



THE UNIFORM PARTNERSHIP ACT (UPA) (1997) (LAST AMENDED 2013)

- A Summary -

The first Uniform Partnership Act was promulgated by the Uniform Law Commission in 1914 and was enacted in every state except Louisiana. The current Uniform Partnership Act was approved in 1997, also known as the Revised Uniform Partnership Act, replaces the 1914 act. UPA (1997) has been enacted by approximately three-fourths of the states. It has been amended several times since its original promulgation, most recently in 2011 and 2013 as part of the Harmonization of Business Entity Acts project. The Harmonization project amends harmonize the language in UPA (1997) with language of similar provisions in the other uniform unincorporated entity acts and made additional updates and harmonization changes.

A general partnership is the default form of a for-profit business organization. It is formed when two or more persons associate for the purpose of engaging in a business for profit and no other form of business organization is chosen by the associates. It exists even if the associates do not have any written agreement and they may not even be aware that they have formed a partnership. UPA (1997), like UPA (1914), contains basic default rules that apply to determine the partners *inter se* relationship and duties. Most of these default rules, for example, the duties of the partners to the partnership and to each other, equal rights to manage the partnership and equal rights to distribution, can be modified by the partners, either in a written partnership agreement or by their actions or course of performance.

UPA (1997) continues the traditional rule that general partners are jointly and severally liable for the obligations of the partnership, but authorizes a general partnership to elect to become a limited liability partnership (LLP) by filing a notice of election in the office of the Secretary of State or the equivalent state filing office. In an LLP, all the partners have the same limited liability protection as shareholders of a corporation and therefore are not vicariously liable for the obligations of the partnership although they are liable for their own malfeasance.

A major change made by UPA (1997) is a shift from a basic aggregate structure to a basic entity structure. In fact Section 201(a) states: "A partnership is an entity distinct from its partners in UPA (1914)." Under UPA (1997) it is clear that a partnership can own and convey property and sue and be sued in its own name.

Under UPA (1914), anytime a partner dissociated, the partnership was dissolved even if the partnership continued in business. The continued business was legally a new partnership. Under UPA (1997), a partner's dissociation does not automatically cause a dissolution and liquidation; and if the partnership is continued it is considered to be the same entity as it was before dissociation. This provides basic stability and continuity of existence and is another consequence of treating a general partnership as a legal entity rather than as an aggregate of individuals.

- **Article 1** contains general provisions including definitions, filing provisions for LLPs, the scope and function of the partnership agreement and the limitations on modifying the *inter se* partnership default rules.
- **Article 2** makes it clear that a general partnership is a legal entity and sets out the rules governing the formation of a partnership, and the status of partnership property.
- **Article 3** carries forward the UPA (1914) traditional rule that general partner is the agent of the partnership for purposes of acts in the ordinary course of business, contains provisions for transfer of partnership property, statements of authority and denial of authority, liability of the partners and the partnership for debts, liabilities, and obligations, and actions by and against the partnership.
- **Article 4** sets forth the relations of partners to each other and to the partnership, including management and distribution rights, information rights, the duties of the loyalty, care and good faith and fair dealing, and other duties of the partners; and the rules governing actions by partners and the partnership to enforce the duties owed to the partnership.
- **Article 5** implements the "pick your partners" principle, which is a core principle of unincorporated business organizations, and delimits the rights of transferees of members' distributional interests and creditors of members seeking to enforce or foreclose on a charging order.
- **Article 6** sets forth the events which cause a partner to become dissociated from the partnership.
- **Article 7** contains provisions for purchasing a dissociated partner's interest in a partnership that is not dissolved at the time of dissociation.
- **Article 8** deals with issues involved in dissolving and winding up a general partnership.
- **Article 9** contains the principal provisions applicable to LLPs, including permitted names, registered agents, initial and periodic filings with the Secretary of State and administrative dissolutions.
- **Article 10** authorizes mergers, interest exchanges, conversions and domestication transactions involving general partnerships.
- **Article 11** deals with foreign LLPs conducting activities in the enacting state.
- **Article 12** contains miscellaneous provisions such as the effective date of the act.

UPA (1997) (Last Amended 2013) is Article 3 of the Uniform Business Organization Code.

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