

Dissociation & Dissolution - RUPA

- UPA v. RUPA: Similar rules/results, except that RUPA leans toward continuation of the partnership.
 - Also: “RUPA, unlike the UPA, allows partners reasonable compensation for post-dissolution work in completing unfinished business” ~ In re Brobeck, Phleger & Harrison LLP, 408 B.R. 318, 332
- Dissociation
 - Events causing dissociation
 - Partnership receives notice of partner’s intent to withdraw
 - Any event provided in the partnership agreement
 - Expulsion: Pursuant to partnership agreement, unanimous vote (for allowable reasons), court order.
 - Events making it impracticable to associate with one or more partner(s)

Dissociation & Dissolution - RUPA

- Dissociation
 - Wrongful dissociation
 - Breach of Partnership Agreement
 - In a partnership for a term:
 - Partner withdraws before the expiration of the term, except as allowed by RUPA 601(b)(6 through 10)
 - Judicial expulsion
 - Dissociation due to bankruptcy
 - A partner who is not an individual – dissociation due to deliberate dissociation or termination

Dissociation & Dissolution - RUPA

- Dissociation
 - Consequences of Wrongful dissociation
 - Partner liability
 - Potential dissolution
 - Limitation on payout
 - No right to participate in winding up
 - Partnership Agreement
 - Power to limit or expand causes of dissociation
 - Cannot limit partner's power to dissociate
 - Cannot limit court's right to expel
 - The power to alter the default rules creates a presumption of continuation

Dissociation & Dissolution - RUPA

- Dissociation not Resulting in Dissolution
 - Foundational Matters
 - Partnership continues
 - Dissociated partner:
 - No right to manage
 - Partnership must purchase partner interest
 - Partnership must indemnify
 - Lingering power and liability, except LLP
 - Statement of Dissociation:
 - Functions as limitation of authority
 - Provides constructive notice – 90 Days after filing
 - File with Sec. of State and office for transfer of real property

Dissociation & Dissolution - RUPA

- Dissociated Partner's Power to Bind
 - Apparent power continues and acts bind if:
 - Prior to dissociation act would have bound partnership, and
 - At time of transaction:
 - Less than 2 years since dissociation
 - No notice and reasonable belief
 - Less than 90 days since filing statement of dissociation
 - If act transfers real property, statement of dissociation was not filed in real property office.
 - Dissociated partner's liability for acts

Dissociation & Dissolution - RUPA

- Dissociated partner's liability for partnership obligations.
 - Obligations prior to dissociation – partner is liable unless material change by creditor
 - Obligations after dissociation – where dissociation does not result in dissolution, the partner is liable if:
 - Partnership is not an LLP
 - Less than 2 years since dissociation
 - No notice and reasonable belief
 - Less than 90 days since filing statement of dissociation
 - If act transfers real property, statement of dissociation was not filed in real property office.

Dissociation & Dissolution - RUPA

- Buyout of dissociated partner
 - No dissolution – buyout is mandatory
 - Buyout price – calculate value of partnership using higher of liquidation vs. sale of business and subtract any damages for wrongful dissociation plus statutory interest.
 - Timing of buyout:
 - Partnership for a term – payment may be deferred to end of term
 - Otherwise buyout must be within 120 days
 - Buyout rules may be changed by agreement.

Dissociation & Dissolution - RUPA

- Dissociation Causing Dissolution:
 - Rules are essentially the same as UPA
 - Partner's power to bind
 - Without a filed statement of dissolution the act is binding if:
 - It is appropriate for winding up, or
 - Would have bound partnership before dissolution and no third party notice
 - Filed statement of dissolution
 - Immediately restricts power
 - Effective after 90 days

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- Other Causes of Dissolution:
 - Expiration of term
 - Unanimous vote prior to term
 - Pursuant to partnership agreement
 - Judicial determination
 - Application by partner
 - Application by transferee
- Merger & Conversion
 - Merger: No under UPA, RUPA allows a general partnership to merge with one or more general or limited partnerships
 - Conversion: No under UPA, RUPA allows general to convert to limited and limited to convert to general

Dissociation & Dissolution - RUPA

Commenting on the differences between the UPA and RUPA, the 9th Circuit noted that RUPA made four important changes:

First, the statute now states that the only fiduciary duties owed by a partner to other partners are the duties of loyalty and care . . .

Second, it defines the duty of loyalty to include "refrain[ing] from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership."

Third, the statute clarifies that a partner does not violate a fiduciary duty merely because he furthers his own interest and that he may transact business with the partnership.

Fourth, it permits the percentage of partners specified in the partnership agreement to authorize transactions that would otherwise violate the duty of loyalty.

J&J Celcom v. AT&T wireless Services, Inc., 215 Fed.Appx. 652