

THE C & D NEWSLETTER



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NEW GENERAL PARTNERSHIP ACT

The Revised Uniform Partnership Act ("RUPA"), signed into law by Governor Wilson on September 27, 1996, became effective on January 1, 1997. RUPA replaces the Uniform Partnership Act, which has governed California partnerships since 1914. RUPA governs all general partnerships formed after December 31, 1996, and will govern all existing general partnerships effective January 1, 1999. This Newsletter will discuss some of the more important changes to existing partnership law made by RUPA. Under RUPA, the following changes have been made:

The partnership is treated as a separate entity, rather than an aggregation of its owners. The partnership property is owned by the partnership itself, rather than the individual partners as co-owners.

A partner may file a Statement of Partnership Authority with the California Secretary of State. The Statement of Authority can specify the scope of authority of the partners to enter into transactions on behalf of the partnership. This allows third parties dealing with the partnership to determine whether a partner is authorized to take action on behalf of the partnership.

A partnership may sue and be sued under its own name. Except under limited circumstances, a judgment against the partnership cannot be satisfied from the assets of an individual partner unless there is also a judgment against the individual partner.

RUPA provides that a partner owes the partnership and the other partners the duty of loyalty and the duty of care. The duty of loyalty includes the duty to account to the partnership for any profits or benefit obtained by the partner in the conduct of partnership business or the use of partnership property, and the duty to refrain from competing with the partnership; the duty of care includes the duty to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct or knowing violation of the law.

Under the old partnership act, a partner's recourse against other partners was limited to bringing an action for an accounting which would result in dissolution of the partnership. Under RUPA, a partner can bring an action against a partner for a breach of the partnership agreement or a violation of fiduciary duty without having to bring an action for an accounting.

Under the old partnership act, the death or withdrawal of a partner caused a dissolution of the partnership. Under RUPA, a partner's death, withdrawal, expulsion, retirement, or bankruptcy results in the partner being "dissociated" from the partnership. Unless a partner's dissociation occurs within 90 days prior to a dissolution of the partnership, the partnership must purchase the interest of the dissociated partner. The purchase price is equal to the amount the dissociated partner would have received if the partnership's assets were sold on the date of dissociation for the greater of the liquidation value or the value of the sale of the business as a going concern without the benefit of the dissociated partner's services. Damages for wrongful dissociation and for other amounts owed by the dissociated partner are deducted from the purchase price.

RUPA provides a mechanism for converting a general partnership into a limited partnership or a limited liability company. RUPA also provides for the merger of one or more partnerships into one partnership, limited liability company or corporation.

The provisions of RUPA dealing with relations between the partners are "default" provisions; which means that they may be changed by the agreement of the partners and only apply in the absence of an agreement to the contrary.

RUPA permits existing partnerships to elect to be governed by RUPA prior to January 1, 1999, the date on which all general partnerships will automatically be governed by RUPA. Thus, all general partnerships need to review their partnership agreement, in light of the benefits afforded by RUPA, to determine if the partnership agreement should

be amended to provide that the partnership is to be governed by RUPA at this time.

This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.