner receives or causes the
30 partnership to receive money or property of a person not a
31 partner, and the money or property is misapplied by a partner,
32 the partnership is liable for the loss.

36 **Comment**

37 (This is Section 305 of the Uniform Partnership Act (1997).)

38 Section 305(a), which is derived from UPA Section 13,
39 imposes liability on the partnership for the wrongful acts of a
40 partner acting in the ordinary course of the partnership's
41 business or otherwise within the partner's authority. The scope
42 of the section has been expanded by deleting from UPA Section 13,
43 "not being a partner in the partnership." This is intended to
44 permit a partner to sue the partnership on a tort or other theory
45 during the term of the partnership, rather than being limited to
46 the remedies of dissolution and an accounting. See also Comment
47 2 to Section 405.

50

2 The section has also been broadened to cover no-fault torts
by the addition of the phrase, "or other actionable conduct."

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

10 The phrase in UPA Section 13, "to the same extent as the
12 partner so acting or omitting to act," has been deleted to
prevent a partnership from asserting a partner's immunity from
14 liability. This is consistent with the general agency rule that
a principal is not entitled to its agent's immunities. See
16 Restatement (Second) of Agency § 217(b) (1957). The deletion is
not intended to limit a partnership's contractual rights.

18 Section 305(b) is drawn from UPA Section 14(b), but has been
20 edited to improve clarity. It imposes strict liability on the
partnership for the misapplication of money or property received
22 by a partner in the course of the partnership's business or
otherwise within the scope of the partner's actual authority.

24 **§1034. Partner's liability**

26 **1. Jointly and severally liable.** Except as otherwise
28 provided in subsections 2 and 3, all partners are liable jointly
and severally for all obligations of the partnership unless
30 otherwise agreed by the claimant or provided by law.

32 **2. Not personally liable for obligation prior to**
admission. A person admitted as a partner into an existing
34 partnership is not personally liable for any partnership
obligation incurred before the person's admission as a partner.

36 **3. Obligation incurred while limited liability**
partnership. An obligation of a partnership incurred while the
38 partnership is a limited liability partnership, whether arising
in contract, tort or otherwise, is solely the obligation of the
40 partnership. A partner is not personally liable, directly or
indirectly, by way of contribution or otherwise, for such an
42 obligation solely by reason of being or so acting as a partner.
This subsection applies notwithstanding anything inconsistent in
44 the partnership agreement that existed immediately before the
vote required to become a limited liability partnership under
46 section 821, subsection 2.

48 **4. Exceptions to limited liability of shareholders.** The
50 exceptions under common law to a limited liability of

2 shareholders of a business corporation organized under the Maine
3 Business Corporation Act and shareholders of a professional
4 corporation organized under the Maine Professional Service
5 Corporation Act apply to the limited liability of partners in a
6 professional limited liability partnership.

8 **Comment**

9 (This is Section 306 of the Uniform Partnership Act (1997).)

10
11 1. Section 306(a) changes the UPA rule by imposing joint
12 and several liability on the partners for all partnership
13 obligations where the partnership is not a limited liability
14 partnership. Under UPA Section 15, partners' liability for torts
15 is joint and several, while their liability for contracts is
16 joint but not several. About ten States that have adopted the
17 UPA already provide for joint and several liability. The UPA
18 reference to "debts and obligations" is redundant, and no change
19 is intended by RUPA's reference solely to "obligations."

20
21 Joint and several liability under RUPA differs, however,
22 from the classic model, which permits a judgment creditor to
23 proceed immediately against any of the joint and several judgment
24 debtors. Generally, Section 307(d) requires the judgment
25 creditor to exhaust the partnership's assets before enforcing a
26 judgment against the separate assets of a partner.

27
28 2. RUPA continues the UPA scheme of liability with respect
29 to an incoming partner, but states the rule more clearly and
30 simply. Under Section 306(a), an incoming partner becomes
31 jointly and severally liable, as a partner, for all partnership
32 obligations, except as otherwise provided in subsection (b).
33 That subsection eliminates an incoming partner's personal
34 liability for partnership obligations incurred before his
35 admission as a partner. In effect, a new partner has no personal
36 liability to existing creditors of the partnership, and only his
37 investment in the firm is at risk for the satisfaction of
38 existing partnership debts. That is presently the rule under UPA
39 Sections 17 and 41(7), and no substantive change is intended. As
40 under the UPA, a new partner's personal assets are at risk with
41 respect to partnership liabilities incurred after his admission
42 as a partner.

43
44 3. Subsection (c) alters classic joint and several
45 liability of general partners for obligations of a partnership
46 that is a limited liability partnership. Like shareholders of a
47 corporation and members of a limited liability company, partners
48 of a limited liability partnership are not personally liable for
49 partnership obligations incurred while the partnership liability
50 shield is in place solely because they are partners. As with

2 shareholders of a corporation and members of a limited liability
company, partners remain personally liable for their personal
misconduct.

4
6 In cases of partner misconduct, Section 401(c) sets forth a
partnership's obligation to indemnify the culpable partner where
8 the partner's liability was incurred in the ordinary course of
the partnership's business. When indemnification occurs, the
10 assets of both the partnership and the culpable partner are
available to a creditor. However, Sections 306(c), 401(b), and
12 807(b) make clear that a partner who is not otherwise liable
under Section 306(c) is not obligated to contribute assets to the
14 partnership in excess of agreed contributions to share the loss
with the culpable partner. (See Comments to Sections 401(b) and
16 807(b) regarding a slight variation in the context of priority
of payment of partnership obligations.) Accordingly, Section
18 306(c) makes clear that an innocent partner is not personally
liable for specified partnership obligations, directly or
indirectly, by way of contribution or otherwise.

20
22 Although the liability shield protections of Section 306(c)
may be modified in part or in full in a partnership agreement
(and by way of private contractual guarantees), the modifications
24 must constitute an intentional waiver of the liability
protections. See Sections 103(b), 104(a), and 902(b). Since the
26 mere act of filing a statement of qualification reflects the
assumption that the partners intend to modify the otherwise
28 applicable partner liability rules, the final sentence of
subsection (c) makes clear that the filing negates inconsistent
30 aspects of the partnership agreement that existed immediately
before the vote to approve becoming a limited liability
32 partnership. The negation only applies to a partner's personal
liability for future partnership obligations. The filing however
34 has no effect as to previously created partner obligations to the
partnership in the form of specific capital contribution
36 requirements.

38 Inter se contribution agreements may erode part or all of
the effects of the liability shield. For example, Section 807(f)
40 provides that an assignee for the benefit of creditors of a
partnership or a partner may enforce a partner's obligation to
42 contribute to the partnership. The ultimate effect of such
contribution obligations may make each partner jointly and
44 severally liable for all partnership obligations - even those
incurred while the partnership is a limited liability
46 partnership. Although the final sentence of subsection (c)
negates such provisions existing before a statement of
48 qualification is filed, it will have no effect on any amendments
to the partnership agreement after the statement is filed.

50

2 The connection between partner status and personal liability
3 for partnership obligations is severed only with respect to
4 obligations incurred while the partnership is a limited liability
5 partnership. Partnership obligations incurred before a
6 partnership becomes a limited liability partnership or incurred
7 after limited liability partnership status is revoked or canceled
8 are treated as obligations of an ordinary partnership. See
9 Sections 1001 (filing), 1003 (revocation), and 1006
10 (cancellation). Obligations incurred by a partnership during the
11 period when its statement of qualification is administratively
12 revoked will be considered as incurred by a limited liability
13 partnership provided the partnership's status as such is
14 reinstated within two years under Section 1003(e). See Section
15 1003(f).

16 When an obligation is incurred is determined by other law.
17 See Section 104(a). Under that law, and for the limited purpose
18 of determining when partnership contract obligations are
19 incurred, the reasonable expectations of creditors and the
20 partners are paramount. Therefore, partnership obligations under
21 or relating to a note, contract, or other agreement generally are
22 incurred when the note, contract, or other agreement is made.
23 Also, an amendment, modification, extension, or renewal of a
24 note, contract, or other agreement should not affect or otherwise
25 reset the time at which a partnership obligation under or
26 relating to that note, contract, or other agreement is incurred,
27 even as to a claim that relates to the subject matter of the
28 amendment, modification, extension, or renewal. A note,
29 contract, or other agreement may expressly modify these rules and
30 fix the time a partnership obligation is incurred thereunder.

31 For the limited purpose of determining when partnership tort
32 obligations are incurred, a distinction is intended between
33 injury and the conduct causing that injury. The purpose of the
34 distinction is to prevent unjust results. Partnership
35 obligations under or relating to a tort generally are incurred
36 when the tort conduct occurs rather than at the time of the
37 actual injury or harm. This interpretation prevents a culpable
38 partnership from engaging in wrongful conduct and then filing a
39 statement of qualification to sever the vicarious responsibility
40 of its partners for future injury or harm caused by conduct that
41 occurred prior to the filing.

42
43
44 **§1035. Actions by and against partnership and partners**

45 **1. Sue and be sued.** A partnership may sue and be sued in
46 the name of the partnership.

47
48 **2. Action against partnership and partners.** An action may
49 be brought against the partnership and, to the extent not

2 inconsistent with section 1034, any or all of the partners in the
3 same action or in separate actions.

4 3. Judgment against partnership; partner. A judgment
5 against a partnership is not by itself a judgment against a
6 partner. A judgment against a partnership may not be satisfied
7 from a partner's assets unless there is also a judgment against
8 the partner.

10 4. Execution against assets of partner. A judgment
11 creditor of a partner may not levy execution against the assets
12 of the partner to satisfy a judgment based on a claim against the
13 partnership unless the partner is personally liable for the claim
14 under section 1034 and:

16 A. A judgment based on the same claim has been obtained
17 against the partnership and a writ of execution on the
18 judgment has been returned unsatisfied in whole or in part;

20 B. The partnership is a debtor in bankruptcy;

22 C. The partner has agreed that the creditor need not
23 exhaust partnership assets;

24 D. A court grants permission to the judgment creditor to
25 levy execution against the assets of a partner based on a
26 finding that partnership assets subject to execution are
27 clearly insufficient to satisfy the judgment, that
28 exhaustion of partnership assets is excessively burdensome
29 or that the grant of permission is an appropriate exercise
30 of the court's equitable powers; or

31 E. Liability is imposed on the partner by law or contract
32 independent of the existence of the partnership.

36 5. Application to partnership liability or obligation.
37 This section applies to any partnership liability or obligation
38 resulting from a representation by a partner or purported partner
39 under section 1036.

40 **Comment**

42 (This is Section 307 of the Uniform Partnership Act (1997).)

44 1. Section 307 is new. Subsection (a) provides that a
45 partnership may sue and be sued in the partnership name. That
46 entity approach is designed to simplify suits by and against a
47 partnership.
48

2 At common law, a partnership, not being a legal entity,
could not sue or be sued in the firm name. The UPA itself is
4 silent on this point, so in the absence of another enabling
statute, it is generally necessary to join all the partners in an
6 action against the partnership.

8 Most States have statutes or rules authorizing partnerships
to sue or be sued in the partnership name. Many of those
10 statutes, however, are found in the state provisions dealing with
civil procedure rather than in the partnership act.

12 2. Subsection (b) provides that suit generally may be
brought against the partnership and any or all of the partners in
14 the same action or in separate actions. It is intended to
clarify that the partners need not be named in an action against
16 the partnership. In particular, in an action against a
partnership, it is not necessary to name a partner individually
18 in addition to the partnership. This will simplify and reduce
the cost of litigation, especially in cases of small claims where
20 there are known to be significant partnership assets and thus no
necessity to collect the judgment out of the partners' assets.

22 Where the partnership is a limited liability partnership,
24 the limited liability partnership rules clarify that a partner
not liable for the alleged partnership obligation may not be
26 named in the action against the partnership unless the action
also seeks to establish personal liability of the partner for the
28 obligation. See subsections (b) and (d).

30 3. Subsection (c) provides that a judgment against the
partnership is not, standing alone, a judgment against the
32 partners, and it cannot be satisfied from a partner's personal
assets unless there is a judgment against the partner. Thus, a
34 partner must be individually named and served, either in the
action against the partnership or in a later suit, before his
36 personal assets may be subject to levy for a claim against the
partnership.

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

44 4. Subsection (d) requires partnership creditors to exhaust
46 the partnership's assets before levying on a judgment debtor
partner's individual property where the partner is personally
48 liable for the partnership obligation under Section 306. That
rule respects the concept of the partnership as an entity and
50 makes partners more in the nature of guarantors than principal

2 debtors on every partnership debt. It is already the law in some
States.

4 As a general rule, a final judgment against a partner cannot
6 be enforced by a creditor against the partner's separate assets
unless a writ of execution against the partnership has been
8 returned unsatisfied. Under subsection (d), however, a creditor
may proceed directly against the partner's assets if (i) the
10 partnership is a debtor in bankruptcy (see Section 101(2)); (ii)
the partner has consented; or (iii) the liability is imposed on
12 the partner independently of the partnership. For example, a
judgment creditor may proceed directly against the assets of a
14 partner who is liable independently as the primary tortfeasor,
but must exhaust the partnership's assets before proceeding
16 against the separate assets of the other partners who are liable
only as partners.

18 There is also a judicial override provision in subsection
(d)(4). A court may authorize execution against the partner's
20 assets on the grounds that (i) the partnership's assets are
clearly insufficient; (ii) exhaustion of the partnership's assets
22 would be excessively burdensome; or (iii) it is otherwise
equitable to do so. For example, if the partners who are parties
24 to the action have assets located in the forum State, but the
partnership does not, a court might find that exhaustion of the
26 partnership's assets would be excessively burdensome.

28 5. Although subsection (d) is silent with respect to
pre-judgment remedies, the law of pre-judgment remedies already
30 adequately embodies the principle that partnership assets should
be exhausted before partners' assets are attached or garnished.
32 Attachment, for example, typically requires a showing that the
partnership's assets are being secreted or fraudulently
34 transferred or are otherwise inadequate to satisfy the
plaintiff's claim. A showing of some exigent circumstance may
36 also be required to satisfy due process. See Connecticut v.
Doehr, 501 U.S. 1, 16 (1991).

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

42 **§1036. Liability of purported partner**

44 **1. Liability of purported partner.** If a person, by words
46 or conduct, purports to be a partner, or consents to being
represented by another as a partner, in a partnership or with one
48 or more persons not partners, the purported partner is liable to
a person to whom the representation is made, if that person,
50 relying on the representation, enters into a transaction with the

2 actual or purported partnership. If the representation, either
3 by the purported partner or by a person with the purported
4 partner's consent, is made in a public manner, the purported
5 partner is liable to a person who relies upon the purported
6 partnership even if the purported partner is not aware of being
7 held out as a partner to the claimant. If partnership liability
8 results, the purported partner is liable with respect to that
9 liability as if the purported partner were a partner. If no
10 partnership liability results, the purported partner is liable
11 with respect to that liability jointly and severally with any
12 other person consenting to the representation.

13 **2. Purported partner as agent.** If a person is thus
14 represented to be a partner in an existing partnership, or with
15 one or more persons not partners, the purported partner is an
16 agent of persons consenting to the representation to bind them to
17 the same extent and in the same manner as if the purported
18 partner were a partner, with respect to persons who enter into
19 transactions in reliance upon the representation. If all of the
20 partners of the existing partnership consent to the
21 representation, a partnership act or obligation results. If
22 fewer than all of the partners of the existing partnership
23 consent to the representation, the person acting and the partners
24 consenting to the representation are jointly and severally liable.

25 **3. Liability of dissociated partner.** A person does not
26 continue to be liable as a partner merely because of a failure to
27 file a statement of dissociation.

28 **4. Nonpartners not liable as partners.** Except as otherwise
29 provided in subsections 1 and 2, persons who are not partners as
30 to each other are not liable as partners to other persons.

31 **Comment**

32 (This is Section 308 of the Uniform Partnership Act (1997).)

33 Section 308 continues the basic principles of partnership by
34 estoppel from UPA Section 16, now more accurately entitled
35 "Liability of Purported Partner." Subsection (a) continues the
36 distinction between representations made to specific persons and
37 those made in a public manner. It is the exclusive basis for
38 imposing liability as a partner on persons who are not partners
39 in fact. As under the UPA, there is no duty of denial, and thus
40
41
42
43
44

2 a person held out by another as a partner is not liable unless he
3 actually consents to the representation. See the Official
4 Comment to UPA Section 16. Also see Section 308(c) (no duty to
5 file statement of denial) and Section 308(d) (no duty to file
6 statement of dissociation or to amend statement of partnership
7 authority).

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

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

18 Subsections (c) and (d) are new and deal with potential
19 negative inferences to be drawn from a failure to correct
20 inaccurate or outdated filed statements. Subsection (c) makes
21 clear that an otherwise innocent person is not liable as a
22 partner for failing to deny his partnership status as asserted by
23 a third person in a statement of partnership authority. Under
24 subsection (d), a partner's liability as a partner does not
25 continue after dissociation solely because of a failure to file a
26 statement of dissociation.
27

28 Subsection (e) is derived from UPA Section 7(1). It means
29 that only those persons who are partners as among themselves are
30 liable as partners to third parties for the obligations of the
31 partnership, except for liabilities incurred by purported
32 partners under Section 308(a) and (b).
33

34 **SUBCHAPTER 4**

35 **RELATIONS OF PARTNERS TO EACH OTHER** 36 **AND TO PARTNERSHIP**

37 **§1041. Partner's rights and duties**

38 **1. Partner's account.** Each partner is deemed to have an
39 account that is:

40 **A. Credited with an amount equal to the money plus the**
41 **value of any other property, net of the amount of any**
42 **liabilities, that the partner contributes to the partnership**
43 **and the partner's share of the partnership profits; and**
44

2 B. Charged with an amount equal to the money plus the value
3 of any other property, net of the amount of any liabilities,
4 that is distributed by the partnership to the partner and
5 the partner's share of the partnership losses.

6 2. Partnership profits and losses. Each partner is
7 entitled to an equal share of the partnership profits and is
8 chargeable with a share of the partnership losses in proportion
9 to the partner's share of the profits.

10 3. Reimbursement and indemnification. A partnership shall
11 reimburse a partner for payments made and indemnify a partner
12 for liabilities incurred by the partner in the ordinary course of
13 the business of the partnership or for the preservation of its
14 business or property.

15 4. Advance to partnership. A partnership shall reimburse a
16 partner for an advance to the partnership beyond the amount of
17 capital the partner agreed to contribute.

18 5. Loan to partnership; interest. A payment or advance
19 made by a partner that gives rise to a partnership obligation
20 under subsection 3 or 4 constitutes a loan to the partnership
21 that accrues interest from the date of the payment or advance.

22 6. Management and conduct of business. Each partner has
23 equal rights in the management and conduct of the partnership
24 business.

25 7. Use or possess partnership property. A partner may use
26 or possess partnership property only on behalf of the partnership.

27 8. Remuneration. A partner is not entitled to remuneration
28 for services performed for the partnership, except for reasonable
29 compensation for services rendered in winding up the business of
30 the partnership.

31 9. Consent of all partners required. A person may become a
32 partner only with the consent of all of the partners.

33 10. Decision by majority or unanimous. A difference
34 arising as to a matter in the ordinary course of business of a
35 partnership may be decided by a majority of the partners. An act
36 outside the ordinary course of business of a partnership and an
37 amendment to the partnership agreement may be undertaken only
38 with the consent of all of the partners.

2 contributor of services, who contributes little or no capital,
3 should be obligated to contribute toward the capital loss of the
4 large contributor who contributed no services. In entering a
5 partnership with such a capital structure, the partners should
6 foresee that application of the default rule may bring about
7 unusual results and take advantage of their power to vary by
8 agreement the allocation of capital losses.

9
10 Subsection (b) provides that each partner "is chargeable"
11 with a share of the losses, rather than the UPA formulation that
12 each partner shall "contribute" to losses. Losses are charged to
13 each partner's account as provided in subsection (a)(2). It is
14 intended to make clear that a partner is not obligated to
15 contribute to partnership losses before his withdrawal or the
16 liquidation of the partnership, unless the partners agree
17 otherwise. In effect, unless related to an obligation for which
18 the partner is not personally liable under Section 306(c), a
19 partner's negative account represents a debt to the partnership
20 unless the partners agree to the contrary. Similarly, each
21 partner's share of the profits is credited to his account under
22 subsection (a)(1). Absent an agreement to the contrary, however,
23 a partner does not have a right to receive a current distribution
24 of the profits credited to his account, the interim distribution
25 of profits being a matter arising in the ordinary course of
26 business to be decided by majority vote of the partners.

27
28 However, where a liability to contribute at dissolution and
29 winding up relates to a partnership obligation governed by the
30 limited liability rule of Section 306(c), a partner is not
31 obligated to contribute additional assets even at dissolution and
32 winding up. See Section 807(b). In such a case, although a
33 partner is not personally liable for the partnership obligation,
34 that partner's interest in the partnership remains at risk. See
35 also Comment to Section 401(c) relating to indemnification.

36 In the case of an operating limited liability partnership,
37 the Section 306 liability shield may be partially eroded where
38 the limited liability partnership incurs both shielded and
39 unshielded liabilities. Where the limited liability partnership
40 uses its assets to pay shielded liabilities before paying
41 unshielded liabilities, each partner's obligation to contribute
42 to the limited liability partnership for that partner's share of
43 the unpaid and unshielded obligations at dissolution and winding
44 up remains intact. The same issue is less likely to occur in the
45 context of the termination of a limited liability partnership
46 since a partner's contribution obligation is based only on that
47 partner's share of unshielded obligations and the partnership
48 will ordinarily use the contributed assets to pay unshielded
49 claims first as they were the basis of the contribution
50 obligations. See Comments to Section 807(b).

2 4. Subsection (c) is derived from UPA Section 18(b) and
3 provides that the partnership shall reimburse partners for
4 payments made and indemnify them for liabilities incurred in the
5 ordinary course of the partnership's business or for the
6 preservation of its business or property. Reimbursement and
7 indemnification is an obligation of the partnership.
8 Indemnification may create a loss toward which the partners must
9 contribute. Although the right to indemnification is usually
10 enforced in the settlement of accounts among partners upon
11 dissolution and winding up of the partnership business, the right
12 accrues when the liability is incurred and thus may be enforced
13 during the term of the partnership in an appropriate case. See
14 Section 405 and Comment. A partner's right to indemnification
15 under this Act is not affected by the partnership becoming a
16 limited liability partnership. Accordingly, partners continue to
17 share partnership losses to the extent of partnership assets.

18 5. Subsection (d) is based on UPA Section 18(c). It makes
19 explicit that the partnership must reimburse a partner for an
20 advance of funds beyond the amount of the partner's agreed
21 capital contribution, thereby treating the advance as a loan.

22 6. Subsection (e), which is also drawn from UPA Section
23 18(c), characterizes the partnership's obligation under
24 subsection (c) or (d) as a loan to the partnership which accrues
25 interest from the date of the payment or advance. See Section
26 104(b) (default rate of interest).

27 7. Under subsection (f), each partner has equal rights in
28 the management and conduct of the business. It is based on UPA
29 Section 18(e), which has been interpreted broadly to mean that,
30 absent contrary agreement, each partner has a continuing right to
31 participate in the management of the partnership and to be
32 informed about the partnership business, even if his assent to
33 partnership business decisions is not required. There are
34 special rules regarding the partner vote necessary to approve a
35 partnership becoming (or canceling its status as) a limited
36 liability partnership. See Section 1001(b).

37 8. Subsection (g) provides that partners may use or possess
38 partnership property only for partnership purposes. That is the
39 edited remains of UPA Section 25(2)(a), which deals in detail
40 with the incidents of tenancy in partnership. That tenancy is
41 abolished as a consequence of the entity theory of partnerships.
42 See Section 501 and Comments.

43 9. Subsection (h) continues the UPA Section 18(f) rule that
44 a partner is not entitled to remuneration for services performed,
45 except in winding up the partnership. Subsection (h) deletes the
46

2 UPA reference to a "surviving" partner. That means any partner
winding up the business is entitled to compensation, not just a
4 surviving partner winding up after the death of another partner.
The exception is not intended to apply in the hypothetical
6 winding up that takes place if there is a buyout under Article 7.

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

10 11. Subsection (j) continues with one important
12 clarification the UPA Section 18(h) scheme of allocating
management authority among the partners. In the absence of an
14 agreement to the contrary, matters arising in the ordinary course
of the business may be decided by a majority of the partners.
16 Amendments to the partnership agreement and matters outside the
ordinary course of the partnership business require unanimous
18 consent of the partners. Although the text of the UPA is silent
regarding extraordinary matters, courts have generally required
20 the consent of all partners for those matters. See, e.g.,
Paciaroni v. Crane, 408 A.2d 946 (Del. Ch. 1989); Thomas v.
22 Marvin E. Jewell & Co., 232 Neb. 261, 440 N.W.2d 437 (1989);
Duell v. Hancock, 83 A.D.2d 762, 443 N.Y.S.2d 490 (1981).

24 It is not intended that subsection (j) embrace a claim for
26 an objection to a partnership decision that is not discovered
until after the fact. There is no cause of action based on that
28 after-the-fact second-guessing.

30 12. Subsection (k) is new and was added to make it clear
that Section 301 governs partners' agency power to bind the
32 partnership to third persons, while Section 401 governs partners'
rights among themselves.

34 **§1042. Distributions in kind**

36 A partner has no right to receive, and may not be required
38 to accept, a distribution in kind.

40 **Comment**

42 (This is Section 402 of the Uniform Partnership Act (1997).)

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

2 This section is complemented by Section 807(a) which
3 provides that, in winding up the partnership business on
4 dissolution, any surplus after the payment of partnership
5 obligations must be applied to pay in cash the net amount
6 distributable to each partner.

8 **§1043. Partner's rights and duties with respect to information**

10 **1. Books and records at chief executive office.** A
11 partnership shall keep its books and records, if any, at its
12 chief executive office.

14 **2. Access to books and records.** A partnership shall
15 provide partners and their agents and attorneys access to its
16 books and records. It shall provide former partners and their
17 agents and attorneys access to books and records pertaining to
18 the period during which they were partners. The right of access
19 provides the opportunity to inspect and copy books and records
20 during ordinary business hours. A partnership may impose a
21 reasonable charge, covering the costs of labor and material, for
22 copies of documents furnished.

24 **3. Furnishing of information.** Each partner and the
25 partnership shall furnish to a partner, and to the legal
26 representative of a deceased partner or partner under legal
27 disability:

28 **A. Without demand, any information concerning the**
29 **partnership's business and affairs reasonably required for**
30 **the proper exercise of the partner's rights and duties under**
31 **the partnership agreement or this chapter; and**

34 **B. On demand, any other information concerning the**
35 **partnership's business and affairs, except to the extent the**
36 **demand or the information demanded is unreasonable or**
37 **otherwise improper under the circumstances.**

38 **Comment**

40 (This is Section 403 of the Uniform Partnership Act (1997).)

42 1. Subsection (a) provides that the partnership's books and
43 records, if any, shall be kept at its chief executive office. It
44 continues the UPA Section 19 rule, modified to include
45 partnership records other than its "books," i.e., financial
46 records. The concept of "chief executive office" comes from UCC
47 Section 9103(3)(d). See the Comment to Section 106.

48 Since general partnerships are often informal or even
49 inadvertent, no books and records are enumerated as mandatory,
50

2 such as that found in RULPA Section 105. Any requirement in UPA
3 Section 19 that the partnership keep books is oblique at best,
4 since it states merely where the books shall be kept, not that
5 they shall be kept. Under RUPA, there is no liability to either
6 partners or third parties for the failure to keep partnership
7 books. A partner who undertakes to keep books, however, must do
8 so accurately and adequately.

9
10 In general, a partnership should, at a minimum,, keep those
11 books and records necessary to enable the partners to determine
12 their share of the profits and losses, as well as their rights on
13 withdrawal. An action for an accounting provides an adequate
14 remedy in the event adequate records are not kept. The
15 partnership must also maintain any books and records required by
16 state or federal taxing or other governmental authorities.

17
18 2. Under subsection (b), partners are entitled to access to
19 the partnership books and records. Former partners are expressly
20 given a similar right, although limited to the books and records
21 pertaining to the period during which they were partners. The
22 line between partners and former partners is not a bright one for
23 this purpose, however, and should be drawn in light of the
24 legitimate interests of a dissociated partner in the
25 partnership. For example, a withdrawing partner's liability is
26 ongoing for pre-withdrawal liabilities and will normally be
27 extended to new liabilities for at least 90 days. It is intended
28 that a former partner be accorded access to partnership books and
29 records as reasonably necessary to protect that partner's
30 legitimate interests during the period his rights and liabilities
31 are being wound down.

32 The right of access is limited to ordinary business hours,
33 and the right to inspect and copy by agent or attorney is made
34 explicit. The partnership may impose a reasonable charge for
35 furnishing copies of documents. Accord, RULPA § 105(b).

36
37 A partner's right to inspect and copy the partnership's
38 books and records is not conditioned on the partner's purpose or
39 motive. Compare RMBCA Section 16.02(c)(1) (shareholder must have
40 proper purpose to inspect certain corporate records). A
41 partner's unlimited personal liability justifies an unqualified
42 right of access to the partnership books and records. An abuse
43 of the right to inspect and copy might constitute a violation of
44 the obligation of good faith and fair dealing for which the other
45 partners would have a remedy. See Sections 404(d) and 405.

46
47 Under Section 103(b)(2), a partner's right of access to
48 partnership books and records may not be unreasonably restricted
49 by the partnership agreement. Thus, to preserve a partner's core
50 information rights despite unequal bargaining power, an agreement

2 limiting a partner's right to inspect and copy partnership books
and records is subject to judicial review. Nevertheless,
4 reasonable restrictions on access to partnership books and
records by agreement are authorized. For example, a provision in
6 a partnership agreement denying partners access to the
compensation of other partners should be upheld, absent any abuse
such as fraud or duress.

8
3. Subsection (c) is a significant revision of UPA Section
10 20 and provides a more comprehensive, although not exclusive,
statement of partners' rights and duties with respect to
12 partnership information other than books and records. Both the
partnership and the other partners are obligated to furnish
14 partnership information.

16 Paragraph (1) is new and imposes an affirmative disclosure
obligation on the partnership and partners. There is no express
18 UPA provision imposing an affirmative obligation to disclose any
information other than the partnership books. Under some
20 circumstances, however, an affirmative disclosure duty has been
inferred from other sections of the Act, as well as from the
22 common law, such as the fiduciary duty of good faith. Under UPA
Section 18(e), for example, all partners enjoy an equal right in
24 the management and conduct of the partnership business, absent
contrary agreement. That right has been construed to require
26 that every partner be provided with ongoing information
concerning the partnership business. See Comment 7 to Section
28 401. Paragraph (1) provides expressly that partners must be
furnished, without demand, partnership information reasonably
30 needed for them to exercise their rights and duties as partners.
In addition, a disclosure duty may, under some circumstances,
32 also spring from the Section 404(d) obligation of good faith and
fair dealing. See Comment 4 to Section 404.

34
Paragraph (2) continues the UPA rule that partners are
36 entitled, on demand, to any other information concerning the
partnership's business and affairs. The demand may be refused if
38 either the demand or the information demanded is unreasonable or
otherwise improper. That qualification is new to the statutory
40 formulation. The burden is on the partnership or partner from
whom the information is requested to show that the demand is
42 unreasonable or improper. The UPA admonition that the
information furnished be "true and full" has been deleted as
44 unnecessary, and no substantive change is intended.

46 The Section 403(c) information rights can be waived or
varied by agreement of the partners, since there is no Section
48 103(b) limitation on the variation of those rights as there is
with respect to the Section 403(b) access rights to books and
50 records. See Section 103(b)(2).

2 **§1044. General standards of partner's conduct**

4 **1. Partner's fiduciary duties.** The only fiduciary duties a
6 partner owes to the partnership and the other partners are the
8 duty of loyalty and the duty of care set forth in subsections 2
10 and 3 as those duties may be clarified or limited in the
12 partnership agreement to the extent and in the manner authorized
14 by section 1003, subsection 2.

16 **2. Duty of loyalty limited.** A partner's duty of loyalty to
18 the partnership and the other partners is limited to the
20 following:

22 **A. To account to the partnership and hold as trustee for it**
24 any property, profit or benefit derived by the partner in
26 the conduct and winding up of the partnership business or
28 derived from a use by the partner of partnership property,
30 including the appropriation of a partnership opportunity;

32 **B. To refrain from knowingly dealing with the partnership**
34 in the conduct or winding up of the partnership business as
36 or on behalf of a party having an interest adverse to the
38 partnership; and

40 **C. To refrain from competing with the partnership in the**
42 conduct of the partnership business before the dissolution
44 of the partnership.

46 **3. Duty of care.** A partner's duty of care to the
48 partnership and the other partners in the conduct and winding up
50 of the partnership business is limited to refraining from
52 engaging in grossly negligent or reckless conduct, intentional
54 misconduct or a knowing violation of law.

56 **4. Obligation of good faith and fair dealing.** A partner
58 shall discharge the duties to the partnership and the other
60 partners under this chapter or under the partnership agreement
62 and exercise any rights consistently with the obligation of good
64 faith and fair dealing, as those obligations may be clarified in
66 the partnership agreement to the extent and in the manner
68 authorized by section 1003, subsection 2.

70 **5. Partner's own interest.** A partner does not violate a
72 duty or obligation under this chapter or under the partnership
74 agreement merely because the partner's conduct furthers the
76 partner's own interest.

78 **6. Loan to and business with partnership.** A partner may
80 lend money to and transact other business with the partnership,
82 and as to each loan or transaction the rights and obligations of

2 the partner are the same as those of a person who is not a
3 partner, subject to other applicable law.

4 7. Personal or legal representative. This section applies
5 to a person winding up the partnership business as the personal
6 or legal representative of the last surviving partner as if the
7 person were a partner.

8
9 **Comment**

10 (This is Section 404 of the Uniform Partnership Act (1997).)

11
12
13 1. Section 404 is new. The title, "General Standards of
14 Partner's Conduct," is drawn from RMBCA Section 8.30. Section
15 404 is both comprehensive and exclusive. In that regard, it is
16 structurally different from the UPA which touches only sparingly
17 on a partner's duty of loyalty and leaves any further development
18 of the fiduciary duties of partners to the common law of agency.
19 Compare UPA Sections 4(3) and 21.

20
21 Section 404 begins by stating that the only fiduciary duties
22 a partner owes to the partnership and the other partners are the
23 duties of loyalty and care set forth in subsections (b) and (c)
24 of the Act. Those duties may not be waived or eliminated in the
25 partnership agreement, but the agreement may identify activities
26 and determine standards for measuring performance of the duties,
27 if not manifestly unreasonable. See Sections 103(b)(3)(5).

28
29 Section 404 continues the term "fiduciary" from UPA Section
30 21, which is entitled "Partner Accountable as a Fiduciary."
31 Arguably, the term "fiduciary" is inappropriate when used to
32 describe the duties of a partner because a partner may
33 legitimately pursue self-interest (see Section 404(e)) and not
34 solely the interest of the partnership and the other partners, as
35 must a true trustee. Nevertheless, partners have long been
36 characterized as fiduciaries. See, e.g., *Meinhard v. Salmon*, 249
37 N.Y. 458, 463, 164 N.E. 545, 546 (1928) (Cardozo, J.). Indeed,
38 the law of partnership reflects the broader law of principal and
39 agent, under which every agent is a fiduciary. See Restatement
40 (Second) of Agency § 13 (1957).

41
42 2. Section 404(b) provides three specific rules that
43 comprise a partner's duty of loyalty. Those rules are exclusive
44 and encompass the entire duty of loyalty.

45
46 Subsection (b)(1) is based on UPA Section 21(1) and
47 continues the rule that partnership property usurped by a
48 partner, including the misappropriation of a partnership
opportunity, is held in trust for the partnership. The express

2 reference to the appropriation of a partnership opportunity is
new, but merely codifies case law on the point. See, e.g.,
4 *Meinhard v. Salmon*, supra; *Fouchek v. Janicek*, 190 Ore. 251, 225
P.2d 783 (1950). Under a constructive trust theory, the
6 partnership can recover any money or property in the partner's
hands that can be traced to the partnership. See, e.g., *Yoder v.*
8 *Hooper*, 695 P.2d 1182 (Colo. App. 1984), aff'd, 737 P.2d 852
(Colo. 1987); *Fortugno v. Hudson Manure Co.*, 51 N.J. Super. 482,
10 144 A.2d 207 (1958); *Harestad v. Weitzel*, 242 Or. 199, 536 P.2d
12 522 (1975). As a result, the partnership's claim is greater than
that of an ordinary creditor. See Official Comment to UPA
Section 21.

14 UPA Section 21(1) imposes the duty on partners to account
for profits and benefits in all transactions connected with "the
16 formation, conduct, or liquidation of the partnership."
Reference to the "formation" of the partnership has been
18 eliminated by RUPA because of concern that the duty of loyalty
could be inappropriately extended to the pre-formation period
20 when the parties are really negotiating at arm's length. Compare
Herring v. Offutt, 295 A.2d 876 (Ct. App. Md. 1972), with *Phoenix*
22 *Mutual Life Ins. Co. v. Shady Grove Plaza Limited Partnership*,
734 F. Supp. 1181 (D. Md. 1990), aff'd, 937 F.2d 603 (4th Cir.
24 1991). Once a partnership is agreed to, each partner becomes a
fiduciary in the "conduct" of the business. Pre-formation
26 negotiations are, of course, subject to the general contract
obligation to deal honestly and without fraud.

28
30 Upon a partner's dissociation, Section 603(b)(3) limits the
application of the duty to account for personal profits to those
32 derived from matters arising or events occurring before the
dissociation, unless the partner participates in winding up the
partnership's business. Thus, after withdrawal, a partner is
34 free to appropriate to his own benefit any new business
opportunity thereafter coming to his attention, even if the
36 partnership continues.

38 Subsection (b)(2) provides that a partner must refrain from
dealing with the partnership as or on behalf of a party having an
40 interest adverse to the partnership. This rule is derived from
Sections 389 and 391 of the Restatement (Second) of Agency.
42 Comment c to Section 389 explains that the rule is not based upon
the harm caused to the principal, but upon avoiding a conflict of
44 opposing interests in the mind of an agent whose duty is to act
for the benefit of his principal.

46
48 Upon a partner's dissociation, Section 603(b)(3) limits the
application of the duty to refrain from representing interests
adverse to the partnership to the same extent as the duty to

2 account. Thus, after withdrawal, a partner may deal with the
partnership as an adversary with respect to new matters or events.

4 Section 404(b)(3) provides that a partner must refrain from
competing with the partnership in the conduct of its business.
6 This rule is derived from Section 393 of the Restatement (Second)
of Agency and is an application of the general duty of an agent
8 to act solely on his principal's behalf.

10 The duty not to compete applies only to the "conduct" of the
partnership business; it does not extend to winding up the
12 business, as do the other loyalty rules. Thus, a partner is free
to compete immediately upon an event of dissolution under Section
14 801, unless the partnership agreement otherwise provides. A
partner who dissociates without a winding up of the business
16 resulting is also free to compete, because Section 603(b)(2)
provides that the duty not to compete terminates upon
18 dissociation. A dissociated partner is not, however, free to use
confidential partnership information after dissociation. See
20 Restatement (Second) of Agency § 393 cmt. e (1957). Trade secret
law also may apply. See the Uniform Trade Secrets Act.

22 Under Section 103(b)(3), the partnership agreement may not
24 "eliminate" the duty of loyalty. Section 103(b)(3)(i) expressly
empowers the partners, however, to identify specific types or
26 categories of activities that do not violate the duty of loyalty,
if not manifestly unreasonable. As under UPA Section 21, the
28 other partners may also consent to a specific act or transaction
that otherwise violates one of the rules. For the consent to be
30 effective under Section 103(b)(3)(ii), there must be full
disclosure of all material facts regarding the act or transaction
32 and the partner's conflict of interest. See Comment 5 to Section
103.

34 3. Subsection (c) is new and establishes the duty of care
36 that partners owe to the partnership and to the other partners.
There is no statutory duty of care under the UPA, although a
38 common law duty of care is recognized by some courts. See, e.g.,
Rosenthal v. Rosenthal, 543 A.2d 348, 352 (Me. 1988) (duty of
40 care limited to acting in a manner that does not constitute gross
negligence or willful misconduct).

42 The standard of care imposed by RUPA is that of gross
44 negligence, which is the standard generally recognized by the
courts. See, e.g., Rosenthal v. Rosenthal, supra. Section
46 103(b)(4) provides that the duty of care may not be eliminated
entirely by agreement, but the standard may be reasonably
48 reduced. See Comment 6 to Section 103.

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

11 The obligation of good faith and fair dealing is a contract
12 concept, imposed on the partners because of the consensual nature
13 of a partnership. See Restatement (Second) of Contracts § 205
14 (1981). It is not characterized, in RUPA, as a fiduciary duty
15 arising out of the partners' special relationship. Nor is it a
16 separate and independent obligation. It is an ancillary
17 obligation that applies whenever a partner discharges a duty or
18 exercises a right under the partnership agreement or the Act.

19 The meaning of "good faith and fair dealing" is not firmly
20 fixed under present law. "Good faith" clearly suggests a
21 subjective element, while "fair dealing" implies an objective
22 component. It was decided to leave the terms undefined in the
23 Act and allow the courts to develop their meaning based on the
24 experience of real cases. Some commentators, moreover, believe
25 that good faith is more properly understood by what it excludes
26 than by what it includes. See Robert S. Summers, "Good Faith" in
27 General Contract Law and the Sales Provisions of the Uniform
28 Commercial Code, 54 Va. L. Rev. 195, 262 (1968):

29 Good faith, as judges generally use the term in matters
30 contractual, is best understood as an "excluder" - a phrase
31 with no general meaning or meanings of its own. Instead, it
32 functions to rule out many different forms of bad faith. It
33 is hard to get this point across to persons used to thinking
34 that every word must have one or more general meanings of
35 its own - must be either univocal or ambiguous.

36 The UCC definition of "good faith" is honesty in fact and, in the
37 case of a merchant, the observance of reasonable commercial
38 standards of fair dealing in the trade. See UCC §§ 1201(19),
39 2103(b). Those definitions were rejected as too narrow or not
40 applicable.

41 In some situations the obligation of good faith includes a
42 disclosure component. Depending on the circumstances, a partner
43 may have an affirmative disclosure obligation that supplements
44 the Section 403 duty to render information.

2 Under Section 103(b)(5), the obligation of good faith and
fair dealing may not be eliminated by agreement, but the partners
4 by agreement may determine the standards by which the performance
of the obligation is to be measured, if the standards are not
manifestly unreasonable. See Comment 7 to Section 103.

6
8 5. Subsection (e) is new and deals expressly with a very
basic issue on which the UPA is silent. A partner as such is not
a trustee and is not held to the same standards as a trustee.
10 Subsection (e) makes clear that a partner's conduct is not deemed
to be improper merely because it serves the partner's own
12 individual interest.

14 That admonition has particular application to the duty of
loyalty and the obligation of good faith and fair dealing. It
16 underscores the partner's rights as an owner and principal in the
enterprise, which must always be balanced against his duties and
18 obligations as an agent and fiduciary. For example, a partner
who, with consent, owns a shopping center may, under subsection
20 (e), legitimately vote against a proposal by the partnership to
open a competing shopping center.

22
24 6. Subsection (f) authorizes partners to lend money to and
transact other business with the partnership and, in so doing, to
enjoy the same rights and obligations as a nonpartner. That
26 language is drawn from RULPA Section 107. The rights and
obligations of a partner doing business with the partnership as
28 an outsider are expressly made subject to the usual laws
governing those transactions. They include, for example, rules
30 limiting or qualifying the rights and remedies of inside
creditors, such as fraudulent transfer law, equitable
32 subordination, and the law of avoidable preferences, as well as
general debtor-creditor law. The reference to "other applicable
34 law" makes clear that subsection (f) is not intended to displace
those laws, and thus they are preserved under Section 104(a).

36
38 It is unclear under the UPA whether a partner may, for the
partner's own account, purchase the assets of the partnership at
a foreclosure sale or upon the liquidation of the partnership.
40 Those purchases are clearly within subsection (f)'s broad
approval. It is also clear under that subsection that a partner
42 may purchase partnership assets at a foreclosure sale, whether
the partner is the mortgagee or the mortgagee is an unrelated
44 third party. Similarly, a partner may purchase partnership
property at a tax sale. The obligation of good faith requires
46 disclosure of the partner's interest in the transaction, however.

48 7. Subsection (g) provides that the prescribed standards of
conduct apply equally to a person engaged in winding up the
50 partnership business as the personal or legal representative of

2 the last surviving partner, as if the person were a partner.
This is derived from UPA Section 21(2), but now embraces the duty
4 of care and the obligation of good faith and fair dealing, as
well as the duty of loyalty.

6 **§1045. Actions by partnership and partners**

8 **1. Partnership action against partner.** A partnership may
maintain an action against a partner for a breach of the
10 partnership agreement, or for the violation of a duty to the
partnership, causing harm to the partnership.

12 **2. Partner action against partnership.** A partner may
maintain an action against the partnership or another partner for
14 legal or equitable relief, with or without an accounting as to
partnership business, to:

18 **A. Enforce the partner's rights under the partnership
agreement;**

20 **B. Enforce the partner's rights under this chapter,
including:**

22 (1) **The partner's rights under sections 1041, 1043 and
1044;**

24 (2) **The partner's right on dissociation to have the
partner's interest in the partnership purchased
26 pursuant to section 1071 or enforce any other right
under subchapter 6 or 7; or**

28 (3) **The partner's right to compel a dissolution and
winding up of the partnership business or enforce any
30 other right under subchapter 8; or**

32 **C. Enforce the rights and otherwise protect the interests
of the partner, including rights and interests arising
34 independently of the partnership relationship.**

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

44 **Comment**

46 (This is Section 405 of the Uniform Partnership Act (1997).)

48 1. Section 405(a) is new and reflects the entity theory of
50 partnership. It provides that the partnership itself may

2 maintain an action against a partner for any breach of the
partnership agreement or for the violation of any duty owed to
the partnership, such as a breach of fiduciary duty.

4
6 2. Section 405(b) is the successor to UPA Section 22, but
with significant changes. At common law, an accounting was
generally not available before dissolution. That was modified by
8 UPA Section 22 which specifies certain circumstances in which an
accounting action is available without requiring a partner to
10 dissolve the partnership. Section 405(b) goes far beyond the UPA
rule. It provides that, during the term of the partnership,
12 partners may maintain a variety of legal or equitable actions,
including an action for an accounting, as well as a final action
14 for an accounting upon dissolution and winding up. It reflects a
new policy choice that partners should have access to the courts
16 during the term of the partnership to resolve claims against the
partnership and the other partners, leaving broad judicial
18 discretion to fashion appropriate remedies.

20 Under RUPA, an accounting is not a prerequisite to the
availability of the other remedies a partner may have against the
22 partnership or the other partners. That change reflects the
increased willingness courts have shown to grant relief without
24 the requirement of an accounting, in derogation of the so-called
"exclusivity rule." See, e.g., *Farney v. Hauser*, 109 Kan. 75,
26 79, 198 Pac. 178, 180 (1921) ("[For] all practical purposes a
partnership may be considered as a business entity"); *Auld v.*
28 *Estridge*, 86 Misc. 2d 895, 901, 382 N.Y.S.2d 897, 901 (1976) ("No
purpose of justice is served by delaying the resolution here on
30 empty procedural grounds").

32 Under subsection (b), a partner may bring a direct suit
against the partnership or another partner for almost any cause
34 of action arising out of the conduct of the partnership
business. That eliminates the present procedural barriers to
36 suits between partners filed independently of an accounting
action. In addition to a formal account, the court may grant any
38 other appropriate legal or equitable remedy. Since general
partners are not passive investors like limited partners, RUPA
40 does not authorize derivative actions, as does RULPA Section 1001.

42 Subsection (b)(3) makes it clear that a partner may recover
against the partnership and the other partners for personal
44 injuries or damage to the property of the partner caused by
another partner. See, e.g., *Duffy v. Piazza Construction Co.*,
46 815 P.2d 267 (Wash. App. 1991); *Smith v. Hensley*, 354 S.W.2d 744
(Ky. App.). One partner's negligence is not imputed to bar
48 another partner's action. See, e.g., *Reeves v. Harmon*, 475 P.2d
400 (Okla. 1970); *Eagle Star Ins. Co. v. Bean*, 134 F.2d 755 (9th
50 Cir. 1943) (fire insurance company not subrogated to claim

2 against partners who negligently caused fire that damaged
partnership property).

4 3. Generally, partners may limit or contract away their
Section 405 remedies. They may not, however, eliminate entirely
6 the remedies for breach of those duties that are mandatory under
Section 103(b). See Comment 1 to Section 103.

8
10 4. Section 405(c) replaces UPA Section 43 and provides that
other (i.e., non-partnership) law governs the accrual of a cause
12 of action for which subsection (b) provides a remedy. The
statute of limitations on such claims is also governed by other
14 law, and claims barred by a statute of limitations are not
revived by reason of the partner's right to an accounting upon
16 dissolution, as they were under the UPA. The effect of those
rules is to compel partners to litigate their claims during the
18 life of the partnership or risk losing them. Because an
accounting is an equitable proceeding, it may also be barred by
laches where there is an undue delay in bringing the action.
20 Under general law, the limitations periods may be tolled by a
partner's fraud.

22
24 5. UPA Section 39 grants ancillary remedies to a person who
rescinds his participation in a partnership because it was
26 fraudulently induced, including the right to a lien on surplus
partnership property for the amount of that person's interest in
the partnership. RUPA has no counterpart provision to UPA Section
28 39, and leaves it to the general law of rescission to determine
the rights of a person fraudulently induced to invest in a
30 partnership. See Section 104(a).

32 **§1046. Continuation of partnership beyond definite term or
particular undertaking**

34
36 **1. Rights and duties as at expiration or completion.** If a
partnership for a definite term or particular undertaking is
38 continued, without an express agreement, after the expiration of
the term or completion of the undertaking, the rights and duties
40 of the partners remain the same as they were at the expiration or
completion, so far as is consistent with a partnership at will.

42 **2. Presumption of agreement to continue.** If the partners,
44 or those of them who habitually acted in the business during the
term or undertaking, continue the business without any settlement
46 or liquidation of the partnership, they are presumed to have
agreed that the partnership will continue.

48 **Comment**

50 (This is Section 406 of the Uniform Partnership Act (1997).)

2 Section 406 continues UPA Section 23, with no substantive
4 change. Subsection (a) provides that, if a term partnership is
6 continued without an express agreement beyond the expiration of
its term or the completion of the undertaking, the partners'
rights and duties remain the same as they were, so far as is
consistent with a partnership at will.

8
10 Subsection (b) provides that if the partnership is continued
by the partners without any settlement or liquidation of the
12 business, it is presumed that the partners have agreed not to
wind up the business. The presumption is rebuttable. If the
14 partnership is continued under this subsection, there is no
dissolution under (2)(iii). As a partnership at will, however,
the partnership may be dissolved under (1) at any time.

16 SUBCHAPTER 5

18 TRANSFEREES AND CREDITORS OF PARTNER

20 §1051. Partner not co-owner of partnership property

22
24 A partner is not a co-owner of partnership property and has
no interest in partnership property that can be transferred,
26 either voluntarily or involuntarily.

28 Comment

30 (This is Section 501 of the Uniform Partnership Act (1997).)

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

42 RUPA also deletes the references in UPA Sections 24 and 25
to a partner's "right in specific partnership property," although
44 those rights are largely defined away by the detailed rules of
UPA Section 25 itself. Thus, it is clear that a partner who
46 misappropriates partnership property is guilty of embezzlement
the same as a shareholder who misappropriates corporate property.
48

2 Adoption of the entity theory also has the effect of
protecting partnership property from execution or other process
4 by a partner's personal creditors. That continues the result
under UPA Section 25(2)(c). Those creditors may seek a charging
6 order under Section 504 to reach the partner's transferable
interest in the partnership.

8 RUPA does not interfere with a partner's exemption claim in
nonpartnership property. As under the UPA, disputes over whether
10 specific property belongs to the partner or to the firm will
likely arise in the context of an exemption claim by a partner.
12

14 A partner's spouse, heirs, or next of kin are not entitled
to allowances or other rights in partnership property. That
continues the result under UPA Section 25(2)(e).
16

18 **§1052. Partner's transferable interest in partnership**

20 The only transferable interest of a partner in the
partnership is the partner's share of the profits and losses of
the partnership, the allocations of income, gain, loss, deduction
or credit or similar items related to such profits and losses and
the partner's right to receive distributions. The interest is
personal property.
24

26 **Comment**

28 (This is Section 502 of the Uniform Partnership Act (1997).)

30 Section 502 continues the UPA Section 26 concept that a
partner's only transferable interest in the partnership is the
32 partner's share of profits and losses and right to receive
distributions, that is, the partner's financial rights. The term
34 "distribution" is defined in Section 101(3). Compare RULPA
Section 101(10) ("partnership interest").
36

38 The partner's transferable interest is deemed to be personal
property, regardless of the nature of the underlying partnership
assets.
40

42 Under Section 503(b)(3), a transferee of a partner's
transferable interest has standing to seek judicial dissolution
of the partnership business.
44

46 A partner has other interests in the partnership that may
not be transferred, such as the right to participate in the
management of the business. Those rights are included in the
48 broader concept of a "partner's interest in the partnership."
See Section 101(9).
50

2 **§1053. Transfer of partner's transferable interest**

4 **1. Transfer of interest.** A transfer, in whole or in part,
of a partner's transferable interest in the partnership:

6 **A. Is permissible;**

8 **B. Does not by itself cause the partner's dissociation or a
dissolution and winding up of the partnership business; and**

10 **C. Does not, as against the other partners or the
partnership, entitle the transferee, during the continuance
of the partnership, to participate in the management or
conduct of the partnership business, to require access to
information concerning partnership transactions or to
inspect or copy the partnership books or records.**

18 **2. Transferee of partner's interest.** A transferee of a
partner's transferable interest in the partnership has a right:

20 **A. To receive, in accordance with the transfer,
distributions to which the transferor would otherwise be
entitled;**

24 **B. To receive upon the dissolution and winding up of the
partnership business, in accordance with the transfer, the
net amount otherwise distributable to the transferor; and**

28 **C. To seek under section 1081, subsection 6, a judicial
determination that it is equitable to wind up the
partnership business.**

32 **3. Account of transaction to transferee.** In a dissolution
and winding up, a transferee is entitled to an account of
partnership transactions only from the date of the latest account
agreed to by all of the partners.

38 **4. Rights and duties retained.** Upon transfer, the
transferor retains the rights and duties of a partner other than
the interest in distributions transferred.

42 **5. Effect to transferee's rights; notice.** A partnership
need not give effect to a transferee's rights under this section
until the partnership has notice of the transfer.

46 **6. Transfer in violations.** A transfer of a partner's
transferable interest in the partnership in violation of a
restriction on transfer contained in the partnership agreement is
ineffective as to a person having notice of the restriction at
the time of transfer.

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Comment

(This is Section 503 of the Uniform Partnership Act (1997).)

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

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

2 4. Subsection (d) is new. It makes clear that unless
3 otherwise agreed the partner whose interest is transferred
4 retains all of the rights and duties of a partner, other than the
5 right to receive distributions. That means the transferor is
6 entitled to participate in the management of the partnership and
7 remains personally liable for all partnership obligations, unless
8 and until he withdraws as a partner, is expelled under Section
9 601(4)(ii), or is otherwise dissociated under Section 601.

10
11 A divorced spouse of a partner who is awarded rights in the
12 partner's partnership interest as part of a property settlement
13 is entitled only to the rights of a transferee. The spouse may
14 instead be granted a money judgment in the amount of the property
15 award, enforceable by a charging order in the same manner as any
16 other money judgment against a partner. In neither case,
17 however, would the spouse become a partner by virtue of the
18 property settlement or succeed to any of the partner's management
19 rights. See, e.g., *Warren v. Warren*, 12 Ark. App. 260, 675
20 S.W.2d 371 (1984).

21 5. Subsection (e) is new and provides that the partnership
22 has no duty to give effect to the transferee's rights until the
23 partnership receives notice of the transfer. This is consistent
24 with UCC Section 9318(3), which provides that an "account debtor"
25 is authorized to pay the assignor until the account debtor
26 receives notification that the amount due or to become due has
27 been assigned and that payment is to be made to the assignee. It
28 further provides that the assignee, on request, must furnish
29 reasonable proof of the assignment.

30
31 6. Subsection (f) is new and provides that a transfer of a
32 partner's transferable interest in the partnership in violation
33 of a restriction on transfer contained in a partnership agreement
34 is ineffective as to a person with timely notice of the
35 restriction. Under Section 103(a), the partners may agree among
36 themselves to restrict the right to transfer their partnership
37 interests. Subsection (f) makes explicit that a transfer in
38 violation of such a restriction is ineffective as to a transferee
39 with notice of the restriction. See Section 102(b) for the
40 meaning of "notice." RUPA leaves to general law and the UCC the
41 issue of whether a transfer in violation of a valid restriction
42 is effective as to a transferee without notice of the restriction.

43
44 Whether a particular restriction will be enforceable,
45 however, must be considered in light of other law. See 11 U.S.C.
46 § 541(c)(1) (property owned by bankrupt passes to trustee
47 regardless of restrictions on transfer); UCC § 9318(4) (agreement
48 between account debtor and assignor prohibiting creation of
49 security interest in a general intangible or requiring account
50

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. TuVu 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).

§1054. Partner's transferable interest subject to charging order

1. Charging order; interest of judgment debtor. 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 that the circumstances of the case may require.

2. Charging order; lien. 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.

3. Redemption of charged interest. At any time before foreclosure, an interest charged may be redeemed:

A. By the judgment debtor;

B. With property other than partnership property, by one or more of the other partners; or

C. 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.

2 (E.D. Va. 1981); Baum v. Baum, 51 Cal. 2d 610, 335 P.2d 481
3 (1959); Atlantic Mobile Homes, Inc. v. LeFever, 481 So. 2d 1002
4 (Fla. App. 1986).

5
6 Notwithstanding subsection (e), there may be an exception
7 for the enforcement of family support orders. Some States have
8 unique statutory procedures for the enforcement of support
9 orders. In Florida, for example, a court may issue an "income
10 deduction order" requiring any person or entity providing
11 "income" to the obligor of a support order to remit to the
12 obligee or a depository, as directed by the court, a specified
13 portion of the income. Fla. Stat. § 61.1301 (1993). "Income" is
14 broadly defined to include any form of payment to the obligor,
15 including wages, salary, compensation as an independent
16 contractor, dividends, interest, or other payment, regardless of
17 source. Fla. Stat. § 61.046(4) (1993). That definition includes
18 distributions payable to an obligor partner. A charging order
19 under RUPA would still be necessary to reach the obligor's entire
20 partnership interest, however.

21 SUBCHAPTER 6

22 PARTNER'S DISSOCIATION

23 §1061. Events causing partner's dissociation

24
25 A partner is dissociated from a partnership upon the
26 occurrence of any of the following events:

27
28 1. Notice of express will to withdraw. The partnership's
29 having notice of the partner's express will to withdraw as a
30 partner or on a later date specified by the partner;

31
32 2. Agreed event. An event agreed to in the partnership
33 agreement as causing the partner's dissociation;

34
35 3. Expulsion pursuant to agreement. The partner's
36 expulsion pursuant to the partnership agreement;

37
38 4. Expulsion by unanimous vote. The partner's expulsion by
39 the unanimous vote of the other partners if:

40
41 A. It is unlawful to carry on the partnership business with
42 that partner;

43
44 B. There has been a transfer of all or substantially all of
45 that partner's transferable interest in the partnership,
46 other than a transfer for security purposes, or a court
47 order charging the partner's interest, that has not been
48 foreclosed;
49
50

2 C. Within 90 days after the partnership notifies a partner
4 who is a limited liability company or corporation that it
6 will be expelled because it has filed a certificate of
8 dissolution or the equivalent or that it has been judicially
or administratively dissolved, the applicable certificate of
dissolution or its equivalent has not been revoked or it has
not been administratively reinstated;

10 D. Within 90 days after the partnership notifies a partner
12 who is a limited liability company or corporation that it
14 will be expelled because its right to do business has been
16 suspended by the jurisdiction of organization or
incorporation, there has been no reinstatement of its right
to do business by such jurisdiction; or

18 E. A partnership that is a partner has been dissolved and
its business is being wound up;

20 5. Expulsion by judicial determination. On application by
22 the partnership or another partner, the partner's expulsion by
judicial determination because:

24 A. The partner engaged in wrongful conduct that adversely
26 and materially affected the partnership business;

28 B. The partner willfully or persistently committed a
30 material breach of the partnership agreement or of a duty
owed to the partnership or the other partners under section
1044; or

32 C. The partner engaged in conduct relating to the
34 partnership business that makes it not reasonably
36 practicable to carry on the business in partnership with the
partner;

38 6. Partner's actions. The partner's:

40 A. Becoming a debtor in bankruptcy;

42 B. Executing an assignment for the benefit of creditors;

44 C. Seeking, consenting to or acquiescing in the appointment
46 of a trustee, receiver or liquidator of that partner or of
all or substantially all of that partner's property; or

48 D. Failing, within 90 days after the appointment, to have
vacated or stayed the appointment of a trustee, receiver or

2 liquidator of the partner or of all or substantially all of
3 the partner's property obtained without the partner's
4 consent or acquiescence or failing within 90 days after the
5 expiration of a stay to have the appointment vacated;

6 7. Partner who is individual. In the case of a partner who
7 is an individual:

8 A. The partner's death;

10 B. The appointment of a guardian or general conservator for
11 the partner; or

14 C. A judicial determination that the partner has otherwise
15 become incapable of performing the partner's duties under
16 the partnership agreement;

18 8. Partner is trust or trustee. In the case of a partner
19 that is a trust or is acting as a partner by virtue of being a
20 trustee of a trust, distribution of the trust's entire
21 transferable interest in the partnership, but not merely by
22 reason of the substitution of a successor trustee;

24 9. Partner is estate or personal representative of estate.
25 In the case of a partner that is an estate or is acting as a
26 partner by virtue of being a personal representative of an
27 estate, distribution of the estate's entire transferable interest
28 in the partnership, but not merely by reason of the substitution
29 of a successor personal representative; or

30 10. Termination. Termination of a partner who is not an
31 individual, partnership, limited liability company, corporation,
32 trust or estate.

34 **Comment**

36 (This is Section 601 of the Uniform Partnership Act (1997).)

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

48 Under RUPA, unlike the UPA, the dissociation of a partner
49 does not necessarily cause a dissolution and winding up of the
50 business of the partnership. Section 801 identifies the

2 situations in which the dissociation of a partner causes a
winding up of the business. Section 701 provides that in all
4 other situations there is a buyout of the partner's interest in
the partnership, rather than a windup of the partnership
6 business. In those other situations, the partnership entity
continues, unaffected by the partner's dissociation.

8 A dissociated partner remains a partner for some purposes
and still has some residual rights, duties, powers, and
10 liabilities. Although Section 601 determines when a partner is
dissociated from the partnership, the consequences of the
12 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
14 for some purposes, but as a former partner for others. For
example, see Section 403(b) (former partner's access to
16 partnership books and records). The consequences of a partner's
dissociation depend on whether the partnership continues or is
18 wound up, as provided in Articles 6, 7, and 8.

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

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

32 Section 602(a) provides that a partner has the power to
34 withdraw at any time. The power to withdraw is immutable under
Section 103(b)(6), with the exception that the partners may agree
36 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
38 right. See UPA Section 31(2). Since no writing is required to
create a partner relationship, it was felt unnecessarily
40 formalistic, and a trap for the unwary, to require a writing to
end one. If a written notification is given, Section 102(d)
42 clarifies when it is deemed received.

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

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

6 4. Section 601(3) provides that a partner may be expelled
7 by the other partners pursuant to a power of expulsion contained
8 in the partnership agreement. That continues the basic rule of
9 UPA Section 31(1)(d). The expulsion can be with or without
10 cause. As under existing law, the obligation of good faith under
11 Section 404(d) does not require prior notice, specification of
12 cause, or an opportunity to be heard. See *Holman v. Coie*, 11
13 Wash. App. 195, 522 P.2d 515, cert. denied, 420 U.S. 984 (1974).

14 5. Section 601(4) empowers the partners, by unanimous vote,
15 to expel a partner for specified causes, even if not authorized
16 in the partnership agreement. This changes the UPA Section
17 31(1)(d) rule that authorizes expulsion only if provided in the
18 partnership agreement. A partner may be expelled from a term
19 partnership, as well as from a partnership at will. Under
20 Section 103(a), the partnership agreement may change or abolish
21 the partners' power of expulsion.

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

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

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

2 Subsection (4)(iv) is the partnership analogue of paragraph
4 (iii) and is suggested by RULPA Section 402(8). It provides that
6 a partnership that is a partner may be expelled if it has been
8 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.

10 6. Section 601(5) empowers a court to expel a partner if it
12 determines that the partner has engaged in specified misconduct.
14 The enumerated grounds for judicial expulsion are based on the
16 UPA Section 32(1) grounds for judicial dissolution. The
18 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.

20 Subsection (5)(i) provides for the partner's expulsion if
22 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).

24 Subsection (5)(ii) provides for expulsion if the court
26 determines that the partner willfully or persistently committed a
28 material breach of the partnership agreement or of a duty owed to
30 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).

32 Subsection (5)(iii) provides for judicial expulsion of a
34 partner who engaged in conduct relating to the partnership
36 business that makes it not reasonably practicable to carry on the
38 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).

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

46 Subsection (6)(i) is derived from UPA Section 31(5), which
48 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"

2 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.

4
6 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
8 Section 541(a)(1) of the Bankruptcy Code, notwithstanding any
restrictions on transfer provided in the partnership agreement.
10 In most Chapter 7 cases, that will result in the eventual buyout
of the partner's interest.

12
14 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
16 thus its RUPA counterpart, under Sections 365(e) and 541(c)(1) of
the Bankruptcy Code. Those sections generally invalidate
18 so-called ipso facto laws that cause a termination or
modification of the debtor's contract or property rights because
20 of the bankruptcy filing. As a consequence, RUPA Section
601(6)(i), which provides for a partner's dissociation by
22 operation of law upon becoming a debtor in bankruptcy, may be
invalid under the Supremacy Clause. See, e.g., In the Matter of
24 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.
26 964 (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
28 (E.D. Va. 1993) (partnership agreement could not be assumed by
debtor under Bankruptcy Code § 365(c)(1) because other partners
30 excused by UPA from accepting performance by or rendering
performance to party other than debtor and buyout option not
32 invalid ipso facto clause under Code § 365 (e)), aff'd per
curiam, 25 F.3d 1038 (4th Cir. 1994). RUPA reflects the policy
34 choice, as a matter of state partnership law, that a partner be
dissociated upon becoming a debtor in bankruptcy.

36
38 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
40 creditors or the appointment of a trustee, receiver, or
liquidator. Subsection (6)(iii) and (iv) cover the latter and
42 are based substantially on RULPA Section 402(4) and (5).

44 8. UPA Section 31(4) provides for the dissolution of a
partnership upon the death of any partner, although by agreement
46 the remaining partners may continue the partnership business.
RUPA Section 601(7)(i), on the other hand, provides for
48 dissociation upon the death of a partner who is an individual,
rather than dissolution of the partnership. That changes
50 existing law, except in those States previously adopting a
similar non-uniform provision, such as California, Georgia, and

2 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.

4
6 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
8 appointment itself operates as the event of dissociation, and no
further order of the court is necessary.

10
12 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
14 performing his duties under the partnership agreement. The
intent is to include physical incapacity.

16
18 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
20 of its entire transferable interest in the partnership, but not
merely upon the substitution of a successor trustee. The
22 provision is inspired by RULPA Section 402(7).

24
26 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
28 partnership, but not merely the substitution of a successor
personal representative. It is based on RULPA Section 402(10).
30 Under Section 601(7), a partner is dissociated upon death,
however, and the estate normally becomes a transferee, not a
32 partner.

34
36 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
38 limited liability company.

40 **§1062. Partner's power to dissociate; wrongful dissociation**

42 **1. By express will.** A partner has the power to dissociate
at any time, rightfully or wrongfully, by express will pursuant
44 to section 1061, subsection 1.

46 **2. Wrongful dissociation.** A partner's dissociation is
wrongful only if:

48
50 **A. It is in breach of an express provision of the
partnership agreement; or**

2 Under subsection (b), a partner's dissociation is wrongful
4 if (1) it breaches an express provision of the partnership
6 agreement or (2), in a term partnership, before the expiration of
8 the term or the completion of the undertaking (i) the partner
10 voluntarily withdraws by express will, except a withdrawal
12 following another partner's wrongful dissociation or dissociation
14 by death or otherwise under Section 601(6) through (10); (ii) the
16 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.

18 The exception in subsection (b)(2)(i) is intended to protect
20 a partner's reactive withdrawal from a term partnership after the
22 premature departure of another partner, such as the partnership's
24 rainmaker or main supplier of capital, under the same
26 circumstances that may result in the dissolution of the
28 partnership under Section 801(2)(i). Under that section, a term
30 partnership is dissolved 90 days after the bankruptcy,
32 incapacity, death (or similar dissociation of a partner that is
34 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).

36 A partner wishing to withdraw prematurely from a term
38 partnership for any other reason, such as another partner's
40 misconduct, can avoid being treated as a wrongfully dissociating
42 partner by applying to a court under Section 601(5)(iii) to have
44 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).

46 3. Subsection (c) provides that a wrongfully dissociating
48 partner is liable to the partnership and to the other partners
50 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

2 damage caused by breach of the partnership agreement or other
3 misconduct. The partnership might also incur substantial
4 expenses resulting from a partner's premature withdrawal from a
5 term partnership, such as replacing the partner's expertise or
6 obtaining new financing. The wrongfully dissociating partner
7 would be liable to the partnership for those and all other
8 expenses and damages that are causally related to the wrongful
9 dissociation.

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

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

28 §1063. Effect of partner's dissociation

30 1. Appreciation of law. If a partner's dissociation
31 results in a dissolution and winding up of the partnership
32 business, subchapter 8 applies; otherwise, subchapter 7 applies.

34 2. Internal effects of partner's dissociation. Upon a
35 partner's dissociation:

36 A. The partner's right to participate in the management and
37 conduct of the partnership business terminates, except as
38 otherwise provided in section 1083;

40 B. The partner's duty of loyalty under section 1044,
41 subsection 2, paragraph C terminates; and

44 C. The partner's duty of loyalty under section 1044,
45 subsection 2, paragraphs A and B and duty of care under
46 section 1044, subsection 3 continue only with regard to
47 matters arising and events occurring before the partner's
48 dissociation, unless the partner participates in winding up
49 the partnership's business pursuant to section 1083.

50

Comment

(This is Section 603 of the Uniform Partnership Act (1997).)

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 of the partnership's business.

SUBCHAPTER 7

**PARTNER'S DISSOCIATION WHEN
BUSINESS NOT WOUND UP**

§1071. Purchase of dissociated partner's interest

1. Purchase of interest if no dissolution. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 1081, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection 2.

2. Buyout price. The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 1087, subsection 2 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.

3. Damages for wrongful dissociation; interest. Damages for wrongful dissociation under section 1062, subsection 2, 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.

4. Indemnification. 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 1072.

5. Payment after 120 days. 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 3.

6. Deferred payment. If a deferred payment is authorized under subsection 8, 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 3, stating the

2 time of payment, the amount and type of security for payment and
3 the other terms and conditions of the obligation.

4 7. Disclosures with payment or tender. The payment or
5 tender required by subsection 5 or 6 must be accompanied by the
6 following:

8 A. A statement of partnership assets and liabilities as of
9 the date of dissociation;

10 B. The latest available partnership balance sheet and
11 income statement, if any;

12 C. An explanation of how the estimated amount of the
13 payment was calculated; and

14 D. Written notice that the payment is in full satisfaction
15 of the obligation to purchase unless, within 120 days after
16 the written notice, the dissociated partner commences an
17 action to determine the buyout price, any offsets under
18 subsection 3 or other terms of the obligation to purchase.

19 8. Wrongful dissociation. A partner who wrongfully
20 dissociates before the expiration of a definite term or the
21 completion of a particular undertaking is not entitled to payment
22 of any portion of the buyout price until the expiration of the
23 term or completion of the undertaking, unless the partner
24 establishes to the satisfaction of the court that earlier payment
25 will not cause undue hardship to the business of the
26 partnership. A deferred payment must be adequately secured and
27 bear interest.

28 9. Dissociated partner's action against partnership. A
29 dissociated partner may maintain an action against the
30 partnership, pursuant to section 1045, subsection 2, paragraph B,
31 subparagraph (2), to determine the buyout price of that partner's
32 interest, any offsets under subsection 3, or other terms of the
33 obligation to purchase. The action must be commenced within 120
34 days after the partnership has tendered payment or an offer to
35 pay or within one year after written demand for payment if no
36 payment or offer to pay is tendered. The court shall determine
37 the buyout price of the dissociated partner's interest, any
38 offset due under subsection 3, and accrued interest, and enter
39 judgment for any additional payment or refund. If deferred
40 payment is authorized under subsection 8, the court shall also
41 determine the security for payment and other terms of the
42 obligation to purchase. The court may assess reasonable
43 attorney's fees and the fees and expenses of appraisers or other
44 experts for a party to the action, in amounts the court finds
45 equitable, against a party that the court finds acted
46 in a wrongful manner.

2 arbitrarily, vexatiously or not in good faith. The finding may
3 be based on the partnership's failure to tender payment or an
4 offer to pay or to comply with subsection 7.

6 **Comment**

8 (This is Section 701 of the Uniform Partnership Act (1997).)

10 1. Article 7 is new and provides for the buyout of a
11 dissociated partner's interest in the partnership when the
12 partner's dissociation does not result in a dissolution and
13 winding up of its business under Article 8. See Section 603(a).
14 If there is no dissolution, the remaining partners have a right
15 to continue the business and the dissociated partner has a right
16 to be paid the value of his partnership interest. These rights
17 can, of course, be varied in the partnership agreement. See
18 Section 103. A dissociated partner has a continuing relationship
19 with the partnership and third parties as provided in Sections
20 603(b), 702, and 703. See also Section 403(b) (former partner's
access to partnership books and records).

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

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

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

46 Under subsection (b), the buyout price is the amount that
47 would have been distributable to the dissociating partner under
48 Section 807(b) if, on the date of dissociation, the assets of the
49

2 partnership were sold at a price equal to the greater of
3 liquidation value or going concern value without the departing
4 partner. Liquidation value is not intended to mean distress sale
5 value. Under general principles of valuation, the hypothetical
6 selling price in either case should be the price that a willing
7 and informed buyer would pay a willing and informed seller, with
8 neither being under any compulsion to deal. The notion of a
9 minority discount in determining the buyout price is negated by
10 valuing the business as a going concern. Other discounts, such
11 as for a lack of marketability or the loss of a key partner, may
12 be appropriate, however.

13
14 Since the buyout price is based on the value of the business
15 at the time of dissociation, the partnership must pay interest on
16 the amount due from the date of dissociation until payment to
17 compensate the dissociating partner for the use of his interest
18 in the firm. Section 104(b) provides that interest shall be at
19 the legal rate unless otherwise provided in the partnership
20 agreement. The UPA Section 42 option of electing a share of the
21 profits in lieu of interest has been eliminated.

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

26
27 The Section 701 rules are merely default rules. The
28 partners may, in the partnership agreement, fix the method or
29 formula for determining the buyout price and all of the other
30 terms and conditions of the buyout right. Indeed, the very right
31 to a buyout itself may be modified, although a provision
32 providing for a complete forfeiture would probably not be
33 enforceable. See Section 104(a).

34
35 4. Subsection (c) provides that the partnership may offset
36 against the buyout price all amounts owing by the dissociated
37 partner to the partnership, whether or not presently due,
38 including any damages for wrongful dissociation under Section
39 602(c). This has the effect of accelerating payment of amounts
40 not yet due from the departing partner to the partnership,
41 including a long-term loan by the partnership to the dissociated
42 partner. Where appropriate, the amounts not yet due should be
43 discounted to present value. A dissociating partner, on the
44 other hand, is not entitled to an add-on for amounts owing to him
45 by the partnership. Thus, a departing partner who has made a
46 long-term loan to the partnership must wait for repayment, unless
47 the terms of the loan agreement provide for acceleration upon
48 dissociation.

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

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

13 6. Subsection (e) provides that, if no agreement for the
14 purchase of the dissociated partner's interest is reached within
15 120 days after the dissociated partner's written demand for
16 payment, the partnership must pay, or cause to be paid, in cash
17 the amount it estimates to be the buyout price, adjusted for any
18 offsets allowed and accrued interest. Thus, the dissociating
19 partner will receive in cash within 120 days of dissociation the
20 undisputed minimum value of the partner's partnership interest.
21 If the dissociated partner claims that the buyout price should be
22 higher, suit may thereafter be brought as provided in subsection
23 (i) to have the amount of the buyout price determined by the
24 court. This is similar to the procedure for determining the
25 value of dissenting shareholders' shares under RMBCA Sections
26 13.20-13.28.

27 The "cause to be paid" language of subsection (a) is
28 repeated here to permit either the partnership, one or more of
29 the continuing partners, or a third-party purchaser to tender
30 payment of the estimated amount due.
31

32 7. Subsection (f) provides that, when deferred payment is
33 authorized in the case of a wrongfully dissociating partner, a
34 written offer stating the amount the partnership estimates to be
35 the purchase price should be tendered within the 120day period,
36 even though actual payment of the amount may be deferred,
37 possibly for many years. See Comment 8. The dissociated partner
38 is entitled to know at the time of dissociation what amount the
39 remaining partners think is due, including the estimated amount
40 of any damages allegedly caused by the partner's wrongful
41 dissociation that may be offset against the buyout price.
42

43 8. Subsection (g) provides that the payment of the
44 estimated price (or tender of a written offer under subsection
45 (f)) by the partnership must be accompanied by (1) a statement of
46 the partnership's assets and liabilities as of the date of the
47 partner's dissociation; (2) the latest available balance sheet
48 and income statement, if the partnership maintains such financial
49
50

2 statements; (3) an explanation of how the estimated amount of the
4 payment was calculated; and (4) a written notice that the payment
6 will be in full satisfaction of the partnership's buyout
8 obligation unless the dissociated partner commences an action to
10 determine the price within 120 days of the notice. Subsection
12 (g) is based in part on the dissenters' rights provisions of
14 RMBCA Section 13.25(b).

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

24 9. Subsection (h) replaces UPA Section 38(2)(c) and
26 provides a somewhat different rule for payment to a partner whose
28 dissociation before the expiration of a definite term or the
30 completion of a particular undertaking is wrongful under Section
32 602(b). Under subsection (h), a wrongfully dissociating partner
34 is not entitled to receive any portion of the buyout price before
36 the expiration of the term or completion of the undertaking,
38 unless the dissociated partner establishes to the satisfaction of
40 the court that earlier payment will not cause undue hardship to
42 the business of the partnership. In all other cases, there must
44 be an immediate payment in cash.

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

48 If the partnership fails to tender payment of the estimated
50 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.

2 If the parties fail to reach agreement, the court must
4 determine the buyout price of the partner's interest, any
6 offsets, including damages for wrongful dissociation, and the
8 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.

10 Under subsection (i), attorney's fees and other costs may be
12 assessed against any party found to have acted arbitrarily,
14 vexatiously, or not in good faith in connection with the
16 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).

18 **§1072. Dissociated partner's power to bind and liability to**
20 **partnership**

22 **1. Apparent authority of dissociated partner.** For 2 years
24 after a partner dissociates without resulting in a dissolution
and winding up of the partnership business, the partnership,
including a surviving partnership under subchapter 9, is bound by
an act of the dissociated partner that would have bound the
partnership under section 1031 before dissociation only if at the
time of entering into the transaction the other party:

28 **A. Reasonably believed that the dissociated partner was**
30 **then a partner;**

32 **B. Did not have notice of the partner's dissociation; and**

34 **C. Is not deemed to have notice under section 1074,**
36 **subsection 2.**

38 **2. Liability for obligation after dissociation.** A
40 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 1.

42 **Comment**

44 (This is Section 702 of the Uniform Partnership Act (1997).)

46 1. Section 702 deals with a dissociated partner's lingering
48 apparent authority to bind the partnership in ordinary course
partnership transactions and the partner's liability to the
50 partnership for any loss caused thereby. It also applies to

2 partners who withdraw incident to a merger under Article 9. See
Section 906(e).

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

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

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

32 The second modification is that, under Section 702(a), the
34 partnership is not bound if the third party has notice of the
partner's dissociation, while under the general rule of Section
36 301 the partnership is bound unless the third party knows of the
partner's lack of authority. Under Section 102(b), a person has
38 "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
40 notification of it. Thus, the partnership may protect itself by
sending a notification of the dissociation to a third party, and
42 a third party may, in any event, have a duty to inquire further
based on what is known. That provides the partnership with
44 greater protection from the unauthorized acts of a dissociated
partner than from those of partners generally.

46 The third modification of the general apparent authority
48 rule under Section 702(a) involves the effect of a statement of
dissociation. Section 704(c) provides that, for the purposes of
50 Sections 702(a)(3) and 703(b)(3), third parties are deemed to

2 have notice of a partner's dissociation 90 days after the filing
of a statement of dissociation. Thus, the filing of a statement
4 operates as constructive notice of the dissociated partner's lack
of authority after 90 days, conclusively terminating the
6 dissociated partner's Section 702 apparent authority.

8 With respect to a dissociated partner's authority to
transfer partnership real property, Section 303(e) provides that
10 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
12 containing such a limitation. Section 704(b) provides that a
statement of dissociation operates as a limitation on the
14 dissociated partner's authority for the purposes of Section
303(e). Thus, a properly recorded statement of dissociation
16 operates as constructive knowledge of a dissociated partner's
lack of authority to transfer real property held in the
18 partnership name, effective immediately upon recording.

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

32
34 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
36 the partner under subsection (a). In effect, the dissociated
partner must indemnify the partnership for any loss, meaning a
38 loss net of any gain from the transaction. The dissociated
partner is also personally liable to the third party for the
40 unauthorized obligation.

42 **§1073. Dissociated partner's liability to other persons**

44 **1. Liability for partnership obligation.** A partner's
46 dissociation does not of itself discharge the partner's liability
for a partnership obligation incurred before dissociation. A
48 dissociated partner is not liable for a partnership obligation
incurred after dissociation, except as otherwise provided in
50 subsection 2.

2 within two years after departure, if the other party does not
4 have notice of the partner's dissociation and reasonably believes
6 when entering the transaction that the dissociated partner is
8 still a partner. The dissociated partner is not personally
10 liable, however, if the other party is deemed to know of the
12 dissociation under Section 303(e) or to have notice thereof under
14 Section 704(c). Also, a dissociated partner is not personally
16 liable for limited liability partnership obligations for which
18 the partner is not personally liable under Section 306.

20 Section 703(b) operates similarly to Section 702(a) in that
22 it requires reliance on the departed partner's continued
24 partnership status, as well as lack of notice. Under Section
26 704(c), a statement of dissociation operates conclusively as
28 constructive notice 90 days after filing for the purposes of
30 Section 703(b)(3) and, under Section 704(b), as constructive
32 knowledge when recorded for the purposes of Section 303(d) and
34 (e).

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

44 Section 703(d) continues the rule of UPA Section 36(3) that
46 a dissociated partner is released from liability for a
48 partnership obligation if the creditor, with notice of the
50 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."

34 In general under RUPA, as a result of the adoption of the
36 entity theory, relationships between a partnership and its
38 creditors are not affected by the dissociation of a partner or by
40 the addition of a new partner, unless otherwise agreed.
42 Therefore, there is no need under RUPA, as there is under the
44 UPA, for an elaborate provision deeming the new partnership to
46 assume the liabilities of the old partnership. See UPA Section
48 41.

50 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.

2 **§1074. Statement of dissociation**

4 **1. Filing of statement.** A dissociated partner or the
6 partnership may file a statement of dissociation stating the name
 of the partnership and that the partner is dissociated from the
 partnership.

8 **2. Deemed to have notice.** For the purposes of section
10 1072, subsection 1, paragraph C and section 1073, subsection 2,
12 paragraph C, a person not a partner is deemed to have notice of
 the dissociation 90 days after the statement of dissociation is
 filed.

14 **Comment**

16 (This is Section 704 of the Uniform Partnership Act (1997).)

18 Section 704 is new and provides for a statement of
20 dissociation and its effects. Subsection (a) authorizes either a
 dissociated partner or the partnership to file a statement of
22 dissociation. Like other RUPA filings, the statement of
 dissociation is voluntary. Both the partnership and the
24 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
26 the statement is governed by Section 105.

28 Filing or recording a statement of dissociation has
 threefold significance:

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

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

46 (3) Ninety days after the statement is filed, third parties
48 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
50 dissociation.

2 **§1075. Continued use of partnership name**

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

10 **Comment**

12 (This is Section 705 of the Uniform Partnership Act (1997).)

14 Section 705 is an edited version of UPA Section 41(10) and
16 provides that a dissociated partner is not liable for the debts
18 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.

20 **SUBCHAPTER 8**

22 **WINDING UP PARTNERSHIP BUSINESS**

24 **§1081. Events causing dissolution and winding up of partnership**
26 **business**

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

32 **1. Notice of express will to withdraw.** In a partnership at
will, the partnership's having notice from a partner, other than
34 a partner who is dissociated under section 1061, subsections 2 to
10, of that partner's express will to withdraw as a partner, or
36 on a later date specified by the partner;

38 **2. Dissolution before expiration of term.** In a partnership
for a definite term or particular undertaking:

40 A. Within 90 days after a partner's dissociation by death
42 or otherwise under section 1061, subsections 6 to 10 or
wrongful dissociation under section 1062, subsection 2, the
44 express will of at least 1/2 of the remaining partners to
wind up the partnership business, for which purpose a
46 partner's rightful dissociation pursuant to section 1062,
subsection 2, paragraph B, subparagraph (1) constitutes the
48 expression of that partner's will to wind up the partnership
business;

50 B. The express will of all of the partners to wind up the
partnership business; or

2 partnership under the UPA. Even if the business of the
3 partnership is continued by some of the partners, it is
4 technically a new partnership. The dissolution of the old
5 partnership and creation of a new partnership causes many
6 unnecessary problems.

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

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

22 With only three exceptions, the provisions of Section 801
23 are merely default rules and may by agreement be varied or
24 eliminated as grounds for dissolution. The first exception is
25 dissolution under Section 801(4) resulting from carrying on an
26 illegal business. The other two exceptions cover the power of a
27 court to dissolve a partnership under Section 801(5) on
28 application of a partner and under Section 801(6) on application
29 of a transferee. See Comments 68 for further explanation of
30 these provisions.
31

32
33 2. Under RUPA, "dissolution" is merely the commencement of
34 the winding up process. The partnership continues for the
35 limited purpose of winding up the business. In effect, that
36 means the scope of the partnership business contracts to
37 completing work in process and taking such other actions as may
38 be necessary to wind up the business. Winding up the partnership
39 business entails selling its assets, paying its debts, and
40 distributing the net balance, if any, to the partners in cash
41 according to their interests. The partnership entity continues,
42 and the partners are associated in the winding up of the business
43 until winding up is completed. When the winding up is completed,
44 the partnership entity terminates.
45

46
47 3. Section 801 continues two basic rules from the UPA.
48 First, it continues the rule that any member of an at-will
49 partnership has the right to force a liquidation. Second, by
50 negative implication, it continues the rule that the partners who

2 wish to continue the business of a term partnership can not be
3 forced to liquidate the business by a partner who withdraws
4 prematurely in violation of the partnership agreement.

6 Those rules are gleaned from the separate UPA provisions
7 governing dissolution and its consequences. Under UPA Section
8 31(1)(b), dissolution is caused by the express will of any
9 partner when no definite term or particular undertaking is
10 specified. UPA Section 38(1) provides that upon dissolution any
11 partner has the right to have the business wound up. That is a
12 default rule and applies only in the absence of an agreement
13 affording the other partners a right to continue the business.

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

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

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

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

42 (i) Subsection (2)(i) provides for dissolution after a
43 partner's dissociation by death or otherwise under Section 601(6)
44 to (10) or wrongful dissociation under Section 602(b), if within
45 90 days after the dissociation at least half of the remaining
46 partners express their will to dissolve the partnership. Thus if
47 a term partnership had six partners and one of the partners dies
48 or wrongfully dissociates before the end of the term, the
49 partnership will, as a result of the dissociation, be dissolved
50 only if three of the remaining five partners affirmatively vote

in favor of dissolution within 90 days after the dissociation.¹
2 This reactive dissolution of a term partnership protects the
4 remaining partners where the dissociating partner is crucial to
6 the successful continuation of the business. The corresponding
8 UPA Section 38(2)(b) rule requires unanimous consent of the
10 remaining partners to continue the business, thus giving each
12 partner an absolute right to a reactive liquidation. Under UPA
14 1994, if the partnership is continued by the majority, any
16 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
18 dissolution are: (6) a partner's bankruptcy or similar financial
20 impairment; (7) a partner's death or incapacity; (8) the
22 distribution by a trust-partner of its entire partnership
24 interest; (9) the distribution by an estate-partner of its entire
26 partnership interest; and (10) the termination of an
28 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.

30 Under Section 601(6)(i), a partner is dissociated upon
32 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
34 partner's bankruptcy does, however, cause dissolution of a term
36 partnership under Section 801(2)(i), unless a majority in
38 interest of the remaining partners thereafter agree to continue
40 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.

42 Similarly, under Section 801(2)(i), the death of any partner
44 will result in the dissolution of a term partnership, only if at
46 least half of the remaining partners express their will to wind
48 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.

50 (ii) Section 801(2)(ii) provides that a term partnership
may be dissolved and wound up at any time by the express will of

2 all the partners. That is merely an expression of the general
rule that the partnership agreement may override the statutory
4 default rules and that the partnership agreement, like any
contract, can be amended at any time by unanimous consent.

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

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

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

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

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

46 8. Section 801(5) provides for judicial dissolution on
48 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
50 court may order a partnership dissolved upon a judicial

2 determination that: (i) the economic purpose of the partnership
is likely to be unreasonably frustrated; (ii) another partner has
4 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
6 reasonably practicable to carry on the partnership business in
conformity with the partnership agreement. The court's power to
8 wind up the partnership under Section 801(5) cannot be varied in
the partnership agreement. See Section 103(b)(8).

10
12 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
14 partners' expectations in a start-up or tax shelter situation, in
which case "book" or "tax" losses do not signify business
16 failure. Truly poor financial performance may justify
dissolution under subsection (5)(i) as a frustration of the
18 partnership's economic purpose.

20 RUPA also deletes UPA Section 32(1)(f) which authorizes a
court to order dissolution of a partnership when "other
22 circumstances render a dissolution equitable." That provision
was regarded as too open-ended and, given RUPA's expanded
24 remedies for partners, unnecessary. No significant change in
result is intended, however, since the interpretation of UPA
26 Section 32(1)(f) is comparable to the specific grounds expressed
in subsection (5). See, e.g., *Karber v. Karber*, 145 Ariz. 293,
28 701 P.2d 1 (Ct. App. 1985) (partnership dissolved on basis of
suspicion and ill will, citing UPA §§ 32(1)(d) and (f)); *Fuller*
30 *v. Brough*, 159 Colo. 147, 411 P.2d 18 (1966) (not equitable to
dissolve partnership for trifling causes or temporary grievances
32 that do not render it impracticable to carry on partnership
business); *Lau v. Wong*, 1 Haw. App. 217, 616 P.2d 1031 (1980)
34 (partnership dissolved where business operated solely for benefit
of managing partner).

36
38 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
40 interest upon foreclosure of a charging order. It is based on
UPA Section 32(2) and authorizes dissolution upon a judicial
42 determination that it is equitable to wind up the partnership
business (i) after the expiration of the partnership term or
44 completion of the undertaking or (ii) at any time, if the
partnership were a partnership at will at the time of the
46 transfer or when the charging order was issued. The requirement
that the court determine that it is equitable to wind up the
48 business is new. The rights of a transferee under this section
cannot be varied in the partnership agreement. See Section
50 103(b)(8).

1 Prior to August 1997, Section 801(2)(i) provided that upon
2 the dissociation of a partner in a term partnership by death or
3 otherwise under Section 601(6) through (10) or wrongful
4 dissociation under 602(b) the partnership would dissolve unless
5 "a majority in interest of the remaining partners (including
6 partners who have rightfully dissociated pursuant to Section
7 602(b)(2)(i)) agree to continue the partnership." This language
8 was thought to be necessary for a term partnership to lack
9 continuity of life under the Internal Revenue Act tax
10 classification regulations. These regulations were repealed
11 effective January 1, 1997. The current language, approved at the
12 1997 annual meeting of the National Conference of Commissioners
13 on Uniform State Laws, allows greater continuity in a term
14 partnership than the prior version of this subsection and UPA
15 Section 38(2)(b).

16 **§1082. Partnership continues after dissolution**

17
18 **1. Continuation for purpose of winding up.** Subject to
19 subsection 2, a partnership continues after dissolution only for
20 the purpose of winding up its business. The partnership is
21 terminated when the winding up of its business is completed.

22
23 **2. Waiver of right to wind up business; terminate**
24 **partnership.** At any time after the dissolution of a partnership
25 and before the winding up of its business is completed, all of
26 the partners, including any dissociating partner other than a
27 wrongfully dissociating partner, may waive the right to have the
28 partnership's business wound up and the partnership terminated.
29 In that event:

30
31 **A. The partnership resumes carrying on its business as if**
32 **dissolution had never occurred, and any liability incurred**
33 **by the partnership or a partner after the dissolution and**
34 **before the waiver is determined as if dissolution had never**
35 **occurred; and**

36
37 **B. The rights of a 3rd party accruing under section 1084,**
38 **subsection 1 or arising out of conduct in reliance on the**
39 **dissolution before the 3rd party knew or received a**
40 **notification of the waiver may not be adversely affected.**

41
42 **Comment**

43 (This is Section 802 of the Uniform Partnership Act (1997).)

44
45
46
47 1. Section 802(a) is derived from UPA Section 30 and
48 provides that a partnership continues after dissolution only for
49 the purpose of winding up its business, after which it is
50 terminated. RUPA continues the concept of "termination" to mark

2 the completion of the winding up process. Since no filing or
3 other formality is required, the date will often be determined
4 only by hindsight. No legal rights turn on the partnership's
5 termination or the date thereof. Even after termination, if a
6 previously unknown liability is asserted, all of the partners are
still liable.

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

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

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

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

40 Paragraph (2) of the subsection provides that the rights of
41 third parties accruing under Section 804(1) before they knew (or
42 were notified) of the waiver may not be adversely affected by the
43 waiver. That is intended to mean the partnership is bound,
44 notwithstanding a subsequent waiver of dissolution and resumption
45 of its business, by a transaction entered into after dissolution
46 that was appropriate for winding up the partnership business,

2 even if not appropriate for continuing the business. Similarly,
4 any rights of a third party arising out of conduct in reliance on
6 the dissolution are protected, absent knowledge (or notification)
8 of the waiver. Thus, for example, a partnership loan, callable
10 upon dissolution, that has been called is not reinstated by a
12 subsequent waiver. If the loan has not been called before the
14 lender learns (or is notified) of the waiver, however, it may not
16 thereafter be called because of the dissolution. On the other
18 hand, a waiver does not reinstate a lease that is terminated by
20 the dissolution itself.

22 **§1083. Right to wind up partnership business**

24 **1. Participation of partner; judicial supervision.** After
26 dissolution, a partner who has not wrongfully dissociated may
28 participate in winding up the partnership's business, but on
30 application of any partner, partner's legal representative or
32 transferee, the Superior Court, for good cause shown, may order
34 judicial supervision of the winding up.

36 **2. Legal representative of last surviving partner.** The
38 legal representative of the last surviving partner may wind up a
40 partnership's business.

42 **3. Powers of person winding up business.** A person winding
44 up a partnership's business may preserve the partnership business
46 or property as a going concern for a reasonable time, prosecute
48 and defend actions and proceedings, whether civil, criminal or
50 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 1087, settle disputes by
mediation or arbitration and perform other necessary acts.

34 **Comment**

36 (This is Section 803 of the Uniform Partnership Act (1997).)

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

46 Section 803(b) continues the rule of UPA Section 25(2)(d)
48 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
50 authority to wind up the business. On the other hand, the legal

2 representative of a deceased partner, other than the last
3 surviving partner, has only the rights of a transferee of the
4 deceased partner's transferable interest. See Comment 8 to
5 Section 601.

6 Section 803(c) is new and provides further guidance on the
7 powers of a person who is winding up the business. It is based
8 on Delaware Laws, Title 6, Section 17803. The powers enumerated
9 are not intended to be exclusive.

10 Subsection (c) expressly authorizes the preservation of the
11 partnership's business or property as a going concern for a
12 reasonable time. Some courts have reached that result without
13 benefit of statutory authority. See, e.g., Paciaroni v. Crane,
14 408 A.2d 946 (Del. Ch. 1979). An agreement to continue the
15 partnership business in order to preserve its going-concern value
16 until sale is not a waiver of a partner's right to have the
17 business liquidated.

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

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

23 **§1084. Partner's power to bind partnership after dissolution**

24 Subject to section 1085, a partnership is bound by a
25 partner's act after dissolution that:

26 1. Appropriate act. Is appropriate for winding up the
27 partnership business; or

28 2. Act would have bound partnership. Would have bound the
29 partnership under section 1031 before dissolution, if the other
30 party to the transaction did not have notice of the dissolution.

31 **Comment**

32 (This is Section 104 of the Uniform Partnership Act (1997).)

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

36 Section 804(1) provides that partners have the authority to
37 bind the partnership after dissolution in transactions that are
38 appropriate for winding-up the partnership business. Section
39 804(2) provides that partners also have the power after
40

2 dissolution to bind the partnership in transactions that are
3 inconsistent with winding up. The partnership is bound in a
4 transaction not appropriate for winding up, however, only if the
5 partner's act would have bound the partnership under Section 301
6 before dissolution and the other party to the transaction did not
7 have notice of the dissolution. See Section 102(b) (notice).
8 Compare Section 301(1) (partner has apparent authority unless
9 other party knows or has received a notification of lack of
10 authority).

11
12 Section 804(2) attempts to balance the interests of the
13 partners to terminate their mutual agency authority against the
14 interests of outside creditors who have no notice of the
15 partnership's dissolution. Even if the partnership is not bound
16 under Section 804, the faithless partner who purports to act for
17 the partnership after dissolution may be liable individually to
18 an innocent third party under the law of agency. See Section 330
19 of the Restatement (Second) of Agency (agent liable for
20 misrepresentation of authority), applicable under RUPA as
21 provided in Section 104(a).

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

35 Also deleted are the special rules for unknown partners in
36 UPA Section 35(2) and for certain causes of dissolution in UPA
37 Section 35(3). Those, too, are inconsistent with RUPA's policy
38 of adhering more closely to the general agency rules of Section
39 301.

40
41 Section 804 should be contrasted with Section 702, which
42 winds down the power of a partner being bought out. The power of
43 a dissociating partner is limited to transactions entered into
44 within two years after the partner's dissociation. Section 804
45 has no time limitation. However, the apparent authority of
46 partners in both situations is now subject to the filing of a
47 statement of dissociation or dissolution, as the case may be,
48 which operates to cut off such authority after 90 days.
49
50

2 **§1085. Statement of dissolution**

4 **1. Filing of statement.** After dissolution, a partner who
6 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.

8 **2. Deemed to have notice.** For the purposes of sections
10 1037 and 1084, a person not a partner is deemed to have notice of
the dissolution and the limitation on the partners' authority as
12 a result of the statement of dissolution 30 days after it is
filed.

14 **Comment**

16 (This is Section 805 of the Uniform Partnership Act (1997).)

18 1. Section 805 is new. Subsection (a) provides that, after
an event of dissolution, any partner who has not wrongfully
20 dissociated may file a statement of dissolution on behalf of the
partnership. The filing and recording of a statement of
22 dissolution is optional. The execution, filing, and recording of
the statement is governed by Section 105. The legal consequences
24 of filing a statement of dissolution are similar to those of a
statement of dissociation under Section 704.

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

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

46 3. Subsection (c) operates in conjunction with Sections 301
48 and 804 to wind down partners' apparent authority after
dissolution. It provides that, for purposes of those sections,
50 90 days after the filing of a statement of dissolution

2 nonpartners are deemed to have notice of the dissolution and the
3 corresponding limitation on the authority of all partners.
4 Sections 301 and 804 provide that a partner's lack of authority
5 is binding on persons with notice thereof. Thus, after 90 days
6 the statement of dissolution operates as constructive notice
7 conclusively limiting the apparent authority of partners to
8 transactions that are appropriate for winding up the business.

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

22 **§1086. Partner's liability to other partners after dissolution**

24 **1. Liable for partner's share.** Except as otherwise
25 provided in subsection 2 and section 1034, after dissolution a
26 partner is liable to the other partners for the partner's share
27 of any partnership liability incurred under section 1084.

28 **2. Liability for inappropriate act.** A partner who, with
29 knowledge of the dissolution, incurs a partnership liability
30 under section 1084, subsection 2 by an act that is not
31 appropriate for winding up the partnership business is liable to
32 the partnership for any damage caused to the partnership arising
33 from the liability.

34 **Comment**

36 (This is Section 806 of the Uniform Partnership Act (1997).)

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

42 Subsection (a) provides that, except as provided in Section
43 306(a) and subsection (b), after dissolution each partner is
44 liable to the other partners by way of contribution for his share
45 of any partnership liability incurred under Section 804. That
46 includes not only obligations that are appropriate for winding up
47 the business, but also obligations that are inappropriate if
48 within the partner's apparent authority. Consistent with other
49 provisions of this Act, Section 806(a) makes clear that a partner
50

2 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).

4
6 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
8 from UPA Section 33(1).

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

16
18 Section 806 is merely a default rule and may be varied in
the partnership agreement. See Section 103(a).

20 **§1087. Settlement of accounts and contributions among partners**

22 **1. Application of assets.** In winding up a partnership's
business, the assets of the partnership, including the
24 contributions of the partners required by this section, must be
applied to discharge the partnership's obligations to creditors,
26 including, to the extent permitted by law, partners who are
creditors. Any surplus must be applied to pay in cash the net
28 amount distributable to partners in accordance with their right
to distributions under subsection 2.

30
32 **2. Settlement of partnership accounts; distributions;**
contribution. Each partner is entitled to a settlement of all
partnership accounts upon winding up the partnership business.
34 In settling accounts among the partners, profits and losses that
result from the liquidation of the partnership assets must be
36 credited and charged to the partners' accounts. The partnership
shall make a distribution to a partner in an amount equal to any
38 excess of the credits over the charges in the partner's account.
A partner shall contribute to the partnership an amount equal to
40 any excess of the charges over the credits in the partner's
account, but excluding from the calculation charges attributable
42 to an obligation for which the partner is not personally liable
under section 1034.

44
46 **3. Contribution by other partners; recovery.** If a partner
fails to contribute the full amount required under subsection 2,
48 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
50 they are personally liable under section 1034. A partner or

1 partner's legal representative may recover from the other
2 partners any contributions the partner makes to the extent the
3 amount contributed exceeds that partner's share of the
4 partnership obligations for which the partner is personally
5 liable under section 1034.

6
7 **4. Contribution for losses after settlement.** After the
8 settlement of accounts, each partner shall contribute, in the
9 proportion in which the partner shares partnership losses, the
10 amount necessary to satisfy partnership obligations that were not
11 known at the time of the settlement and for which the partner is
12 personally liable under section 1034.

13
14 **5. Deceased partner's estate liable.** The estate of a
15 deceased partner is liable for the partner's obligation to
16 contribute to the partnership.

17
18 **6. Enforcement for creditors.** An assignee for the benefit
19 of creditors of a partnership or a partner, or a person appointed
20 by a court to represent creditors of a partnership or a partner,
21 may enforce a partner's obligation to contribute to the
22 partnership.

23
24 **Comment**

25 (This is Section 807 of the Uniform Partnership Act (1997).)

26
27 1. Section 807 provides the default rules for the
28 settlement of accounts and contributions among the partners in
29 winding up the business. It is derived in part from UPA Sections
30 38(1) and 40.

31
32 2. Subsection (a) continues the rule in UPA Section 38(1)
33 that, in winding up the business, the partnership assets must
34 first be applied to discharge partnership liabilities to
35 creditors. For this purpose, any required contribution by the
36 partners is treated as an asset of the partnership. After the
37 payment of all partnership liabilities, any surplus must be
38 applied to pay in cash the net amount due the partners under
39 subsection (b) by way of a liquidating distribution.

40
41 RUPA continues the "in-cash" rule of UPA Section 38(1) and
42 is consistent with Section 402, which provides that a partner has
43 no right to receive, and may not be required to accept, a
44 distribution in kind, unless otherwise agreed. The in-cash rule
45 avoids the valuation problems that afflict unwanted in-kind
46 distributions.

47
48 The partnership must apply its assets to discharge the
49 obligations of partners who are creditors on a parity with other

2 creditors. See Section 404(f) and Comment 6. In effect, that
abolishes the priority rules in UPA Section 40(b) and (c) which
4 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"
6 has been repaid by the partnership is personally liable, as a
partner, for any outside debt remaining unsatisfied, unlike a
8 limited partner or corporate shareholder. Accordingly, the
obligation to contribute sufficient funds to satisfy the claims
10 of outside creditors may result in the equitable subordination of
inside debt when partnership assets are insufficient to satisfy
12 all obligations to non-partners.

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

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

42 Section 807(b) makes clear that a partner's contribution
obligation to a partnership in dissolution only considers the
44 partner's share of obligations for which the partner was
personally liable under Section 306 ("unshielded obligations").
46 See Comments to Section 401(b) (partner contribution obligation
to an operating partnership). Properly determined under this
48 Section, the total required partner contributions will be
sufficient to satisfy the partnership's total unshielded
50 obligations. In special circumstances where a partnership has

2 both shielded and unshielded obligations and the partner required
3 contributions are used to first pay shielded partnership
4 obligations, the partners may be required to make further
5 contributions to satisfy the partnership unpaid unshielded
6 obligations. The proper resolution of this matter is left to
7 debtor-creditor law as well as the law governing the fiduciary
8 obligations of the partners. See Section 104(a).

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

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

28 5. Subsection (d) provides that, after settling the
29 partners' accounts, each partner must contribute, in the
30 proportion in which he shares losses, the amount necessary to
31 satisfy partnership obligations that were not known at the time
32 of the settlement. That continues the basic rule of UPA Section
33 40(d) and underscores that the obligation to contribute exists
34 independently of the partnership's books of account. It
35 specifically covers the situation of a partnership liability that
36 was unknown when the partnership books were closed.

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

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

48 SUBCHAPTER 9

50 CONVERSIONS AND MERGERS

2 **§1091. Definitions**

4 As used in this subchapter, unless the context otherwise
6 indicates, the following terms have the following meanings.

8 **1. General partner.** "General partner" means a partner in a
partnership and a general partner in a limited partnership.

10 **2. Limited partner.** "Limited partner" means a limited
12 partner in a limited partnership.

14 **3. Limited partnership.** "Limited partnership" means a
limited partnership created under the Maine Revised Uniform
16 Limited Partnership Act, predecessor law or comparable law of
another jurisdiction.

18 **4. Partner.** "Partner" includes both a general partner and
20 a limited partner.

22 **Comment**

(This is Section 901 of the Uniform Partnership Act (1997).)

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

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

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

48 3. Article 9 does not restrict the provisions authorizing
50 conversions and mergers to domestic partnerships. Since no

2 filing is required for the creation of a partnership under RUPA,
it is often unclear where a partnership is domiciled. Moreover,
4 a partnership doing business in the State satisfies the
definition of a partnership created under this Act since it is an
6 association of two or more co-owners carrying on a business for
profit. Even a partnership clearly domiciled in another State
8 could easily amend its partnership agreement to provide that its
internal affairs are to be governed by the laws of a
10 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.

12
14 4. Because Article 9 deals with the conversion and merger
of both general and limited partnerships, Section 901 sets forth
16 four definitions distinguishing between the two types of
partnerships solely for the purposes of Article 9. "Partner"
18 includes both general and limited partners, and "general partner"
includes general partners in both general and limited
20 partnerships.

22 **§1092. Conversion of partnership to limited partnership**

24 **1. Conversion.** A partnership may be converted to a limited
partnership pursuant to this section.

26 **2. Terms and conditions.** The terms and conditions of a
conversion of a partnership to a limited partnership must be
28 approved by all of the partners or by a number or percentage
specified for conversion in the partnership agreement.

30 **3. Certificate of limited partnership.** After the
32 conversion is approved by the partners, the partnership shall
file a certificate of limited partnership in the jurisdiction in
34 which the limited partnership is to be formed. The certificate
must include:

36
38 **A.** A statement that the partnership was converted to a
limited partnership from a partnership;

40 **B.** Its former name; and

42 **C.** A statement of the number of votes cast by the partners
for and against the conversion and, if the vote is less than
44 unanimous, the number or percentage required to approve the
conversion under the partnership agreement.

46
48 **4. Effective date of conversion.** The conversion takes
effect when the certificate of limited partnership is filed or at
any later date specified in the certificate.

50

2 the conversion takes place). A former general partner who
4 becomes a limited partner as a result of the conversion can avoid
6 the lingering 90day exposure to liability as a general partner by
8 notifying those transacting business with the partnership of his
10 limited partner status.

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

28 §1093. Conversion of limited partnership to partnership

30 1. Conversion. A limited partnership may be converted to a
32 partnership pursuant to this section.

34 2. Terms and conditions. Notwithstanding a provision to
36 the contrary in a limited partnership agreement, the terms and
38 conditions of a conversion of a limited partnership to a
40 partnership must be approved by all of the partners.

42 3. Cancellation of certificate. After the conversion is
44 approved by the partners, the limited partnership shall cancel
46 its certificate of limited partnership.

48 4. Effective date of conversion. The conversion takes
50 effect when the certificate of limited partnership is canceled.

5. Liability. 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 1034, the partner is liable as a
general partner for an obligation of the partnership incurred
after the conversion takes effect.

Comment

(This is Section 903 of the Uniform Partnership Act (1997).)

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

2 limited partners. See Section 901(4). The purpose of the
4 unanimity requirement is to protect a limited partner from
6 exposure to personal liability as a general partner without clear
8 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.

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

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

18 Subsection (e) provides that a limited partner who becomes a
20 general partner is liable as a general partner for all
22 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.

24 **§1094. Effect of conversion; entity unchanged**

26 **1. Same entity.** A partnership or limited partnership that
28 has been converted pursuant to this subchapter is for all
purposes the same entity that existed before the conversion.

30 **2. Effect of conversion.** When a conversion takes effect:

32 **A. All property owned by the converting partnership or**
34 **limited partnership remains vested in the converted entity;**

36 **B. All obligations of the converting partnership or limited**
38 **partnership continue as obligations of the converted entity;**
and

40 **C. An action or proceeding pending against the converting**
42 **partnership or limited partnership may be continued as if**
the conversion had not occurred.

44 **Comment**

46 (This is Section 904 of the Uniform Partnership Act (1997).)

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

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

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

14 **§1095. Merger of partnerships**

16 **1. Merger pursuant to plan.** Pursuant to a plan of merger
18 approved as provided in subsection 3, a partnership may be merged
with one or more partnerships or limited partnerships.

20 **2. Plan of merger.** The plan of merger must set forth:

22 **A. The name of each partnership or limited partnership that**
24 **is a party to the merger;**

26 **B. The name of the surviving entity into which the other**
28 **partnerships or limited partnerships will merge;**

30 **C. Whether the surviving entity is a partnership or a**
limited partnership and the status of each partner;

32 **D. The terms and conditions of the merger;**

34 **E. The manner and basis of converting the interests of each**
36 **party to the merger into interests or obligations of the**
38 **surviving entity or into money or other property in whole or**
part; and

40 **F. The street address of the surviving entity's chief**
executive office.

42 **3. Approval of plan.** The plan of merger must be approved:

44 **A. In the case of a partnership that is a party to the**
46 **merger, by all of the partners, or a number or percentage**
specified for merger in the partnership agreement; and

48 **B. In the case of a limited partnership that is a party to**
50 **the merger, by the vote required for approval of a merger by**
the law of the State or foreign jurisdiction in which the

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

12 **§1096. Effect of merger**

14 **1. Effect of merger. When a merger takes effect:**

16 **A. The separate existence of every partnership or limited**
18 **partnership that is a party to the merger, other than the**
surviving entity, ceases;

20 **B. All property owned by each of the merged partnerships or**
limited partnerships vests in the surviving entity;

22 **C. All obligations of every partnership or limited**
24 **partnership that is a party to the merger become the**
obligations of the surviving entity; and

26 **D. An action or proceeding pending against a partnership or**
28 **limited partnership that is a party to the merger may be**
30 **continued as if the merger had not occurred, or the**
surviving entity may be substituted as a party to the action
or proceeding.

32 **2. Agent for service of process. The Secretary of State is**
34 **the agent for service of process in an action or proceeding**
36 **against a surviving foreign partnership or limited partnership to**
enforce an obligation of a domestic partnership or limited
38 **partnership that is a party to a merger. The surviving entity**
40 **shall promptly notify the Secretary of State of the mailing**
address of its chief executive office and of any change of
42 **address. Upon receipt of process, the Secretary of State shall**
mail a copy of the process to the surviving foreign partnership
or limited partnership.

44 **3. Liability of partner. A partner of the surviving**
partnership or limited partnership is liable for:

46 **A. All obligations of a party to the merger for which the**
48 **partner was personally liable before the merger;**

2 B. All other obligations of the surviving entity incurred
4 before the merger by a party to the merger, but those
obligations may be satisfied only out of property of the
entity; and

6 C. Except as otherwise provided in section 1034, all
8 obligations of the surviving entity incurred after the
10 merger takes effect, but those obligations may be satisfied
only out of property of the entity if the partner is a
limited partner.

12 4. Obligations incurred before merger. If the obligations
14 incurred before the merger by a party to the merger are not
satisfied out of the property of the surviving partnership or
16 limited partnership, the general partners of that party
immediately before the effective date of the merger shall
18 contribute the amount necessary to satisfy that party's
obligations to the surviving entity, in the manner provided in
20 section 1087 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.

22 5. Dissociated partner. A partner of a party to a merger
24 who does not become a partner of the surviving partnership or
limited partnership is dissociated from the entity of which that
26 partner was a partner as of the date the merger takes effect.
The surviving entity shall cause the partner's interest in the
28 entity to be purchased under section 1071 or another statute
specifically applicable to that partner's interest with respect
30 to a merger. The surviving entity is bound under section 1072 by
an act of a general partner dissociated under this subsection,
32 and the partner is liable under section 1073 for transactions
entered into by the surviving entity after the merger takes
34 effect.

36 **Comment**

38 (This is Section 906 of the Uniform Partnership Act (1997).)

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

44 Subsection (a) provides that when the merger takes effect:
46 (1) the separate existence of every partnership that is a party
to the merger (other than the surviving entity) ceases; (2) all
48 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)
50 all legal actions pending against a party to the merger may be

2 continued as if the merger had not occurred or the surviving
entity may be substituted as a party. Title to partnership
4 property vests in the surviving entity without further act or
deed and without reversion or impairment.

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

14 Subsection (c) provides that a general partner of the
surviving entity is liable for (1) all obligations for which the
16 partner was personally liable before the merger; (2) all other
obligations of the surviving entity incurred before the merger by
18 a party to the merger, which obligations may be satisfied only
out of the surviving entity's partnership property; and (3) all
20 obligations incurred by the surviving entity after the merger,
limited to the surviving entity's property in the case of limited
22 partners and also limited to obligations of the partnership for
which the partner was personally liable under Section 306.
24

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

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

46 Subsection (e) provides for the dissociation of a partner of
a party to the merger who does not become a partner in the
48 surviving entity. The surviving entity must buy out that
partner's interest in the partnership under Section 701 or other
50 specifically applicable statute. If the state limited

2 partnership act has a dissenter's rights provision providing a
different method of determining the amount due a dissociating
4 limited partner, it would apply, rather than Section 701, since
the two statutes should be read in pari materia.

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

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

22 **§1097. Statement of merger**

24 **1. Filing of statement.** After a merger, the surviving
26 partnership or limited partnership may file a statement that one
or more partnerships or limited partnerships have merged into the
28 surviving entity.

30 **2. Statement of merger.** A statement of merger must contain:

32 **A. The name of each partnership or limited partnership that**
34 **is a party to the merger;**

36 **B. The name of the surviving entity into which the other**
partnerships or limited partnerships were merged;

38 **C. The street address of the surviving entity's chief**
40 **executive office and of an office in this State, if any;**

42 **D. Whether the surviving entity is a partnership or a**
limited partnership; and

44 **E. If the surviving partnership or limited partnership is**
46 **not organized under the laws of this State, a statement that**
the surviving partnership or limited partnership:

48 **(1) Agrees that it may be served with process in this**
State in a proceeding for enforcement of an obligation
50 **of a party to the merger that was organized under the**

2 laws of this State, as well as for enforcement of an
3 obligation of the surviving partnership or limited
4 partnership arising from the merger; and

5 (2) Appoints the Secretary of State as its agent for
6 service of process in any such proceeding and the
7 surviving partnership or limited partnership shall
8 specify the address to which a copy of the process must
9 be mailed by the Secretary of State.

10 **3. Name in which property held.** Except as otherwise
11 provided in subsection 4, for the purposes of section 1032,
12 property of the surviving partnership or limited partnership that
13 before the merger was held in the name of another party to the
14 merger is property held in the name of the surviving entity upon
15 filing a statement of merger.

16 **4. Transfer of real property.** For the purposes of section
17 1032, real property of the surviving partnership or limited
18 partnership that before the merger was held in the name of
19 another party to the merger is property held in the name of the
20 surviving entity. A certified copy of the statement of merger
21 may be recorded in the registry of deeds of the county in which
22 the real property is located as evidence of title, but the
23 failure to record the statement does not affect the validity of
24 the transfer of title.

25 **5. Incomplete statement.** A filed and, if appropriate,
26 recorded statement of merger, executed and declared to be
27 accurate pursuant to section 1005, subsection 3, stating the name
28 of a partnership or limited partnership that is a party to the
29 merger in whose name property was held before the merger and the
30 name of the surviving entity, but not containing all of the other
31 information required by subsection 2, operates with respect to
32 the partnerships or limited partnerships named to the extent
33 provided in subsections 3 and 4.

34 **Comment**

35 (This is Section 907 of the Uniform Partnership Act (1997).)

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

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

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

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

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

24 **§1098. Nonexclusive**

26 This subchapter is not exclusive. Partnerships or limited
partnerships may be converted or merged in any other manner
28 provided by law.

30 **Comment**

32 (This is Section 908 of the Uniform Partnership Act (1997).)

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

42 **SUBCHAPTER 10**

44 **MISCELLANEOUS PROVISIONS**

46 **§1101. Uniformity of application and construction**

48 This chapter must be applied and construed to effectuate its
general purpose to make uniform the law with respect to the
50 subject of this chapter among states enacting it.

2 **§1102. Short title**

4 This chapter may be known and cited as "the Uniform
6 Partnership Act."

8 **§1103. Effective date**

10 This chapter takes effect July 1, 2006.

12 **Comment**

14 (This is Section 1204 of the Uniform Partnership Act (1997).)

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

20 **§1104. Applicability**

22 1. Application before July 1, 2006. Before July 1, 2006,
22 this chapter governs only a partnership formed:

24 A. After July 1, 2006, except a partnership that is
26 continuing the business of a dissolved partnership under
26 former Title 31, section 318; and

28 B. Before July 1, 2006 that elects, as provided by
30 subsection 3, to be governed by this chapter.

32 2. Application on and after July 1, 2006. On and after
32 July 1, 2006, this chapter governs all partnerships.

34 3. Election before July 1, 2006. Before July 1, 2006, a
36 partnership voluntarily may elect, in the manner provided in its
36 partnership agreement or by law for amending the partnership
38 agreement, to be governed by this chapter. The provisions of
38 this chapter relating to the liability of the partnership's
40 partners to 3rd parties apply to limit those partners' liability
40 to a 3rd party who had done business with the partnership within
42 one year before the partnership's election to be governed by this
42 chapter only if the 3rd party knows or has received a
44 notification of the partnership's election to be governed by this
44 chapter. A partnership may elect to be governed by this chapter
46 by filing a statement of election stating the name of the
46 partnership and that the partnership has made the election
48 pursuant to this section.

Comment

(This is Section 1206 of the Uniform Partnership Act (1997).)

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. 6132b10.03 (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.

§1105. Rules of construction

1. Savings clause. This chapter does not affect an action or proceeding commenced or right accrued before this chapter takes effect.

2. Freedom to contract. It is the policy of the chapter to give maximum effect to the freedom of contract and to the enforceability of partnership agreements.

3. Law and equity. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

2 4. Statutes in derogation of common law. Rules that
3 statutes in derogation of the common law are to be strictly
4 construed do not apply to this chapter.

6 5. Obligations of contract. Neither this chapter nor any
7 amendment of this chapter may be construed to impair the
8 obligations of any contract existing when this chapter or
9 amendment goes into effect.

10 **Comment**

12 (Subsection 1 is section 1207 of the Uniform Partnership Act
13 (1997).)

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

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

30 Pending "action" refers to a judicial proceeding, while
31 "proceeding" is broader and includes administrative proceedings.
32 Although it is not always clear whether a right has "accrued,"
33 the term generally means that a cause of action has matured and
34 is ripe for legal redress. See, e.g., Estate of Hoover v. Iowa
35 Dept. of Social Services, 299 Iowa 702, 251 N.W.2d 529 (1977);
36 Nielsen v. State of Wisconsin, 258 Wis. 1110, 141 N.W.2d 194
37 (1966). An inchoate right is not enough, and thus, for example,
38 there is no accrued right under a contract until it is breached.

40
41
42 **PART B**

44 **Sec. B-1. 31 MRSA §811, first ¶,** as corrected by RR 2001, c. 2,
45 Pt. C, §5 and affected by §7, is amended to read:

46
47 A limited liability partnership may be registered under this
48 Act for any lawful purpose. A professional limited liability
49 partnership, as defined in Title 13, section 282 723,
50 subsection -5-A- 6, is subject to the Maine Professional Service
Corporation Act except as follows.

2 **Sec. B-2. 31 MRSA §821**, as enacted by PL 1995, c. 633, Pt. B,
§1, is repealed and the following enacted in its place:

4 **§821. Registration**

6 **1. Filing of certificate.** A partnership formed under the
8 Uniform Partnership Act may be registered as a registered limited
10 liability partnership by signing and filing a certificate of
limited liability partnership with the Secretary of State.

12 **2. Terms and conditions.** The terms and conditions on which
14 a partnership becomes a limited liability partnership must be
approved by the vote necessary to amend the partnership agreement
16 or, in the case of a partnership agreement that expressly
considers obligations to contribute to the partnership, by the
18 vote necessary to amend those provisions.

20 **Sec. B-3. 31 MRSA §822, sub-§1, ¶C**, as enacted by PL 1995, c.
633, Pt. B, §1, is amended to read:

22 C. The name and the business, residence or mailing address
of the contact partner; and

24 **Sec. B-4. 31 MRSA §822, sub-§1, ¶C-1** is enacted to read:

26 C-1. The street address of the partnership's chief
28 executive office and, if different, the street address of an
office in the State, if any; and

30 **Sec. B-5. 31 MRSA §822, sub-§3** is enacted to read:

32 **3. Errors; later changes.** The status of a partnership as a
34 limited liability partnership and the liability of its partners
is not affected by errors or later changes in the information
36 required to be contained in the certificate under subsection 1.

38 **Sec. B-6. 31 MRSA §858**, as enacted by PL 1995, c. 633, Pt. B,
§1, is repealed.

40 **Sec. B-7. 31 MRSA §858-A** is enacted to read:

42 **§858-A. Effect of failure to qualify**

44 **1. No action or proceeding until granted authority; fees**
46 **paid.** A foreign limited liability partnership transacting
48 business in this State may not maintain an action or proceeding
in this State until it is granted authority to do business in
50 this State and pays to the State all fees and penalties for the
years or parts of years during which it did business in this
State without having been granted authority to do business.

2 **2. Validity of contract or act; defend action or**
3 **proceeding.** The failure of a foreign limited liability
4 partnership to obtain authority to do business in this State in
5 accordance with this chapter does not impair the validity of a
6 contract or act of the foreign limited liability partnership or
7 preclude it from defending an action or proceeding in this State.

8
9 **3. Limitation on personal liability.** A limitation on
10 personal liability of a partner is not waived solely by
11 transacting business in this State without being granted
12 authority to do business in this State.

13 **4. Agent for service of process.** If a foreign limited
14 liability partnership transacts business in this State without
15 being granted the authority to do business in this State, the
16 Secretary of State is its agent for service of process with
17 respect to a right of action arising out of the transaction of
18 business in this State.

19
20 **Sec. B-8. 31 MRSA §859-A, first ¶,** as enacted by PL 2003, c.
21 631, §71, is amended to read:

22
23 Notwithstanding Title 4, chapter 5 and Title 5, chapter 375,
24 the Secretary of State may commence a proceeding under section
25 859-B to revoke the status authority of a partnership as a
26 foreign limited liability partnership authorized to do business
27 in this State if:

28
29 **Sec. B-9. 31 MRSA §859-B, sub-§§2, 3 and 6,** as enacted by PL
30 2003, c. 631, §71, are amended to read:

31
32 **2. Revocation.** The foreign partnership's status--as--a
33 ~~limited-liability-partnership~~ authority to do business is revoked
34 if within -60 30 days after the notice under subsection 1 was
35 issued the Secretary of State determines that the foreign limited
36 liability partnership has failed to correct the ground or grounds
37 for revocation. The Secretary of State shall send notice to the
38 foreign partnership at the partnership's last registered office
39 address in this State and to its last registered or principal
40 office address in its jurisdiction of registration that recites
41 the ground or grounds for revocation of the foreign partnership's
42 status as a limited liability partnership and the effective date
43 of revocation.

44
45 **3. Authority to transact business ceases.** The authority of
46 a foreign limited liability partnership to transact business in
47 this State ceases on the date of revocation of its authority
48 unless such revocation is stayed pursuant to section 859-C,
49 subsection 2.

2 **6. Authorization after revocation.** A foreign limited
3 liability partnership whose authority to transact business in
4 this State has been revoked under this section and that wishes to
5 transact business again in this State may be ~~reinstated pursuant~~
6 ~~to section 859-D~~ requalified by applying for authority under this
7 subchapter.

8
9 **Sec. B-10. 31 MRSA §§859-D and 859-E,** as enacted by PL 2003,
10 c. 631, §71, are repealed.

11 **Sec. B-11. 31 MRSA §864** is enacted to read:

12 **§864. Action by Attorney General**

13 The Superior Court has jurisdiction to enjoin a foreign
14 limited liability partnership or any agent of the foreign limited
15 liability partnership from doing business in this State if the
16 foreign limited liability partnership has not been granted the
17 authority to do business under this subchapter. The Attorney
18 General may file a complaint in any county in which the foreign
19 limited liability partnership is doing or has done business for
20 the purpose of obtaining an injunction under this section.

21 **Sec. B-12. 31 MRSA §873, sub-§1, ¶D,** as enacted by PL 1995, c.
22 633, Pt. B, §1, is repealed and the following enacted in its
23 place:

24 D. The street address of the partnership's chief executive
25 office, the street address of an office of the partnership
26 in this State and the name and street address of the contact
27 partner.

28 **Sec. B-13. 31 MRSA §874, sub-§1,** as amended by PL 2003, c.
29 631, §80, is further amended to read:

30 **1. Failure to file annual report; penalty.** A registered or
31 foreign limited liability partnership that is required to deliver
32 an annual report for filing, as provided by section 873, that
33 fails to deliver its properly completed annual report to the
34 Secretary of State shall pay, in addition to the regular annual
35 report fee, the late filing penalty described in section 871,
36 subsection 22, as long as the report is received by the Secretary
37 of State prior to revocation of its status as a limited liability
38 partnership or authority to do business as a foreign limited
39 liability partnership, respectively. Upon a limited liability
40 partnership's failure to file the annual report and to pay the
41 annual report fee or the penalty, the Secretary of State,
42 notwithstanding Title 4, chapter 5 and Title 5, chapter 375,
43 shall revoke the status authority to do business of that
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2 partnership as a foreign limited liability partnership or shall
3 ~~revoke the status of that partnership as~~ a registered limited
4 liability partnership. The Secretary of State shall use the
5 procedures set forth in section 808-B to revoke the status of a
6 registered limited liability partnership and the procedures set
7 forth in section 859-B to revoke the status authority to do
8 business of a partnership as a foreign limited liability
9 partnership in this State. A foreign limited liability
10 partnership whose ~~limited-liability-partnership-status~~ authority
11 to do business has been revoked under section 859-B that wishes
12 to do business again as a limited liability partnership in this
13 State must ~~follow the procedures set forth in section 859-D to~~
14 ~~reinstate~~ requalify by applying for authority under this
15 subchapter. A partnership whose status as a registered limited
16 liability partnership has been revoked under section 808-B must
17 follow the requirements set forth in section 808-C to reinstate.

18 **Sec. B-14. Savings clause.** This Part does not affect an action
19 or proceeding commenced or a right accrued before this Act takes
20 effect.

22 **Sec. B-15. Effective date.** This Part takes effect July 1, 2006.

24 SUMMARY

26 This bill repeals the existing Uniform Partnership Act and
27 enacts the Revised Uniform Partnership Act of 1997 (RUPA) as the
28 new Uniform Partnership Act. It makes the following changes in
29 Maine partnership law.

32 Under current law concerning the agency authority of
33 partners, every partner has apparent authority to carry on the
34 business of the partnership. This bill continues that concept
35 except that the apparent authority includes acts for carrying on
36 in the ordinary course business of the kind carried on by the
37 partnership, not just the business of the particular partnership
38 in question. Current law provides that the partnership is bound
39 for the acts of a partner within the apparent authority unless
40 the partner has no actual authority and the person with whom the
41 partner is dealing has knowledge that the partner has no actual
42 authority. This bill is the same as current law except that
43 RUPA provides that a person who has received a notification of a
44 partner's lack of authority is also bound. RUPA specifies the
45 meaning of "receives a notification".

46 Under current law concerning partnership recovery of
47 property wrongfully conveyed, the partnership may recover the
48 property unless the partner binds the partnership as provided in
49 current law or the purchaser or the purchaser's assignee is a
50

2 holder for value without knowledge. Under RUPA, the burden
3 shifts to the partnership to show that the act was not authorized
4 and that the grantee and subsequent grantee for value had no
5 knowledge or notice of the partner's lack of authority.

6 Under current law concerning partnership liability for
7 partner conduct, the partnership is liable for the wrongful
8 conduct of a partner performed in the ordinary course of the
9 business of the partnership or with the authority of the other
10 partners, but only to persons who are not also partners in the
11 partnership. RUPA is the same as the current law, except that a
12 partner can sue as well. The RUPA provision also includes
13 no-fault torts under the phrase "other actionable conduct."
14

15 Under current law concerning partner liability, there is
16 joint and several liability for tortuous conduct and joint
17 liability for contractual obligations. Under RUPA, there is
18 joint and several liability for all obligations of the
19 partnership. With regard to registered liability partnerships
20 except for professional limited liability partnerships, the
21 liability shield under current law for a Maine limited liability
22 partnership protects only against tort liabilities. RUPA
23 provides full shield liability protection for a tortuous
24 liability and for contractual obligations. Current law contains
25 no provision concerning whether the partnership agreement affects
26 the liability imposed by the statute. In contracts, RUPA
27 provides that it expressly overrides anything to the contrary in
28 the partnership agreement. The current law limits the liability
29 of an incoming partner to the partnership property. RUPA
30 provides that there is no liability to incoming partners for
31 preadmission liabilities.
32

33 Current law contains no provision concerning actions by and
34 against the partnership and partners. RUPA establishes the
35 partnership as distinct from partners for judgments, levies and
36 legal actions generally.

37 Under current law, a partner is obligated to contribute
38 immediately to offset a deficit of the partnership. RUPA
39 provides that each partner is chargeable with a share of the
40 partnership losses in proportion to the partner's share of
41 profits. The partner is not obligated to contribute to any
42 deficit obligation before the partner withdraws or the
43 partnership liquidates.
44

45 Under current law and under RUPA, profits and losses are
46 split evenly under default provisions.
47

48 Under current law, partners have a tenancy in the
49 partnership. RUPA provides that the partners have no separate
50

2 interest in partnership property. The partnership is treated as
an entity separate from the partners for purposes of property
interests.

4
6 Under current Maine law, every partner has access at all
times to inspect and copy the partnership's books and records.
RUPA is generally the same as the current law except that access
8 is also afforded to former partners with respect to books and
records pertaining to the period during which they were
10 partners. Also under RUPA, a partner's right of access to books
and records may not be unreasonably restricted by the partnership
12 agreement. Thus, reasonable restrictions by agreement are
authorized.

14
16 RUPA provides that partners and the partnership have an
affirmative obligation to furnish to a partner without demand any
information concerning the partnership's business and affairs
18 reasonably required for the proper exercise of the partner's
rights and duties under the partnership agreement for the act.
20 As to other information, a partner and the partnership must
furnish the information on demand, except to the extent that the
22 demand or information is unreasonable or otherwise improper under
the circumstances. Current law contains no express provision.

24
26 RUPA clearly and exclusively defines the duties of loyalty
and duty of care; it specifies that a partner may transact
business with the partnership without violating any duties and it
28 provides that there is no per se violation of a duty solely on
account of the fact that the conduct furthers a partner's
30 interest. There is no comparable provision in current law on
standards of partner conduct, so it must be addressed by the
32 common law.

34 Current law does not address an action of the partnership
against a partner. RUPA permits a partnership to maintain an
36 action against a partner.

38 Current Maine law provides that any partner has the right to
a formal account as to partnership affairs under certain
40 circumstances. The right of a partner to make an action against
a partnership is much broader and more specific under RUPA. In
42 particular, RUPA allows an action to be made against the
partnership by a partner with or without an accounting as to the
44 partnership business.

46 Under current law, the partners are tenants in partnership
as to partnership property. Under RUPA, a partner is not a
48 co-owner of partnership property; a partner has no interest in
partnership property that can be transferred.

50

2 Under current law, only a partner's financial rights are transferable. RUPA makes no change.

4 RUPA provides that a transferor partner retains the rights and duties of a partner other than the economic rights transferred. There is no comparable provision in current law.

8 RUPA provides that a transfer in violation of restrictions against transfer is ineffective as to a person with timely notice of the restriction. There is no comparable provision in current law.

12 RUPA expressly provides that a charging order is the exclusive remedy. Current law contains no provision although case law provides that the charging order remedy is generally an exclusive remedy.

18 Under current Maine law, the departure of a partner causes the dissolution of the partnership. Dissolution of a partnership because a partner departs is referred to as the "aggregate" theory. Under RUPA, "dissociate" means separation. The dissociation does not necessarily cause a dissolution of the partnership. This is referred to as the "entity" theory.

24 With regard to a wrongful dissociation, current law provides that a partner may depart the partnership at any time. The departing partner can be charged with any damages caused by the departure. Under RUPA, a partner who dissociates wrongfully is liable to the partnership and the other partners.

30 Under current Maine law, after the departure of a partner the other partners can continue the partnership only if the partner wrongfully departed. Under RUPA, the result of the dissociation is a buyout of the dissociated partner's interest unless there is a dissolution of the partnership. RUPA clarifies a partner's duties upon dissociation.

38 Under RUPA, when a partner's dissociation does not cause dissolution, the partner's interest is purchased. RUPA enumerates the purchase price and terms of the purchase. It also provides special rules for the timing of a buyout when a partner wrongfully dissociates from a term partnership or partnership established to accomplish a specific project and for a claim by the dissociated partner against the partnership to determine any of the particulars of the buyout. There is no similar provision under current Maine law because departure of a partner causes a dissolution of the partnership. Under current law, if a partner causes a dissolution wrongfully and if the other partners decide to continue the partnership, then the partner causing the

2 dissolution can require the purchase of such partner's interest
for value.

4 RUPA provides that for a period of 2 years after
dissociation, a partner has apparent authority to bind the
6 partnership under the conditions set forth. The dissociated
partner is liable to the partnership for any damages resulting
8 from an obligation improperly incurred by the dissociated
partner. There is no similar provision under current Maine law.

10 Under RUPA, a dissociation does not automatically discharge
12 the partner's liability for predissociation partnership
obligations, but does discharge postdissociation liabilities
14 except in enumerated circumstances. There is no similar
provision under current Maine law.

16 RUPA provides that a dissociated partner may file a
18 statement of dissociation. This statement terminates the
dissociated partner's authority to transfer partnership property,
20 apparent authority and continuing liability to 3rd parties 30
days after it is filed. The filing is voluntary. The proposed
22 Maine provision shortens the time before the statement takes
effect under RUPA from 90 days to 30 days. There is no similar
24 provision under current Maine law.

26 Under RUPA, a dissociated partner is not liable for
partnership liabilities if the partnership name or use of the
28 dissociated partner's name is continued. There is no similar
provision under current Maine law.

30 The events that cause a dissolution are found in the Maine
32 Revised Statutes, Title 31, section 311, with respect to actions
by the partners, and section 312, with respect to judicial
34 dissolution. RUPA enumerates those default events when a
partnership is dissolved and its business wound up. If one of
36 these events does not occur or if the partnership agreement
provides that such event does not cause a dissolution, then the
38 dissociated partner is bought out and the partnership continues.

40 Under current Maine law, a partnership continues after
dissolution only for the purposes of winding up its business.
42 All partners who have not caused a wrongful dissolution may
continue the partnership and its operations. RUPA provides that
44 a partnership continues after dissolution only for the purpose of
winding up its business. However, all remaining partners,
46 including the dissociated partner if the dissociation was not
wrongful, have the right to continue the partnership and its
48 operations.

2 Under current law, the partners who have not wrongfully
dissolved the partnership may wind up the partnership. RUPA
4 enumerates the rules for who may wind up the partnership business
and the powers of the person or persons winding up the
partnership business.

6
8 Under RUPA, a partnership is bound by a partner's act after
dissolution if the act either is appropriate for winding up the
partnership or would have bound the partnership before
10 dissolution if the other party had no notice of the dissolution.
The current Maine provisions are similar. The proposed Maine
12 provision removes some complex and cumbersome provisions dealing
with former creditors and other parties who knew the partnership
14 before dissolution.

16 RUPA enumerates the rules for the filing of a statement of
the partnership's dissociation and the effects of the filing with
18 respect to 3rd parties dealing with the partnership. RUPA
provides that the statement is effective 90 days after filing,
20 but this Maine enactment provides that the statement is effective
30 days after filing. There is no similar provision under
22 current Maine law.

24 The proposed Maine law is similar to current Maine law
concerning a partner's liability to other partners after
26 dissolution. RUPA provides that a partner is liable to the other
partners for the partner's share of any partnership liability
28 incurred to wind up the partnership. In addition, a partner who
incurs a partnership liability for an act inappropriate for
30 winding up the partnership is liable to the partnership for any
damage arising from the liability. Unlike current law, RUPA
32 draws no distinction as to the cause of dissolution.

34 RUPA addresses the settlement of accounts and contributions
among partners. First, the partnership assets are used to pay
36 partnership creditors. Second, after the payment of creditors,
any surplus is paid in cash to the partners to settle the
38 partners' accounts. If a partner has a negative account, which
occurs when the partner's obligations to the partnership are in
40 excess of the amount owed from the partnership, then the partner
must contribute the negative amount to the partnership. RUPA
42 contains special provisions for coverage of obligations of an
insolvent partner by solvent partners, the rights of the estate
44 of a deceased partner and the rights of a creditor of a partner.
Under current Maine law, similar rules apply to the settlement of
46 partnership assets upon dissolution. Current Maine law
distinguishes between obligations to creditors and obligations to
48 partners. The proposed Maine laws do not make this distinction
and treat all creditors of the partnership equally. Moreover,

2 current Maine law distinguishes between amounts owed to partners
in respect of capital and amounts owed in respect of profit. The
proposed Maine laws do not make this distinction.

4
6 Under current Maine law, when a limited liability
partnership fails to file the annual report, appoint a registered
agent or make other required filings, the partners' limited
8 liability is revoked. RUPA provides that the effect of such
failures is the suspension of the limited liability partnership's
10 authority to do business.

12 Under RUPA, the vote for registration of the partnership as
a limited liability partnership generally must be approved by
14 vote required to amend the partnership agreement. Current law
includes no explicit provisions.

16 Under RUPA, a foreign limited liability partnership that
18 fails to qualify to do business in Maine may not maintain action
in Maine, and the Secretary of State is automatically appointed
20 as agent for service of process. Under current law, the failure
results in no limited liability for partners.

22 Under current Maine law, if the limited partnership fails to
24 file the annual report or make other filings, the limited
liability of the partners is revoked. Under RUPA, the same
26 failure results in the revocation of authority to do business in
Maine.

28 RUPA explicitly provides that the Attorney General may seek
30 an injunction in any county where the limited liability
partnership has done business when a foreign limited liability
32 partnership has not been authorized to do business in this State.

34 Under current Maine law, a partner in limited liability
partnership is not liable for liability "arising from omissions,
36 negligence, wrongful acts, misconduct or malpractice" of another
partner or agent of partnership. The law does not prevent
38 liability for purely contractual obligations of partnership.
RUPA provides extended liability protection for partners in the
40 limited liability partnership for vicarious liability for
partnership obligations, similar to limitations on liability of
42 corporate shareholders. This bill retains the specific liability
standards for partners in professional limited liability
44 partnerships set forth in the Maine Professional Services
Corporation Act.

46 RUPA explicitly sets forth procedures for conversion of a
48 general partnership to a limited partnership. Following
conversion, a partner who has become a limited partner as a
50 result of the conversion remains liable as a general partner for

2 preconversion obligations and is liable as a general partner for
3 partnership obligations incurred within 90 days after the
4 conversion, if the transaction counterparty in question believed
5 the limited partner to be a general partner. Current law does
6 not address this circumstance.

7
8 The conversion of a limited partnership to a general
9 partnership is unambiguously permitted under RUPA, with clear
10 procedures for conversion. Regardless of the provisions of the
11 limited partnership agreement, a conversion to a general
12 partnership must be approved by all partners. Current Maine law
13 does not address conversion of a limited partnership to a general
14 partnership in the general partnership statute, and it is unclear
15 if it is permitted under the Maine Revised Uniform Limited
16 Partnership Act, due to lack of provisions regarding conversion
17 in general partnership statute.

18 RUPA provides explicit guidance for merger of a general
19 partnership with another general partnership or a limited
20 partnership. RUPA also provides explicit guidance with regard to
21 effects of merger. Current Maine law does not address this issue.
22

23 Under RUPA, with respect to duties owed to the partnership
24 or other partners only, a partner will not be held liable for
25 that partner's good faith reliance on the terms of the
26 partnership agreement, if any. Current law contains no explicit
27 provisions.
28

29 The following are deviations from the Revised Uniform
30 Partnership Act of 1997 contained in this bill.

31
32 1. The definition of limited liability partnership
33 references the Maine Limited Liability Partnership Act, not
34 Article 10 of RUPA.

35
36 2. With regard to a partner's liability, new provisions are
37 added: to clarify that a partner in a limited liability
38 partnership is liable for the partner's own acts, or for acts of
39 any person under that partner's direct supervision and control;
40 to include particular Maine liability provisions applicable to
41 professional limited liability partnerships; and to clarify that
42 a partner in a limited liability partnership is not a proper
43 party to a suit against the partnership as an entity.
44

45
46 3. The information to be filed with the Secretary of State
47 by a surviving party to a merger of partnerships is slightly
48 revised.

49
50 4. The provisions concerning the statement of merger are
51 amended: to mandate that any survivor of a merger with a Maine

2 partnership that is itself a foreign partnership file a consent
to service of process with the Secretary of State's office for
4 obligations arising; and to provide that failure to file a copy
of a statement of merger with the registrar of deeds will not
6 affect the surviving entity's title to real property.

8 5. Articles 10 and 11 of the RUPA are omitted in deference
to the more detailed provisions in the Maine Limited Liability
Partnership Act.

10