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# 18

## Partnership Dissolution

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### A. [18.1] Cause of Action

An action by a partner, partners, or a transferee of a partner's transferable interest to change the relation of the partners from being associated in the carrying on of the business of the partnership to continuing the partnership solely to wind up and complete the partnership affairs.

### B. [18.2] What Law Controls

On July 25, 2002, Illinois adopted the Uniform Partnership Act (1997) (UPA (1997)), which is codified at 805 ILCS 206/100, *et seq.*, and generally became effective on January 1, 2003. For the applicability of the Act to specific partnerships, see §18.9 below.

The UPA (1997) represents the first significant revision of Illinois partnership law in over 80 years. Every aspect of the law, including fiduciary duties, authority, partner liability, withdrawal and dissolution, and rights and obligations, has been modified. The primary articles addressing dissolution of a partnership are Article 6 covering "Partner's Dissociation," Article 7 covering "Partner's Dissociation When Business Not Wound Up," and Article 8 covering "Winding Up Partnership Business."

When a partner's dissociation results in a dissolution and winding up of the partnership business, Article 8 of the UPA (1997) applies; otherwise, Article 7 applies. 805 ILCS 206/603. Article 7 deals with situations in which a partner's dissociation does not result in dissolution of the partnership business, but rather triggers a purchase of the dissociated partner's interest pursuant to §701 of the UPA (1997). Accordingly, this chapter focuses on Article 8 of the UPA (1997), a dissociation that results in a dissolution.

A partnership is dissolved, and its business must be wound up, only upon the occurrence of one of the events listed in §801 of the UPA (1997). These events include notice from a partner of that partner's express will to withdraw from a partnership at will, the express will of all the partners to wind up the partnership's business, the expiration of a specified term, or the completion of a specified undertaking.

A partnership is also dissolved upon the occurrence of any event identified in a written partnership agreement as a triggering event for dissolution and winding up. 805 ILCS 206/801(3).

Section 801(5) provides that a partnership is dissolved “on application by a partner” resulting in a judicial determination that

1. the economic purpose of the partnership is likely to be unreasonably frustrated;
2. another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or
3. it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

Section 801(6) also provides for dissolution when, on application by a transferee of a partner’s transferable interest, there is a judicial determination that it is equitable to wind up the partnership business under the circumstances enumerated in the UPA (1997) (*i.e.*, upon expiration of a fixed term or at any time in a partnership at will).

### **C. [18.3] Elements**

Although there are no reported cases under the Uniform Partnership Act (1997), the author of this chapter does not believe the elements of a cause of action for dissolution of a partnership have changed. These elements include the following:

1. The parties entered into and formed a partnership for the purpose of engaging in a business.
2. Since formation, the parties, as partners, have carried on the business.
3. The dissolution of the partnership is authorized and/or required
  - a. by termination of the definite term or completion of the particular undertaking specified in the partnership agreement;
  - b. by the express will of any partner, other than a partner who is dissociated under the UPA (1997), to withdraw as a partner when there is no definite term or particular undertaking specified;
  - c. by the express will of all the partners who have not assigned or otherwise forfeited their interests;
  - d. by any event agreed to in the partnership agreement;
  - e. by any event that makes it unlawful for the business of the partnership to be carried on;

- f. by the death of any partner;
- g. by the bankruptcy of any partner or the partnership; and/or
- h. by order of the court.

#### **D. [18.4] Relevant Standard Jury Instructions**

There are no standard jury instructions.

#### **E. [18.5] Statute of Limitations**

The statute of limitations pursuant to 735 ILCS 5/13-205 for this “civil action[ ] not otherwise provided for” is five years after the cause of action accrued.

#### **F. [18.6] Parties**

**Proper plaintiff.** A cause of action may be brought by any partner who has not assigned or otherwise forfeited his or her partnership interest or the transferee of a partner’s transferable interest.

**Proper defendant.** A proper defendant to such a cause of action is the remaining partner(s) of the partnership.

#### **G. [18.7] Special Considerations**

Upon dissolution, the partnership is not terminated but continues only for the purpose of winding up the partnership’s affairs and business. The termination of the partnership occurs when the winding up of its business is completed.

The statutory enumeration of the causes of dissolution precludes dissolution for any other cause.

Generally, a provision in a partnership agreement governing dissolution of the partnership takes precedence over statutory provisions.

If the partnership agreement specifies a definite term, dissolution before the expiration of its term breaches the partnership agreement, and the breaching partner may be liable to the other partner(s) for damages for breach of contract.

Dissolution generally terminates all authority of any partner to act for the partnership or to incur new obligations on behalf of the partnership except if appropriate for winding up the partnership’s business. However, any partner who has not wrongfully dissociated generally may participate in winding up the partnership’s business, provided however, upon application of a partner, the court, for good cause, may order judicial supervision of the winding up.

When a partnership is dissolved, the fiduciary relationship between the parties is terminated except with respect to winding up and accounting.

In order to relieve partners of debts incurred after dissolution, notice of the dissolution should be given to persons who have dealt with the partnership prior to the dissolution.

In addition, a statement of dissolution may be filed under the UPA (1997). 805 ILCS 206/805. The effect of filing a statement of dissolution, which may be filed by any partner who has not wrongfully dissociated, is to cancel a statement of partnership authority. It is treated as a limitation on authority with respect to transfers of real property. For purposes of determining a partner's power to act as an agent and bind the partnership, a third party is deemed to have notice of the dissolution and the limitation on the partner's authority 90 days after a statement of dissolution is filed.

#### **H. [18.8] Remedies — Special Issues**

Additional remedies that a court may order upon dissolution include, without limitation,

1. that the affairs of the partnership, including collection and disposal of assets, identification and payment of all just debts, preparation of an accounting, and disbursement of any surplus, be wound up and completed;
2. that the affairs of the partnership may be wound up and completed by a partner, partners, or a receiver appointed by the court;
3. that an account be taken of all partnership transactions; and
4. that a partner, or partners, be required to pay the partnership or remaining partner(s) anything due from an accounting or as a result of damages caused by the act(s) of the breaching partner(s).

#### **I. [18.9] Applicability of the UPA (1997)**

Article 12 and several other provisions in the UPA (1997) address the Act's applicability. Prior January 1, 2008, the UPA (1997) governed only partnerships formed on or after January 1, 2003. 805 ILCS 206/1206(a). For purposes of §1206(a), continuation of the business of an Illinois partnership after a dissolution under §33 of the former Uniform Partnership Act was not the formation of a new partnership.

Partnerships formed before January 1, 2003, could elect to be governed by the UPA (1997). 805 ILCS 206/1206(a)(2), 206/1206(c). The election was made in the manner provided in the partnership agreement or by law for amending the agreement. 805 ILCS 206/1206(c).

On and after January 1, 2008, the UPA (1997) governs all partnerships. 805 ILCS 206/1206(b).

**J. [18.10] Checklist for Complaint**

1. Formation or organization of a partnership.
2. Date and place of formation or organization.
3. How partnership was formed or organized (*i.e.*, by written agreement or orally).
4. Names of all partners and the partnership.
5. Statement that plaintiff(s) and defendant(s) are partners in the partnership.
6. Statement that partnership was formed for purpose of engaging in defined business, and description of that business.
7. Substance of the provisions of the partnership agreement that give rise to the cause of action for dissolution or, alternatively, the other basis for seeking dissolution, whether by statute or other act.
8. Event or breach of the provisions that gives rise to the cause of action for dissolution.
9. Statement that assets of the partnership are of greater value together and no equitable division of the assets can be made without loss and prejudice to the parties.
10. Damages, if any, sustained.
11. Prayer for relief (*i.e.*, dissolution, accounting, appointment of a receiver or plaintiff to oversee dissolution, distribution of surplus).

**K. [18.11] Affirmative Defenses Specific to Cause of Action**

1. Plaintiff has assigned or otherwise forfeited his or her rights as a partner.
2. Waiver.
3. Estoppel.
4. Breach of partnership agreement by plaintiff.

**L. [18.12] Related Actions**

1. Accounting after dissolution.
2. Breach of partnership agreement or dissolution agreement.

3. Breach of fiduciary duty of one partner to another.
4. Actions by third parties to enforce liability on a partnership obligation.

**M. [18.13] Sample Form**

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