

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of State] for filing of a statement of rescission stating the name of the partnership and that dissolution has been rescinded under this section.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;