

ULC Unincorporated Organization Acts Committee
Statutory Background to JEB Report Issue #2
Rescinding Dissolution of a General Partnership
dissolution and recission provisions – UPA, ULPA, ULLCA (2013)
definition of partner – UPA (2103)

The statutory sections below are those directly relevant to JEB Report Issue #2. Highlighted passages direct the reader's attention to pivotal wording.

UPA 2013

SECTION 102. DEFINITIONS

(10) “Partner” means a person that:

(A) has become a partner in a partnership under Section 402 or was a partner in a partnership when the partnership became subject to this [act] under Section 110; and

(B) **has not dissociated as a partner under Section 601.**

SECTION 801. EVENTS CAUSING DISSOLUTION. A partnership is dissolved, and its business must be wound up, upon the occurrence of any of the following:

(1) **in a partnership at will, the partnership knows or has notice of a person's express will to withdraw as a partner,** other than a partner that has dissociated under Section 601(2) through (10), but, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on the later date;

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

(A) within 90 days **after a person's dissociation by death or otherwise under Section 601(6) through (10) or wrongful dissociation under Section 602(b), the affirmative vote or consent of at least half of the remaining partners** to wind up the partnership business, for

which purpose a person's rightful dissociation pursuant to Section 602(b)(2)(A) constitutes that partner's consent to wind up the partnership business;....

SECTION 803. RESCINDING DISSOLUTION.

[possible fix indicated by strike and score]

(b) Rescinding dissolution under this section requires:

(1) the affirmative vote or consent of each partner; ~~and~~

(2) if the dissolution results from a person's dissociation under Section

801(1), the consent of the person; and

(3) if the partnership has delivered to the [Secretary of State] for filing a statement of dissolution and:

(A) the statement has not become effective, delivery to the [Secretary of State] for filing of a statement of withdrawal under Section 115 applicable to the statement of dissolution; or

(B) the statement of dissolution has become effective, delivery to the [Secretary of State] for filing of a statement of rescission stating the name of the partnership and that dissolution has been rescinded under this section.

ULPA (2013)

SECTION 801. EVENTS CAUSING DISSOLUTION.

(a) A limited partnership is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

- (1) an event or circumstance that the partnership agreement states causes dissolution;
- (2) the affirmative vote or consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective;
- (3) after the dissociation of a person as a general partner:
 - (A) if the partnership has at least one remaining general partner,¹ the affirmative vote or consent to dissolve the partnership not later than 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the vote or consent is to be effective;....

SECTION 803. RESCINDING DISSOLUTION.

(a) A limited partnership may rescind its dissolution, unless a statement of termination applicable to the partnership has become effective, [the appropriate court] has entered an order under Section 801(a)(6) dissolving the partnership, or the [Secretary of State] has dissolved the partnership under Section 811.

(b) Rescinding dissolution under this section requires:

- (1) the affirmative vote or consent of each partner;....

¹ An additional issue: this language presupposes that at least one remaining general partner will agree to carry on; should this presupposition become explicit as a precondition?

ULLCA (2013)

SECTION 701. EVENTS CAUSING DISSOLUTION.

(a) A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the affirmative vote or consent of all the members;

(3) the passage of 90 consecutive days during which the company has no members unless before the end of the period:

(A) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

(B) at least one person becomes a member in accordance with the consent;

(4) on application by a member, the entry by [the appropriate court] of an order dissolving the company on the grounds that:

(A) the conduct of all or substantially all the company's activities and affairs is unlawful;

(B) it is not reasonably practicable to carry on the company's activities and affairs in conformity with the certificate of organization and the operating agreement; or

(C) the managers or those members in control of the company:

(i) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(ii) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant; or

(5) the signing and filing of a statement of administrative dissolution by the [Secretary of State] under Section 708.

SECTION 703. RESCINDING DISSOLUTION.

(a) A limited liability company may rescind its dissolution, unless a statement of termination applicable to the company has become effective, [the appropriate court] has entered an order under Section 701(a)(4) dissolving the company, or the [Secretary of State] has dissolved the company under Section 708.

(b) Rescinding dissolution under this section requires:

(1) the affirmative vote or consent of each member;