



WHY YOUR STATE SHOULD ADOPT THE UNIFORM PARTNERSHIP ACT (UPA) (1997) (LAST AMENDED 2013)

The original Uniform Partnership Act was drafted in 1914 and enacted in every state except Louisiana. In 1997 it was completely revised. This revised version of the act is frequently referred to as the Revised Uniform Partnership Act. UPA (1997) was enacted in approximately three-fourths of the states. The 2011 and 2013 amendments to UPA (1997), approved as part of the Harmonization of Business Entity Acts project, expand the comprehensiveness of the act significantly, incorporate statutory and case law developments since its initial promulgation, and harmonize the language in the provisions that are similar to the other uniform and model unincorporated entity acts. It is the foundational unincorporated business entity statute. Every state should enact it. States that enacted UPA (1997) before the Harmonization project amendments should consider adopting UPA (1997), either as a stand-alone act or as Article 3 of the Uniform Business Organizations Code.

The following list describes the more significant changes to UPA (1997), as amended:

- **Flexible Structure.** UPA (1997) is a default statute for matters not covered by the partnership agreement. In general, the partnership agreement expressly controls over the statutory language in the act so that partners may tailor their management structure to meet their business needs.
- **Cohesive Entity.** UPA (1997) defines a partnership explicitly as an entity, not an aggregate. As an entity, the partnership is treated as a distinct body placed between the partners and the partnership assets. A partnership may sue and be sued in the partnership name; property may be acquired and conveyed in the partnership name.
- **Partner's Interest.** A partner's interest in the partnership is viewed as two separate group of rights and liabilities associated with participation in a partnership: (1) distribution rights and (2) governance rights. Under the default rules in the act distribution rights are transferable but the governance rights are not transferable. The non-transferability of governance rights, along with the default rule that admission of new partners requires unanimous consent of all the partners, implement the "pick your partner" principle, which is a core concept of partnership law. No partner has an interest in specific property of the partnership. Creditors of a partner may attach the right of a partner to distributions from the partnership by means of a charging order, but may not attach specific partnership property or participate or interfere with the management of the partnership or demand inspection of the partnership's books and records.
- **Partner Obligations to Each Other.** UPA (1997) defines the partners' duties of care and loyalty, their information rights, and the obligation of good faith and fair dealing. These are basic standards of conduct that a partner must meet. There is specific statutory authority to modify, and in many cases to eliminate, these duties and other duties in the partnership

agreement; the partnership agreement, however, cannot completely abolish all of these standards.

- **Reorganization Transactions.** UPA (1997) contains comprehensive provisions authorizing general partnerships to merge, have interest exchanges, or convert into any other type of entity and also authorizes other types of entities to merge, have interest exchanges with and convert into a general partnership. In addition, the act authorizes general partnerships to domesticate in another state and also authorizes a foreign general partnership to domesticate in the RUPA state.
- **Limited Liability Partnerships.** UPA (1997) provides limited liability protection for general partners of a limited liability partnership. The only requirement to create a limited liability partnership is to file a registration statement after the partnership has been formed in the Office of the Secretary of State or the equivalent filing office in the state. However, individual partners like shareholders in a corporation, are personally liable for any tort they may have committed, or for any debts, liabilities or other obligations of the partnership they have personally guaranteed.
- **Continuity of Life.** UPA (1997) changes the rule on dissolution of a partnership. Under the act, partnerships no longer dissolve every time a partner leaves, as was the case under UPA (1914). In most cases, a partnership may buy out the interest of a partner who leaves without dissolving the partnership. A term partnership will not dissolve so long as at least one-half of the partners choose to remain. When a partner's dissociation precipitates dissolution, partners are allowed to vote subsequently to continue the partnership. If the partnership is continued, it is considered to be the same entity as it was before the dissociation.

For more information on UPA, please contact Libby Snyder at (312) 450-6619 or by email at lsnyder@uniformlaws.org.