

[ARTICLE] 8
DISSOLUTION

SECTION 801. NONJUDICIAL DISSOLUTION. Except as otherwise provided in Section 802, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

(1) the happening of an event specified in the partnership agreement;

(2) the 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 consent is to be effective;

(3) after the dissociation of a person as a general partner:

(A) if the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or

(B) if the limited partnership does not have a remaining general partner, the passage of 90 days after the dissociation, unless before the end of the period:

(i) consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(ii) at least one person is admitted as a general partner in accordance with the consent;

(4) the passage of 90 days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner; or

(5) the signing and filing of a declaration of dissolution by the [Secretary of State] under Section 809(c).

Comment

This Act does not require that any of the consents referred to in this section be given in the form of a signed record. The partnership agreement has the power to impose that requirement. See Comment to Section 110.

In several provisions, this section provides for consent in terms of rights to receive distributions. Distribution rights of non-partner transferees are not relevant. Mere transferees have no consent rights, and their distribution rights are not counted in determining whether majority consent has been obtained.

Paragraph (1) – There is no requirement that the relevant provision of the partnership agreement be made in a record, unless the partnership agreement creates that requirement. However, if the relevant provision is not “contained in a partnership agreement made in a record,” Section 111(9)(D) includes among the limited partnership's required information “a record stating . . . any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.”

Paragraph (2) – Rights to receive distributions owned by a person that is both a general and a limited partner figure into the limited partner determination only to the extent those rights are owned in the person's capacity as a limited partner. See Section 111(9)(C).

Example: XYZ is a limited partnership with three general partners, each of whom is also a limited partner, and 5 other limited partners. Rights to receive distributions are allocated as follows:

Partner #1 as general partner – 3%
Partner #2 as general partner – 2%
Partner #3 as general partner – 1%
Partner #1 as limited partner – 7%
Partner #2 as limited partner – 3%
Partner #3 as limited partner – 4%
Partner #4 as limited partner – 5%

Partner #5 as limited partner – 5%
Partner #6 as limited partner – 5%
Partner #7 as limited partner – 5%
Partner #8 as limited partner – 5%
Several non-partner transferees, in the aggregate – 55%

Distribution rights owned by persons as limited partners amount to 39% of total distribution rights. A majority is therefore anything greater than 19.5%. If only Partners 1,2, 3 and 4 consent to dissolve, the limited partnership is not dissolved. Together these partners own as limited partners 19% of the distribution rights owned by persons as limited partners – just short of the necessary majority. For purposes of this calculation, distribution rights owned by non-partner transferees are irrelevant. So, too, are distribution rights owned by persons as general partners. (However, dissolution under this provision requires “the consent of all general partners.”)

Paragraph (3)(A) – Unlike paragraph (2), this paragraph makes no distinction between distribution rights owned by persons as general partners and distribution rights owned by persons as limited partners. Distribution rights owned by non-partner transferees are irrelevant.

SECTION 802. JUDICIAL DISSOLUTION. On application by a partner the [appropriate court] may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

Comment

Source – RULPA Section 802.

Section 110(b)(9) limits the power of the partnership agreement with regard to this section.

SECTION 803. WINDING UP.

(a) A limited partnership continues after dissolution only for the purpose of winding up its activities.

(b) In winding up its activities, the limited partnership:

(1) may amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in Section 203, and perform other necessary acts; and

(2) shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

(c) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a general partner under Section 804; and

(2) shall promptly amend the certificate of limited partnership to state:

(A) that the limited partnership does not have a general partner;

(B) the name of the person that has been appointed to wind up the limited partnership; and

(C) the street and mailing address of the person.

(d) On the application of any partner, the [appropriate court] may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:

(1) a limited partnership does not have a general partner and within a reasonable time

following the dissolution no person has been appointed pursuant to subsection (c); or

(2) the applicant establishes other good cause.

Comment

Source – RUPA Sections 802 and 803.

Subsection (b)(2) – A limited partnership may satisfy its duty to “discharge” a liability either by paying or by making an alternative arrangement satisfactory to the creditor.

Subsection (c) – The method for determining majority consent is analogous to the method applicable under Section 801(2). See the Comment to that paragraph.

A person appointed under this subsection is **not** a general partner and therefore is not subject to Section 408.

SECTION 804. POWER OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO BIND PARTNERSHIP AFTER DISSOLUTION.

(a) A limited partnership is bound by a general partner’s act after dissolution which:

(1) is appropriate for winding up the limited partnership’s activities; or

(2) would have bound the limited partnership under Section 402 before dissolution, if,

at the time the other party enters into the transaction, the other party does not have notice of the dissolution.

(b) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(1) at the time the other party enters into the transaction:

(A) less than two years has passed since the dissociation; and

(B) the other party does not have notice of the dissociation and reasonably

believes that the person is a general partner; and