

2009

## Ohio's New Partnership Law

Jeanne M. Rickert

Follow this and additional works at: <https://engagedscholarship.csuohio.edu/clevstlrev>



Part of the [Business Organizations Law Commons](#)

[How does access to this work benefit you? Let us know!](#)

---

### Recommended Citation

Jeanne M. Rickert, *Ohio's New Partnership Law*, 57 Clev. St. L. Rev. 783 (2009)  
*available at* <https://engagedscholarship.csuohio.edu/clevstlrev/vol57/iss4/5>

This Article is brought to you for free and open access by the Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact [library.es@csuohio.edu](mailto:library.es@csuohio.edu).

## OHIO'S NEW PARTNERSHIP LAW

JEANNE M. RICKERT\*

I. INTRODUCTION .....	783
II. PARTNERSHIP AS AN ENTITY .....	785
III. FIDUCIARY DUTIES .....	789
IV. EXITING THE PARTNERSHIP: DISSOCIATION .....	795
V. CHANGES IN TERMINOLOGY .....	799
VI. FILING REQUIREMENTS AND STATEMENTS OF AUTHORITY .....	801
VII. LIMITED LIABILITY PARTNERSHIPS .....	804
VIII. OTHER RUPA VARIATIONS IN OHIO .....	805
IX. CONCLUSION .....	808

### I. INTRODUCTION

The enactment of new Chapter 1776 in 2008 modernized Ohio's partnership law.<sup>1</sup> The "old" law, Chapter 1775, was based on the Uniform Partnership Act that dates from 1914. The new Ohio statute is substantially the same in most respects as the Revised Uniform Partnership Act (1997) ("RUPA"). One of the major RUPA changes, treating the partnership as an entity (rather than an aggregate of the partners) is not new in Ohio. Ohio had already moved to treating a partnership as an entity. By adopting RUPA, Ohio adopts the entity theory of partnership more completely. Perhaps the most significant change of the new Ohio statute is to follow RUPA and delineate mandatory, exclusive fiduciary duties for partners. Another RUPA innovation included in Chapter 1776 are the provisions related to a partner's exit from the partnership, called "dissociation." A partner's exit no longer creates an automatic dissolution. Chapter 1776 also incorporates several innovations that are similar to changes Delaware made when it revised its partnership law to adopt RUPA. Other changes to Chapter 1776 are unique to Ohio.<sup>2</sup>

Key fundamentals of partnership law under Chapter 1775 remain the same under new Chapter 1776. Each partner generally has the authority to conduct the business of the partnership in the ordinary course.<sup>3</sup> Partners are still jointly and severally liable for partnership obligations.<sup>4</sup> Since few business owners want personal liability

---

\* Partner, Jones Day in Cleveland. The views set forth herein are the personal views of the author and do not necessarily reflect those of the law firm with which she is associated.

<sup>1</sup> H.B. 332, 127th Gen. Assem., Reg. Sess. (Ohio 2008).

<sup>2</sup> See *infra* Parts V, VII. Other statutory changes that were part of the Ohio legislation revised the filing requirements that apply to general partnerships and eliminated filings that required a partnership to list each of its partners.

<sup>3</sup> OHIO REV. CODE ANN. § 1776.31(A) (West 2009). See *infra* text accompanying notes 101-112.

<sup>4</sup> OHIO REV. CODE ANN. § 1776.36(A). RUPA and Chapter 1776 make a slight change. A partner's liability for contractual obligations of the partnership, like a partner's liability for tort obligations of the partnership, is now joint and several. See REVISED UNIF. P'SHIP ACT § 306

for the obligations of the business, most people will not deliberately choose to do business as a partnership. Most businesses will be organized as limited liability companies or corporations so that, under most circumstances, the owners will not have personal liability for enterprise obligations. As a consequence, partnerships will typically be the default form of doing business.<sup>5</sup> Most partnerships have been and will be created informally without advice of counsel. Individuals or entities that come together in a joint enterprise will, by their conduct, become partners. An expectation that the statute and its default rules would be applied most often to smaller, unlaywered, default partnerships guided choices made in the statute.<sup>6</sup> Larger enterprises that deliberately choose to do business in partnership form will most likely have a written agreement that defines the relationships among the partners and will not be governed by the statutory default rules.

As was true before, the statutory rules in Chapter 1776 can generally be modified by agreement of the partners. One drafting point needs to be kept in mind when working with new Chapter 1776 or with RUPA. The provisions of Chapter 1776 will *not* contain the familiar “unless otherwise agreed” or “subject to any agreement to the contrary” that was typical in Chapter 1775. Instead, new Chapter 1776, like RUPA, simply provides that all provisions can be varied by agreement except for those identified as not subject to modification.<sup>7</sup>

Partnerships newly formed after January 1, 2009, or partnerships existing on that date that properly elected in Chapter 1776, are subject to new Chapter 1776, and its rules will be applied to them. Partnerships formed prior to January 1, 2009, or partnerships formed in 2009 that are continuing the business of a pre-existing partnership will remain subject to Chapter 1775 until January 1, 2010, and the rights and obligations of partners and partnerships arising prior to that date will be

---

cmt. 1 (1997). A partner’s liability is, by statute, secondary rather than primary, absent special circumstances. *See* text accompanying notes 31-34 *infra*. The partners’ liability can, of course, be limited by filing to become a limited liability partnership. The full shield protection of Chapter 1775 is continued under Chapter 1776. OHIO REV. CODE ANN. § 1776.36(C); *see also infra* Part VI.

<sup>5</sup> OHIO REV. CODE ANN. § 1776.22(A).

<sup>6</sup> The RUPA drafting committee focused on the small partnership. Donald J. Weidner, *RUPA and Fiduciary Duty: The Texture of Relationship*, 58 LAW & CONTEMP. PROBS. Spring 1995, at 81, 83. The subcommittee of the Ohio State Bar Association’s Corporation Law Committee that developed Ohio’s version of RUPA was likewise focused on the “default” partnership. The Ohio subcommittee was chaired by Glenn Morrical and included Jason Blackford, Michael Ellis, Howard Friedman, Keith Raker, Robert Schwartz, and the author. The views expressed in this article are the author’s and do not necessarily reflect those of the other subcommittee members, the Corporation Law Committee, or the Ohio State Bar Association.

<sup>7</sup> OHIO REV. CODE ANN. § 1776.03. Nonwaivable provisions regarding obligations of partners are discussed in the text accompanying notes 39, 46, 57 and 40 *infra*. Other provisions that are protected under the statute are: rights and duties with respect to filings with the Secretary of State, the power to dissociate; the rights of a tribunal, under certain circumstances, to expel a partner; the requirement, under certain circumstances, to wind-up the partnership business; the law applicable to a domestic limited liability partnership; rights of third parties under Chapter 1776. *Id.*

determined under Chapter 1775. Starting on January 1, 2010, all Ohio partnerships will be governed by new Chapter 1776.<sup>8</sup>

In drafting agreements and advising partners about present and future conduct, only Chapter 1776 will be relevant after January 1, 2010. In litigation, however, courts will be called upon to apply the old rules to conduct that occurred prior to the time that the new law became effective for the partnership. In interpreting Chapter 1775, which is based on the Uniform Partnership Act (1914) (the "UPA"), RUPA and its official comments should still be helpful. The official comments to RUPA will often signal when RUPA is continuing the existing law and when RUPA is changing the rules. Since Chapter 1776 is based on RUPA, those signals can also guide the interpretation of Chapter 1776.

The discussion below focuses on key areas where Chapter 1776 and RUPA reflect changes in the law of partnerships. This article also highlights how Chapter 1776 differs from RUPA so that lawyers can tailor agreements to Ohio law, and lawyers and courts considering questions of Ohio partnership law can take into account statutory variations when considering the persuasiveness of case law from other jurisdictions that may not have the same statutory rules.

## II. PARTNERSHIP AS AN ENTITY

Under Chapter 1775 and the UPA, as well as the common law, a partnership is a consensual, contractual relationship. It is created by the partners' decision to associate. Under the UPA, the partnership is an aggregate of the partners, but it is not a separate legal person in its own right.<sup>9</sup> The relationship among partners can be defined by agreement, but absent agreement, the partnership statute or common law defines rights and obligations among the partners, and the partners' rights and obligations to third persons. Partnership law also supplements the partners' agreement if the agreement does not address a particular situation. Historically, a partnership described the association, shorthand for the web of relationships among the partners, delineated by their agreement and the statute, as well as the rights of third parties vis-à-vis the partners.

In 2006, Ohio expressly adopted an entity theory of partnership in response to *Arpadi v. First MSP Corp.*<sup>10</sup> Following that decision, Ohio amended Chapter 1775 to add to the traditional definition of what constitutes a partnership the explicit

---

<sup>8</sup> On January 1, 2010, Chapter 1775 will be repealed. H.B. 332, 127th Gen. Assem., Reg. Sess. (Ohio 2008).

<sup>9</sup> There was a major debate during the process of drafting the UPA about whether to adopt an "entity" approach recognizing the partnership as a legal "person" in its own right. After study and debate, the aggregate theory prevailed. William Draper Lewis, *The Uniform Partnership Act—a Reply to Mr. Crane's Criticism*, 29 HARV. L. REV. 158, 159 (1915).

<sup>10</sup> *Arpadi v. First MSP Corp.*, 628 N.E. 2d 1335, (Ohio 1994). In *Arpadi*, the limited partners of a limited partnership sued the partnership's attorney for malpractice. *Id.* at 1338. The defendant argued that the lawyer owed a duty to the partnership, not to the limited partners. *Id.* The Ohio Supreme Court held that, because under Ohio law the limited partnership is "indistinguishable from the partners which compose it, the duty arising from the relationship between the attorney and the partnership extends as well to the limited partners." *Id.* at 1339.

statement that a partnership “is an entity” of two or more persons.<sup>11</sup> New Chapter 1776, like RUPA, more completely embraces an entity theory of partnership. Under RUPA, a partnership is a separate legal person. As a result, the partnership form of business is more stable and predictable.<sup>12</sup> For example, because a partnership is an entity distinct from the aggregate of its partners, a partnership continues despite a partner leaving.<sup>13</sup> This is not the case under Chapter 1775; even if the withdrawal violates the partnership agreement, the partnership ends and its affairs are to be wound up unless there is an express election to continue the business by the remaining partners.<sup>14</sup> As noted in the official comment to the analogous RUPA section,<sup>15</sup> the explicit adoption of an entity theory of partnership should avoid results such as the one reached by the courts in *Arpadi* and the *Fairway Development* case.<sup>16</sup> The consensual nature of the relationship continues. Except as otherwise agreed, a new partner cannot be admitted except by consent of all the partners.<sup>17</sup>

Another consequence of more fully developing the entity theory is that property law is altered. Under Chapter 1775, property may be held in partnership name,<sup>18</sup> but the partners are co-owners and hold partnership property as tenants in partnership.<sup>19</sup> Tenancy in partnership is eliminated in Chapter 1776 and in RUPA. Partners have no individual ownership rights in partnership property.<sup>20</sup> This change is important to effect the transition to a full entity concept of partnership, but it is only a change in terminology. Partners’ rights are not changed. As before, they have the right to use partnership property on behalf of the partnership.<sup>21</sup> Nothing is being taken from the bundle of rights held by partners or the creditors of the business.

---

<sup>11</sup> OHIO REV. CODE ANN. § 1775.05(A) (amended in 2006 to add the entity concept in explicit terms) (effective until Jan. 1, 2010).

<sup>12</sup> See *id.* § 1776.21(A) (“A partnership is an entity distinct from its partners.”). See Mark Anderson, *Not Our Grandparents’ Partnership Statute*, 46 ADVOCATE Nov. 2003, at 12, 12.

<sup>13</sup> REVISED UNIF. P’SHP ACT § 601 cmt. 1 (1997). See *infra* Part III.

<sup>14</sup> OHIO REV. CODE ANN. § 1775.37(B)(2).

<sup>15</sup> REVISED UNIF. P’SHP ACT § 201 cmt. 4 (1997).

<sup>16</sup> *Fairway Dev. Co. v. Title Ins. Co. of Minn.*, 621 F. Supp. 120 (N.D. Ohio 1985). The court followed the aggregate theory of partnership and held that a partnership of three partners dissolved when two of the partners transferred their entire partnership rights to the third partner and an outside buyer. *Id.* at 124. When the “new” partnership sought to sue an insurance company based on a contract signed by the original partnership, the court held the new partnership lacked standing. *Id.*

<sup>17</sup> OHIO REV. CODE ANN. § 1776.41(I).

<sup>18</sup> *Id.* § 1775.07(C).

<sup>19</sup> *Id.* § 1775.24(A). This was one of the major innovations of the UPA. Before the UPA, partners were tenants in common and partnership creditors had no special advantage over a partner’s other creditors with respect to assets used in the partnership. The tenancy in partnership gave partnership creditors priority as to partnership assets. See Lewis, *supra* note 9.

<sup>20</sup> *Id.* § 1776.23(A).

<sup>21</sup> *Id.* §§ 1775.24(B)(1), 1776.41(G).

The more fully developed entity theory of partnership also affects litigation. Under Chapter 1776, a partnership can sue a partner, and a partner can sue the partnership or another partner.<sup>22</sup> Prior law did not contemplate litigation while the partnership continued. If a partner sued another, it was considered to end the consensual relationship and caused a dissolution. Claims among or between partners were then adjudged as part of an accounting when the partnership was wound up and terminated.<sup>23</sup> Under Chapter 1776 and under RUPA, if there is litigation among the partners, or if a partner is in litigation with the partnership, the dispute does not automatically result in the dissolution of the partnership or a separation (or dissociation) of the partner(s) involved under the statutory default rules.

The partners can alter the default rule of the statute and provide in their agreement that their relationship will end or that it will be altered if disputes arise. The agreement could provide for a partner's dissociation if the partner sues the partnership or another partner, or if a partner is sued by the partnership. If this approach is taken, as a drafting matter, the partners would probably want the filing of the suit to be a breach of the agreement. With that, the dissociation is wrongful and the dissociated partner who has the statutory right to be paid the fair value of his interest in the partnership must wait until the expiration of the term of the partnership for payment.<sup>24</sup> Rather than providing for automatic dissolution, the agreement could give the other partners the right to expel any partner sued by the partnership or a partner who has sued the partnership.<sup>25</sup> Alternatively, the agreement could provide that litigation among the partners, or between partners and the partnership, triggers dissolution.<sup>26</sup> In considering how to treat litigation between the partnership and its partners, the partners (and counsel) should also understand how the other statutory default rules will come into play. If a partner is expelled, or if suit by a partner is a breach of the partnership agreement, will that allow other partners to trigger a complete dissolution? As already noted, the approach taken may determine the time when the dissociated partner is entitled to payment for his or her partnership interest.<sup>27</sup> Considering the statutory rules will help the parties identify the issues that they may want to address in their agreement and which statutory default rules to

---

<sup>22</sup> *Id.* § 1776.45(A)-(B).

<sup>23</sup> *See* *Roberts v. Astoria Med. Group*, 350 N.Y.S.2d 159, 161 (N.Y. App. Div. 1973) (noting that “[i]t is well established that the internal affairs of a partnership are not subject to court interference,” and noting “the usual prerequisites of an accounting and dissolution”).

<sup>24</sup> OHIO REV. CODE ANN. § 1776.52(B)(1) (stating that dissociation is wrongful if it is in breach of an express provision of the partnership agreement); *id.* § 1776.54(H) (stating that if there is a wrongful dissociation and partnership is for a definite term or particular undertaking, the dissociated partner must wait for payment unless that partner makes specific showing that earlier payment will not be a hardship).

<sup>25</sup> *Id.* § 1776.51(B)-(C).

<sup>26</sup> *Id.* § 1776.61(A), (C), (E)(2)-(3).

<sup>27</sup> For example, the expulsion of a partner in a partnership for a definite term or particular undertaking will not give the other partners the right to dissolve, but dissociation because of a breach of the partnership agreement would allow half or more of the remaining partners to dissolve the partnership. *Id.* § 1776.61(B)(1). *See also id.* § 1776.54(H) (deferral of payment automatic for wrongful dissociation); *id.* § 1776.52(B) (expulsion not included as a wrongful dissociation).

modify in their agreement. In the absence of provisions in the partnership agreement, the partnership will continue and all partners will remain partners under Chapter 1776 even if there is litigation between the partners and the partnership. A corollary of giving the partnership and its partners the right to sue is that the partnership or a partner must now sue on a claim or run the risk that the statute of limitations may run.<sup>28</sup>

In Ohio, a written partnership agreement may also contain a consent to service of process so that all the partners and the partnership can be joined and their rights determined in one proceeding.<sup>29</sup> RUPA does not have this provision. To obtain the benefit of this Ohio provision, the partners must provide for it in a written agreement. While the partners' association in an Ohio partnership may, under general principles of *in personam* jurisdiction, allow all of them to be joined in one proceeding, a consent provision should dispense with arguments about jurisdiction and choice of forum. That, in turn, should expedite any litigation and make it less expensive.

Another important consequence of the entity approach reflected in Chapter 1776 and RUPA is that partners' liability for partnership obligations is secondary rather than primary. While partners are liable for partnership obligations, "[a] judgment against a partnership is not by itself a judgment against a partner[;] [a] judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner."<sup>30</sup> This is not a change in Ohio law; Ohio courts and other rules already provided for this result.<sup>31</sup> As noted in the comments to the analogous RUPA provision, other law will determine the collateral effect to be given to a judgment entered against the partnership in a subsequent suit with a partner.<sup>32</sup> Chapter 1776 and RUPA also limit a creditor's ability to levy execution against a partner's separate assets. A partner's assets are available if judgment was entered against the partnership on the same claim and a writ of execution against the partnership was returned unsatisfied (in whole or in part); the partnership is a debtor in bankruptcy; the partner agreed that exhaustion of partnership assets was not required; a court determines that partnership assets are "clearly insufficient" to satisfy the judgment; that exhaustion of the partnership's assets is "excessively burdensome"; or if a court determines that granting the creditor this right is an appropriate exercise of its equitable powers.<sup>33</sup>

---

<sup>28</sup> See REVISED UNIF. P'SHIP ACT § 405 cmt. 4 (1997). This may also be addressed in the partnership agreement. Partners might agree to forbear on claims while the partnership continues and could agree not to raise the statute of limitations if claims are brought within some period after dissolution.

<sup>29</sup> OHIO REV. CODE ANN. § 1776.10.

<sup>30</sup> *Id.* § 1776.37(C).

<sup>31</sup> *E.g.*, Wayne Smith Constr. Co. v. Wolman, Duberstein & Thompson, 604 N.E.2d 157, 163 (Ohio 1992) ("An execution on a judgment rendered against a partnership firm by its firm name shall operate only on the partnership property." (quoting OHIO REV. CODE ANN. § 2309.09)).

<sup>32</sup> REVISED UNIF. P'SHIP ACT § 307 cmt. 3 (1997).

<sup>33</sup> OHIO REV. CODE ANN. § 1776.37(D).

## III. FIDUCIARY DUTIES

Although fiduciary duties are not mentioned in Chapter 1775 or in the UPA, the mutual agency of partners means that partners owe each other the duties of care and loyalty that an agent owes a principal. An agent is a fiduciary and is obligated to subordinate the agent's interests to those of the principal. An agent is required to put the best interests of the principal first, before the agent's self-interest.<sup>34</sup> In fact, the most famous statement of the duties owed by one partner to another sets the bar very high. As Justice Cardozo explained it:

Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd.<sup>35</sup>

At the same time, a partner, by definition, is a co-owner of the business and has an economic stake in the partnership. The partners' mutual self-interest is one of the hallmarks of a partnership. Justice Cardozo's statement of a partner's duty, like other pre-RUPA case law,<sup>36</sup> requires a partner to abjure self-interest and seems to ignore the partner's economic interest that is a fundamental aspect of the partners' relationship. Chapter 1776 and RUPA recognize the reality that partners have a common interest in the enterprise, but their interests are not congruent; when their interests diverge, one partner is not required to elevate the interests of other partners over self-interest. The new law specifically states that a partner does not violate a duty under the statute or the partnership agreement "merely because the partner's conduct furthers the partner's own interest."<sup>37</sup>

New Chapter 1776, like RUPA, provides partners, lawyers, and courts adjudicating partnership disputes with boundaries that define partners' fiduciary duties. Chapter 1776 adopted RUPA's fiduciary duty provisions, including

---

<sup>34</sup> RESTATEMENT (THIRD) OF AGENCY § 8.01 cmt. b (2006).

<sup>35</sup> *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928) (citation omitted). See Weidner, *supra* note 6, at 87-88 (citing *Meinhard* as famous statement of the fiduciary law of partners).

<sup>36</sup> See *Meinhard*, 164 N.E.2d at 546; *Birnbaum v. Birnbaum*, 539 N.E. 2d 574, 575-76 (N.Y. 1989); see also *In re USACafes*, 600 A.2d 43, 48 (Del. Ch. 1991) (drawing on trust law to describe the fiduciary's duty to subordinate personal interest to the interest of the beneficiary).

<sup>37</sup> OHIO REV. CODE ANN. § 1776.44(E).

mandatory default rules that the partnership agreement cannot alter.<sup>38</sup> Chapter 1776, like RUPA, states expressly that these enumerated duties of loyalty and care are the “only fiduciary duties a partner owes.”<sup>39</sup> Rather than interpolating from case law to define the duties that should guide partners in their relations with each other and the partnership, Chapter 1776 and RUPA provide a statutory framework that—by its own terms—is comprehensive. There are always challenges in applying legal rules to specific facts and circumstances, but under Chapter 1776, there is one place to find the rules that will apply in the partnership context. Ohio elected to follow RUPA without modifying these provisions. Thus, Ohio will have the benefit of court decisions in other states to help lawyers, clients, and courts understand the RUPA rules and their application.

The duty of loyalty to the partnership and other partners is defined by the statute and consists of three parts: (1) “To account . . . and hold as trustee for [the partnership] any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity,”<sup>40</sup> (2) Not to deal “with the partnership in the conduct or winding up of the partnership business as or on behalf of a [person with] an interest adverse to the partnership,”<sup>41</sup> and (3) “To refrain from competing with the partnership in [its business] before [dissolution].”<sup>42</sup> These three elements encompass a partner’s entire duty of loyalty to the partnership. The partnership agreement cannot eliminate the duty of loyalty. It can, however, specify types or categories of activities, if not manifestly unreasonable, that do not violate the duty of loyalty.<sup>43</sup>

Practitioners will recognize that this statutory framework affirms the validity of provisions that are frequently included in partnership agreements. In real estate partnerships, it is common to define carefully the project that the partnership will undertake, while expressly authorizing the partners to participate in other projects outside the partnership for their own account, either alone or with others. For example, if the partnership intends to develop and manage a mixed-use retail and

---

<sup>38</sup> *Id.* § 1776.44. Generally, partners can, by agreement, establish the rules that will govern their relationship. *Id.* § 1776.03(A). However, Chapter 1776 (like RUPA) places limits on varying certain of its provisions, including a partner’s fiduciary obligations. *Id.* § 1776.03(B).

<sup>39</sup> *Id.* § 1776.44(A). There are other specific statutory rights and obligations of partners, but only the duty of loyalty and the duty of care are denominated as “fiduciary duties” in RUPA and Chapter 1776. Some of the other statutory rights and obligations, that in other contexts have been considered fiduciary obligations, are also protected under the statute so that they cannot be altered by agreement. For example, the partnership agreement cannot “unreasonably restrict” a partner’s right of access to books and records, although the agreement can alter the duty to share information without demand. *Id.* §§ 1776.03(B)(2), 1776.43(C). Similarly, the partnership agreement cannot eliminate the obligation of good faith and fair dealing. *Id.* § 1776.03(B)(5). See *infra* text accompanying notes 56-62.

<sup>40</sup> OHIO REV. CODE ANN. § 1776.44(B)(1).

<sup>41</sup> *Id.* § 1776.44(B)(2).

<sup>42</sup> *Id.* § 1776.44(B)(3).

<sup>43</sup> *Id.* § 1776.03(B)(3).

residential complex on a specific property, the agreement will often say that partners are free to pursue other projects. One partner's ownership of an adjacent parcel and that partner's right to develop that parcel for his or her own account may be expressly noted. Sometimes the other projects that partners are free to pursue for their own account are limited to projects of a different type. If the partnership is to construct single family homes, the agreement might grant the partners unfettered ability to pursue for their own account apartment, multi-family, or retail projects. Other times the restrictions are geographic or temporal, and partners are permitted to participate in projects at some stated distance from the project owned or managed by the partnership, or are permitted to engage in new projects once the project is constructed and fully leased. So long as the provisions are not manifestly unreasonable, they are permitted by the statute. This allows the partners to agree on the parameters of the duties that would otherwise potentially restrict these activities: the partners' duties not to usurp partnership opportunities and not to compete with the partnership in its business. Absent provisions like this, it may be unclear what opportunities should be considered partnership opportunities and whether a partner has breached the duty of loyalty if the opportunity is not first offered to the partnership.

Partnership agreements often define the partners' ability to permit the partnership to purchase goods and services from the partners or from their affiliates. The agreement may identify a specific contract, or it may set out the parameters for the terms of a contract or transaction that are consented to by the other partners. On other occasions, the agreement permits partners to enter into contracts that would otherwise violate the duty of loyalty if the contract terms are fair to the partnership or are no less favorable to the partnership than those available from disinterested third parties. Again, so long as the terms are not manifestly unreasonable, the partnership agreement can allow a partner (or an affiliate) to be on the other side of a transaction with the partnership without violating the partner's duty of loyalty.

The only other fiduciary duty under Chapter 1776 and RUPA is a partner's duty of care. The duty of care under the statute "is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law."<sup>44</sup> As with the duty of loyalty, the partnership agreement cannot "unreasonably reduce" a partner's duty of care, although the partners may agree to a higher standard of conduct.<sup>45</sup> Practitioners will recognize that these statutory provisions validate clauses such as those that provide that a partner is not required to devote full time to the business of the partnership. Similarly, an agreement that permits a partner to reasonably rely on professionals or experts should be given effect.

Chapter 1776, like RUPA, is also quite specific about the time frames when partners are subject to these duties. They do not apply before the partnership is formed.<sup>46</sup> The duties only attach when the parties have entered into a partnership

---

<sup>44</sup> *Id.* § 1776.44(C).

<sup>45</sup> *Id.* § 1776.03(B)(4).

<sup>46</sup> REVISED UNIF. P'SHIP ACT § 404 cmt. 2 (1997).

relationship; they end for a partner that leaves the partnership.<sup>47</sup> They continue for a partner who is winding up a dissolved partnership.<sup>48</sup>

Chapter 1776 also follows RUPA in expressly recognizing that a partner may engage in transactions with the partnership and have the same rights and obligations as a person that is not a partner. The final qualifier “subject to other applicable law,” recognizes that fraudulent transfer and other law may treat insiders differently.<sup>49</sup> The fact that a partner may deal with the partnership in a non-partner capacity does not address the duty of loyalty issue. If the action or transaction is not addressed in the partnership agreement provisions covering actual or potential conflict of interest transactions, the partner will need to obtain appropriate consent from the other partners.<sup>50</sup>

As noted, Chapter 1776 follows RUPA with respect to fiduciary duties and the non-waivable obligations of partners. Consequently, the application and understanding of these provisions will benefit from case law and commentary in other jurisdictions as well as Ohio. Courts considering these questions will need to be mindful of statutory variations. Delaware, for example, adopted the RUPA statement of fiduciary duty, but in Delaware, the fiduciary duties are not in the list of non-waivable provisions.<sup>51</sup> Theoretically, partners in a Delaware partnership can completely waive or “opt out” of fiduciary duties. Under RUPA and Chapter 1776, partners can specify activities that they agree do not violate the partner’s duty of loyalty, subject to the check that the decision cannot be manifestly unreasonable. With appropriate disclosures, there can also be a waiver to allow a partner to take action that would otherwise breach a fiduciary duty. In other words, to the extent that the partners consider and discuss particular activities or conduct, it can be accommodated under Chapter 1776 and RUPA. For unforeseen events, however, the default standards of fiduciary duty will apply in Ohio and under RUPA. The Delaware statute would permit a broader waiver or disclaimer of fiduciary duty. The Ohio and RUPA rule will lead to fewer surprises among the partners. Activities the partners want to allow will have been described in advance or discussed in connection with granting a waiver. The Ohio and RUPA approach is more likely to

---

<sup>47</sup> OHIO REV. CODE ANN. § 1776.53(B)(2), (3).

<sup>48</sup> *Id.* § 1776.53(B)(3).

<sup>49</sup> *Id.* § 1776.44(F). Under the Bankruptcy Code, the trustee or debtor-in-possession can recover payments made to an insider during the year before the filing of a petition for relief. 11 U.S.C. § 547(b) (2006). Similarly, fraudulent transfer law treats insiders, including partners, differently from other creditors. Insiders, if the debtor is a partnership, include anyone who is a (i) general partner in the debtor, (ii) relative of a general partner in, general partner of, or person in control of the debtor, (iii) partnership in which the debtor is a general partner, (iv) general partner of the debtor, or (v) person in control of the debtor. OHIO REV. CODE ANN. § 1336.01(G)(3). *See, e.g., id.* §§ 1336.05(B) (certain transfers fraudulent if made to an insider), 1336.08(E) (certain transfers to insiders fall outside of the rule of § 1336.05(B)); 11 U.S.C. § 548(a); *see also* OHIO REV. CODE ANN. § 1336.04(B)(1) (fact that transfer was to an insider may be relevant to finding of intent to defraud under § 1336.04(A)(1)).

<sup>50</sup> OHIO REV. CODE ANN. §§ 1776.44(B)(2), 1776.03(B)(3).

<sup>51</sup> DEL. CODE ANN. tit. 6, §§ 15-404 (fiduciary duty), 15-103 (nonwaivable provisions) (2009).

avoid unintended consequences because, by defining parameters, the partner must consider the potential conflicts in more detail than would be required for a broad, blanket waiver.

If a conflict of interest transaction is not addressed in the partnership agreement, and if partner consent is not obtained, partnership law does not provide any other protection for the partner in the conflict situation. Ohio's limited liability company law and its corporation law have a statutory rule that is helpful to owners and managers. Chapter 1701 and Chapter 1705 permit a conflict of interest transaction that is not specifically authorized in advance by the other owners, without the need for any specific consent or ratification by disinterested parties, if the action or transaction is "fair" to the entity.<sup>52</sup> Partnership law does not have a similar provision. Since it is hard to foresee and specifically address every situation that may arise, it will be helpful if the agreement provides for the same result as the exculpatory provisions provided by statute in Chapter 1701 and 1705. The agreement could say:

A partner may enter into any contract or agreement with the partnership and otherwise enter into any transaction or dealing with the partnership on an arms'-length basis (in each case on terms and conditions that, in the aggregate, are not less favorable to the partnership than those the partnership could obtain from an unrelated third party) and the partner may derive and retain any profit therefrom, so long as any such contract or agreement or other transaction or dealing is approved by [the partners or governing committee] under Section [ ] if such approval is required. The validity of any such contract, agreement, transaction or dealing or any payment or profit related thereto or derived therefrom shall not be affected by any relationship between the partnership and the partner.

Often, it will also be appropriate to craft this provision more broadly to encompass partners and affiliates of the partners who may enter into transactions with the partnership. The approval referenced at the end of the first sentence above is not approval of the conflict of interest transaction, but refers to the more general authority provisions by which the partners or their representatives oversee the business.

Chapter 1776 and RUPA also make explicit that a partner does not violate fiduciary duties or obligations under the statute or partnership agreement "merely because the partner's conduct furthers the partner's own interest."<sup>53</sup> If the partners prefer to govern their relationship under a higher standard that puts joint interest above self interest, their agreement can so provide. Chapter 1776 and RUPA constrain the partners' ability to limit their duties, but they are free to impose higher standards on themselves. In most instances, the default rule is likely to accurately reflect the parties' expectations: The partners come together out of their common interest, but most partners would not expect that they must put the interests of their

---

<sup>52</sup> OHIO REV. CODE ANN. §§ 1705.31(A)(1)(c), 1701.60(A)(1)(c).

<sup>53</sup> *Id.* § 1776.44(E).

partners ahead of themselves. A partner's ability to act in personal self interest is curtailed by the duty of loyalty, which includes the obligation not to be adverse to the partnership in the conduct (or winding up) of its business.

If the partners are entities, or for other reasons, will be acting through representatives, their representatives should also be afforded the benefit of the standard that applies to a partner. It is easier to reach this conclusion if the partnership agreement specifically provides for this result. Logically, since an entity can only act through its representatives, representatives of a partner that is an entity should be protected if they act in the interest of the partner they represent (assuming there is no breach of any other obligation). There is no apparent reason that an individual partner who chooses to act through a representative should be subject to a different standard. Partnership law is, in this regard, different from the rules that apply to a corporation. Corporate directors owe their fiduciary duties to the corporation and to all the shareholders. A corporate director nominated or appointed by a particular shareholder is not free to act in the interest of that shareholder.<sup>54</sup>

A partner's actions are also constrained by the obligation of good faith and fair dealing. Although not denominated a fiduciary duty, the obligation operates to restrain a partner's conduct. The RUPA commentary explains that the obligation of good faith and fair dealing is a concept drawn from contract law and derives from the consensual nature of the partners' relationship.<sup>55</sup> The partners cannot eliminate the obligation of good faith and fair dealing, but the partnership agreement may prescribe standards to define that obligation so long as the standards are not manifestly unreasonable.<sup>56</sup> Because the duty of loyalty and the obligation of good faith and fair dealing cannot be eliminated, the checks on a partner's conduct cannot be eliminated. A partner's obligation, without demand, to furnish to other partners information about the partnership and its business that is required for the other partner(s) to exercise rights and duties<sup>57</sup> will also serve as a check on the partner's conduct. The statutory obligations to disclose information can be varied by agreement, but the agreement will operate in the un-lawyered, default partnership.

This obligation of good faith and fair dealing is also described by the official commentary as an "ancillary obligation."<sup>58</sup> The obligation is not a separate source of rights or duties, but it addresses how partners are expected to discharge their responsibilities under the statute or the partnership agreement. In other words, it would not state a claim against a partner simply to say that the partner breached the obligation of good faith and fair dealing. If the partner making the claim alleged that he or she was denied access to partnership books and records by the other partner acting in bad faith, the claim would be proper because it is based on the claimant's right of access, and the other partner's breach of the obligation of good faith and fair dealing occurred in connection with the other breach. Actions that, under the partnership agreement, can be taken, or a consent that can be withheld in the

---

<sup>54</sup> See Andrew S. Gold, *The New Concept of Loyalty in Corporate Law*, 43 U.C. DAVIS L. REV. (forthcoming 2010), available at <http://ssrn.com/abstract=1406207>, at 34-35.

<sup>55</sup> REVISED UNIF. P'SHIP ACT § 404 cmt. 4.

<sup>56</sup> OHIO REV. CODE ANN. § 1776.03(B)(5).

<sup>57</sup> *Id.* § 1776.43(C)(1).

<sup>58</sup> REVISED UNIF. P'SHIP ACT § 404 cmt. 4.

discretion of a partner will also be subject to the overriding obligation of good faith and fair dealing. In exercising his or her discretion, a partner must be fair and must not act in bad faith.<sup>59</sup>

The official comments to RUPA indicate that the contours of the obligation will develop over time, and that the drafters deliberately chose not to adopt definitions from the UCC to define the parameters of this obligation.<sup>60</sup> In its version of RUPA, Delaware refers to the “implied contractual covenant of good faith and fair dealing.” The Delaware formulation ties the obligation under Delaware law specifically to good faith and fair dealing as to matters of contract.<sup>61</sup> Delaware is a forum that often has published decisions on business and commercial disputes. The differences in statutory language noted here mean that Delaware precedents discussing good faith and fair dealing should be carefully considered by courts in other states, like Ohio, that follow the RUPA language more closely. Delaware courts will be constrained to construe the obligation as defined in the context of contracts, while, in other jurisdictions, the contours of good faith and fair dealing may be different when applied to the fiduciary or other statutory obligations. For example, under the statute, a partner is obligated to present to the partnership business opportunities that are within the scope of the partnership business. If a partner becomes aware of an opportunity and withdraws before taking up that opportunity, the partner is no longer a partner and no longer bound by the duty of loyalty that would restrain a partner’s conduct. The obligation of good faith and fair dealing makes it easier to conclude that the former partner has breached the duty of loyalty. Assuming that it is a default partnership with no partnership agreement (or that the partnership agreement does not address duty of loyalty) there might be a question as to whether Delaware would apply the obligation of good faith and fair dealing. Since all partnerships, even default partnerships, are based on a consensual relationship and an implied contract, the answer to that question should be “yes.” Under Chapter 1776 and RUPA, the obligation of good faith and fair dealing does not reference the partners’ contract and applies broadly to both statutory and contractual obligations. Under Ohio law and under RUPA, the partner who withdraws to take advantage of what would otherwise be a partnership opportunity has breached the partner’s duties. The obligation of good faith and fair dealing helps a court to impose liability for underhanded conduct or spiteful actions, but to respect the intent of the drafters, courts must not create new, independent obligations and should only look at how partners are carrying out obligations set out in their agreement or the statute.

#### IV. EXITING THE PARTNERSHIP: DISSOCIATION

Perhaps the most significant provisions in Chapter 1776 and RUPA are the provisions governing partnership retirement, withdrawal, or other exit from a partnership. Under Chapter 1775, a partnership dissolves every time a partner leaves

---

<sup>59</sup> See Gold, *supra* note 54, at 13 (discussing good faith as a subsidiary element of the duty of loyalty).

<sup>60</sup> REVISED UNIF. P’SHIP ACT § 404 cmt. 4.

<sup>61</sup> DEL. CODE ANN. tit. 6 § 15-103(b)(3) (2009). There is no reference to the obligation of good faith and fair dealing in the Delaware counterpart to RUPA § 404. See DEL. CODE ANN. tit. 6 § 15-404.

the partnership.<sup>62</sup> Chapter 1775 defines dissolution as the change in the relationship caused by a partner's ceasing to be associated in the carrying on, as distinguished from the winding up, of the business.<sup>63</sup> A partnership that has dissolved is still a partnership and continues for the purpose of winding up its business. After dissolution, however, the partnership is limited to winding up its affairs. Only after winding up does the partnership terminate.

In past practice, if there were multiple partners in a partnership that dissolved because of the departure of a partner, the remaining partners often elected to continue the partnership business and there was no winding up of partnership affairs. The new partnership, comprised of the continuing partners, succeeded to the rights and obligations of the old partnership. If one or more partners "wrongfully" caused the dissolution, the other partners had the right under the statute to continue the business of the partnership in a new partnership using the assets of the dissolved partnership.<sup>64</sup> But, under the new law, dissolution will happen less frequently.

A partner's departure or "dissociation" from the partnership does not cause an automatic dissolution under Chapter 1776 or RUPA. Instead, depending on the type of dissociation, the statute provides for either the buyout of the dissociated partner's interest in the partnership or a dissolution of the partnership.<sup>65</sup> If the dissociation does not trigger automatic dissolution, the other partners will often have the ability to elect to dissolve the partnership as a result of another partner's dissociation.<sup>66</sup> In essence, the new statute flips the presumption. Under the old law, the departure of a partner dissolved the partnership unless the remaining partners elected to continue. Under the new statute, the partnership continues after a partner leaves unless the other partners elect for the partnership to end. The new statute better reflects what usually happens in practice. The number of partnerships that wind up their affairs, liquidate, and terminate will probably not change, despite the change in the law. If there is dissolution, the winding up and eventual termination is not changed in Chapter 1776 and RUPA.

Under Chapter 1775, after a dissolution, either the business was wound up and all partners were paid out, or, if the remaining partners continued the business, they either bought out the departing partner or gave security for the amount due, which would be paid at the end of the term or undertaking. In broad terms, the result under Chapter 1776 and RUPA is similar. If a dissolution and winding up do not occur, and the partnership agreement does not provide for a different result, Chapter 1776 and RUPA require the partnership to buy out the dissociated partner's interest and

---

<sup>62</sup> OHIO REV. CODE ANN. § 1775.30(A)(2), (B).

<sup>63</sup> *Id.* § 1775.28. Chapter 1776 and RUPA do not define dissolution. Ohio's corporation law and limited liability company law have the same omission.

<sup>64</sup> *Id.* § 1775.37(B)(2).

<sup>65</sup> *Id.* § 1776.61 ("A partnership is dissolved, and the partnership's business shall be wound up, only upon the occurrence of any of the following events . . ."); *id.* § 1776.53(A) ("If a partner's dissociation results in a dissolution and winding up of the partnership business, . . .").

<sup>66</sup> *Id.* § 1776.61(A), (B)(1)-(2).

the partnership continues.<sup>67</sup> If there is to be a buyout of the dissociated partner and the partners have not agreed to a different valuation mechanism or other method to determine the buyout price, the statutory default rule will apply. The statutory price for a buy out of the dissociated partner's partnership interest is the amount the dissociated partner would have received if the partnership assets were sold and the partnership was wound up and liquidated. The amount payable is reduced by any damages associated with the withdrawal if the former partner had no right to withdraw and by any other amounts the dissociated partner owes to the partnership.<sup>68</sup> The dissociated partner is also entitled to an indemnity from the partnership for partnership liabilities.<sup>69</sup> If the parties cannot agree on the amount due, the partnership makes the calculation and pays the amount to the dissociated partner.<sup>70</sup> If the dissociated partner disagrees with the calculation, the partner must bring a claim to resolve disagreements about the valuation or the calculation. The partner must bring that claim within one hundred and twenty days of the partnership's tender or offer of payment.<sup>71</sup> If the partnership has not made a tender or offer, the partner must bring the claim within one year after written demand on the partnership.<sup>72</sup>

In addition, Chapter 1776 and RUPA provide that if the partnership is for a definite term or particular undertaking and there is a wrongful withdrawal, the withdrawing partner is not entitled to payment before the end of the term or completion of the undertaking unless the former partner establishes that making the payment will not cause undue hardship to the business of the partnership.<sup>73</sup> Therefore, if partners in partnerships are governed by state laws consistent with RUPA in this regard, and they are concerned about the burdens placed on a continuing partnership in connection with a buy-out of a withdrawing partner, they should resist the boilerplate clause stating that the term of the partnership is perpetual. Instead, the agreement should make their partnership for a definite term or specific undertaking.

---

<sup>67</sup> *Id.* § 1776.54(A) (“When a partner is dissociated from a partnership and that dissociation does not result in a dissolution and winding up of the partnership business under section 1776.61 of the Revised Code, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to [1776.54(B)].”).

<sup>68</sup> *Id.* § 1776.54(B)(1), (C). Interest is also due from the date of dissociation until payment. *Id.* § 1776.54(B)(2).

<sup>69</sup> *Id.* § 1776.54(D).

<sup>70</sup> *Id.* § 1776.54(E). It is not always necessary to pay the entire amount in cash. *Id.* § 1776.54(F).

<sup>71</sup> *Id.* § 1776.54 (I)(1).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* § 1776.54(H). Many agreements state expressly that partners have no right to withdraw, and if that is done, any withdrawal would be a wrongful dissociation. If a partnership is for a definite term or undertaking, a dissociation before the completion of the term or undertaking is wrongful if the partner withdraws, is expelled by a tribunal for “bad” acts, the partner becomes a debtor in bankruptcy, or an entity is willfully dissolved or terminated. *Id.* § 1776.52(B)(2)(a)-(d). However, if the partner's withdrawal is after another partner has ceased to exist, is insolvent, or has wrongfully withdrawn, then the subsequent withdrawal by another partner is not wrongful.

Ohio law also includes a safety valve not found in RUPA that gives much greater protection and flexibility to a continuing partnership. If the continuing partners determine that “immediate payment of the buyout price would cause undue hardship to the business of the partnership,” the partnership may defer payment.<sup>74</sup> A partnership that has made the hardship determination would follow the process set out in RUPA for a buyout as of the time the partnership is entitled to defer payment. This means that the partnership would tender a written offer to pay the buyout price, stating the time of payment or schedule of payments, the amount and type of security for the payment(s), and other terms and conditions of the partnership’s payment obligation.<sup>75</sup> The price would be based on the partnership’s calculation of the amount that the dissociated partner would have received if the partnership assets were sold and the partnership was wound up and liquidated. The partners may negate, expand, or alter the buyout requirements, describe payment options, and set out further mechanics by their agreement.<sup>76</sup>

If the dissociation event causes dissolution rather than triggering a buyout, Chapter 1776, like Chapter 1775, provides for settlement of the partners’ accounts.<sup>77</sup> Partners are required to make contributions to the partnership to enable it to pay partnership obligations if the assets of the partnership are insufficient.<sup>78</sup> If a partner fails to make the required contribution, the other partners are required to make further contributions to cover the defaulting partner’s share of obligations for which the contributing are personally liable; the statute entitles the contributing partners to recover their excess contributions from the defaulting partner.<sup>79</sup>

The statute also delineates a dissociated partner’s ability to bind the partnership and a dissociated partner’s liability for partnership acts.<sup>80</sup> In Ohio, a dissociated partner is potentially liable for a partnership obligation entered into within two years of the dissociation “only if . . . the partner *would have been liable* for the obligation *if the transaction had been entered into while the person was a partner*,” and, among other things, the other party “reasonably believed that the dissociated partner was then a partner *and reasonably relied on that belief in entering into the transaction*.”<sup>81</sup> The additional language in Chapter 1776 (italicized in the preceding sentence)

---

<sup>74</sup> *Id.* § 1776.54(F).

<sup>75</sup> *Id.* If the partnership elects to take advantage of this provision by making the hardship determination, it must explain that determination in writing when it gives the dissociated partner the tender of the buyout price and terms. *Id.* § 1776.54(G)(5). If the dissociated partner objects, the dissociated partner bears the burden to show that earlier payment would not be a hardship. *Id.* § 1776.54(I)(2).

<sup>76</sup> *Id.* § 1776.03(A).

<sup>77</sup> *Id.* § 1776.67(B).

<sup>78</sup> *Id.* § 1776.67(C).

<sup>79</sup> *Id.* § 1776.67(D), (F), (G).

<sup>80</sup> *Id.* §§ 1776.55, 1776.56, 1776.66.

<sup>81</sup> *Id.* § 1776.56(B)(1) (emphasis added to indicate non-RUPA language). See REVISED UNIF. P’SHIP ACT § 703(b)(1) (1997). The two year period can be shortened if the partnership or the dissociated partner files a statement of dissociation. OHIO REV. CODE ANN. § 1776.57.

provides an extra measure of protection to a partner who dissociates from a partnership that is continuing in business after the dissociation.

When partners come together to create a partnership, they are typically motivated by the opportunity and usually do not look ahead to the unwinding of their relationship. The statutory rules will always apply to the default partnership, but will often apply to other partnerships as well because the partners will not have addressed the end of their relationship in their agreement.

#### V. CHANGES IN TERMINOLOGY

RUPA and Chapter 1776 add some new terms of art to the lexicon of partnership law and also modify some familiar terms of art.

Because some of the provisions that are non-waivable under RUPA use the term “court,” the Ohio State Bar Association subcommittee that drafted Chapter 1776 was concerned that a strict reading of the RUPA language might cause a court to conclude that it could not give effect to an arbitration provision in a partnership agreement. Chapter 1776 uses the term “tribunal” rather than RUPA’s term “court” in some places to be clear that matters can be determined by an arbitration forum as well as a court.<sup>82</sup> By this change, the partners’ selection of another tribunal should be given effect. The partners agreement, however, can only affect the forum where their disputes will be determined. The term tribunal is not used in sections of the statute that relate to third parties. For example, only a court can issue the order for a creditor that seeks to impose a charging order on a partner’s interest.<sup>83</sup> In all the sections related to third party rights, the term “court” is retained.<sup>84</sup> Those creditor or third party provisions can all be varied by agreements to which the creditors or other third parties are parties, and the affected parties may select a different tribunal if they choose.

A definitional change from Chapter 1775 broadens the meaning of a partner’s “interest in the partnership.” Under current law, a partner’s “interest in the partnership” is only a partner’s economic interest in the partnership.<sup>85</sup> Both Chapter 1776 and RUPA, however, define “interest in the partnership” more broadly to encompass a partner’s economic interests, management interests, and other rights in the partnership.<sup>86</sup> Practitioners often included this broader definition in their partnership agreements even under the old statute. Chapter 1776 uses the term

---

<sup>82</sup> OHIO REV. CODE ANN. § 1776.10(B). Under RUPA, the partnership agreement may not “vary the right of a court to expel a partner.” REVISED UNIF. P’SHIP ACT § 103(B)(7) (emphasis added). Section 103 contains the provisions that the partners are not permitted to alter by their agreement. Ergo, there was some concern that a court could conclude that the partners could not, by agreement, determine that an arbitrator could make the determination when section 103 says the right is granted to a court. Chapter 1776 uses the term “tribunal” rather than the term “court” when addressing matters that involve the partners *inter se* or the partners and the partnership. See OHIO REV. CODE ANN. §§ 1776.03, 1776.49, 1776.51(E), (G)(3), 1776.52(B)(2)(b), 1776.54(H), (I)(2), (3), 1776.61(E), (F).

<sup>83</sup> OHIO REV. CODE ANN. § 1776.50(A).

<sup>84</sup> See *id.* § 1776.63.

<sup>85</sup> *Id.* § 1775.25; REVISED UNIF. P’SHIP ACT § 101 cmt.; *id.* § 502.

<sup>86</sup> OHIO REV. CODE ANN. § 1776.01(P); REVISED UNIF. P’SHIP ACT § 101(9).

“economic interest in the partnership” to describe the equivalent of “interest in the partnership” as it was defined in Chapter 1775 and the UPA.<sup>87</sup> Under RUPA, the defined term “transferable interest” means a partner’s economic interest in the partnership.<sup>88</sup> As under existing law, a partner can transfer to an assignee the partner’s economic interest but, unless the partnership agreement provides otherwise, cannot admit the assignee as a partner.<sup>89</sup>

Chapter 1776 and RUPA narrow the definition of “knowledge.” Under current law, a person has “knowledge” when the person has actual knowledge or when the person has knowledge of other facts such that the circumstances suggest bad faith.<sup>90</sup> Under new Chapter 1776, as under RUPA, a person “knows” a fact only if the person has actual knowledge;<sup>91</sup> the new statute eliminates bad faith from the definition of knowledge.<sup>92</sup> The practical effect of this change is muted, however, by another change. Chapter 1776 and RUPA broaden the definition of “notice.” Chapter 1775 deemed a person to have notice when the person giving notice told the fact to the person or delivered a written statement to the person or a “proper person” at the person’s business or residence.<sup>93</sup> Under Chapter 1776, a person has “notice” under any one of three circumstances: (1) when the person knows the fact, (2) has received “notification” of the fact, or (3) has reason to know the fact exists.<sup>94</sup> A person receives “notification” either when the notification is delivered to the person’s place of business or other place for receiving communications, or when the person actually becomes aware of the fact.<sup>95</sup> A sender “notifies” another person “by taking steps reasonably required to inform the other person . . . whether or not the other person learns of that notification.”<sup>96</sup>

---

<sup>87</sup> OHIO REV. CODE ANN. § 1776.01(F). Like Ohio, Delaware uses the term “economic interest” where RUPA uses the term “transferable interest.” *Compare* DEL. CODE ANN. tit. 6, § 15-101(15) (2009) *with* REVISED UNIF. P’SHP ACT § 101(9).

<sup>88</sup> REVISED UNIF. P’SHP ACT § 502.

<sup>89</sup> *Id.* §§ 1775.26, 1776.49. Division (G) of new section 1776.49 negates the operation of provisions of Article 9 of the UCC that will allow restrictions on transfer to be effective to block a pledge of partnership interests.

<sup>90</sup> *Id.* § 1775.02(A).

<sup>91</sup> *Id.* § 1776.02(A).

<sup>92</sup> REVISED UNIF. P’SHP ACT § 102 cmt.

<sup>93</sup> OHIO REV. CODE ANN. § 1775.02(B).

<sup>94</sup> *Id.* § 1776.02(B).

<sup>95</sup> REVISED UNIF. P’SHP ACT § 102 cmt.

<sup>96</sup> OHIO REV. CODE ANN. § 1776.02(C); *see* Edwin W. Hecker, Jr., *The Kansas Revised Uniform Partnership Act*, 68 J. KAN. B. ASS’N. Oct. 1999, at 16, 21. The article notes that critics of RUPA believe “[i]nclusion of the concept of notification . . . expands the category of cases in which the partnership will not be bound and lessens third party protection.” *Id.* Another commentator has advised creditors to check the public record of a partnership every ninety days. *See* Carol R. Goforth, *The Revised Uniform Partnership Act: Ready or Not, Here It Comes*, 1999 ARK. L. NOTES 47, 49-50 (1999).

## VI. FILING REQUIREMENTS AND STATEMENTS OF AUTHORITY

Partnership statutes provide a number of rules designed to provide clarity regarding ownership and transfer of real estate. This is not surprising because the law has historically recognized each parcel of real estate as unique, and real estate assets are often valuable assets. Moreover, the ownership or development of real estate is a business often conducted in partnership form.

Historically, an Ohio partnership that owned real property was required to file a certificate “stating the names in full of all the members of the partnership and their places of residence.”<sup>97</sup> Under Chapter 1775 and the UPA, the partners were the owners of partnership property, and this filing meant that the owners were identified in the public record.<sup>98</sup> This filing requirement does not apply to partnerships governed by Chapter 1776. Consequently, a partnership formed after January 1, 2009, or a partnership electing into Chapter 1776, is not required to make a filing under Chapter 1777.<sup>99</sup> After 2010, no partnership needs to make a filing under Chapter 1777.<sup>100</sup> Under Chapter 1776, the partnership owns the property. Since there is no filing required for corporations or limited liability companies that own real property, there was no need to require a similar filing for the partnership once Chapter 1776 more fully recognized the partnership as an entity.

A partnership may file a statement of authority so that there is a public filing identifying those who can bind the partnership with respect to transactions involving real property.<sup>101</sup> If a partnership files a statement of partnership authority, it must either identify the names and addresses of all the partners, or identify an information agent<sup>102</sup> who must maintain the list and make it available “to any person on request for good cause shown.”<sup>103</sup> In a non-RUPA provision, Chapter 1776 also requires that a partnership filing a statement of partnership authority appoint an agent for service of process.<sup>104</sup> If a partnership files a statement granting a partner authority to transfer real property held in the name of the partnership, the recorded grant of authority is conclusive in favor of a transferee who gives value without actual knowledge to the contrary.<sup>105</sup> A partner’s authority to transfer partnership real property under a statement of partnership authority is effective only if the property is held in the name of the partnership.<sup>106</sup> A recorded limitation of a partner’s authority

---

<sup>97</sup> OHIO REV. CODE ANN. § 1777.02.

<sup>98</sup> See *supra* notes 19-21 and accompanying text (explaining partners’ ownership rights under Chapter 1775).

<sup>99</sup> *Id.* § 1777.07(B)-(C).

<sup>100</sup> *Id.* § 1777.07(A).

<sup>101</sup> *Id.* § 1776.33(A)(2).

<sup>102</sup> *Id.* § 1776.33(A)(1)(c).

<sup>103</sup> *Id.* § 1776.33(B).

<sup>104</sup> *Id.* § 1776.33(A)(1)(d).

<sup>105</sup> *Id.* § 1776.33(D)(2).

<sup>106</sup> REVISED UNIF. P’SHIP ACT § 303 cmt. 2. A recorded statement has no effect on a partner’s authority to transfer partnership real property held other than in the name of the

to transfer real property held in the name of the partnership is also effective against third parties.<sup>107</sup>

Statements of partnership authority that affect a partner's authority with respect to transactions not involving real property are treated differently. A grant of authority, such as a grant of authority to act outside the ordinary course of the partnership's business, is binding on the partnership in favor of a person who gives value in good faith.<sup>108</sup> A limitation on a partner's authority with respect to transactions other than real property transactions does *not* create constructive knowledge of a partner's lack of authority.<sup>109</sup> The limitation is effective only against a third party who knows or has received notification of the limitation.<sup>110</sup>

As under prior law, the general rule is that a partner acting in the ordinary course of the partnership's business has authority to bind the partnership.<sup>111</sup> Under Chapter 1776, a partner's authority can be qualified if the partnership files a "statement of partnership authority" defining the partners' authority.<sup>112</sup> A filed statement of partnership authority expires in five years by operation of law,<sup>113</sup> so it will be necessary to refile unless the statement is earlier cancelled or modified. Absent an effective filing, each partner can bind the partnership in the ordinary course of its business, as partners could under Chapter 1775.

If a partner leaves a partnership, either that dissociated partner or the partnership itself can file a statement of dissociation.<sup>114</sup> A filing is not required. By making the filing, the former partner can limit its liability for further partnership obligations. Similarly, the filing limits the power of the dissociated partner to bind the partnership. The remaining partners, who can have personal liability for partnership obligations that the former partner may create, have an interest in causing the partnership to make the filing. Generally, after a partner dissociates, the partner's

---

partnership. *Id.* A partnership's interest in property not held in the name of the partnership, by definition, will not be disclosed in a title search by a third party. *Id.*

<sup>107</sup> OHIO REV. CODE ANN. § 1776.33(E) provides that third parties are deemed to have knowledge of a recorded limitation on a partner's authority to transfer real property held in the name of the partnership. Transferees are bound by knowledge of a limitation on a partner's authority under section 1776.33, and thus are bound by a filed limitation of authority. REVISED UNIF. P'SHIP ACT § 303 cmt. 2.

<sup>108</sup> *Id.* § 1776.33(D)(1).

<sup>109</sup> *Id.* § 1776.33(F).

<sup>110</sup> *Id.* § 1776.33.

<sup>111</sup> The statutory formulation is slightly changed. Each partner is an agent "for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership." *Id.* § 1776.31(A). The list of actions that require the consent of the other partners is gone. *See id.* § 1775.08(C).

<sup>112</sup> *Id.* § 1776.31.

<sup>113</sup> *Id.* § 1776.33(G).

<sup>114</sup> *Id.* § 1776.57(A).

actions continue to bind the partnership for two years.<sup>115</sup> Filing a statement of dissociation, however, gives third parties constructive notice of the dissociated partner's lack of authority ninety days after the statement is filed, and thus terminates the dissociated partner's apparent authority to bind the partnership.<sup>116</sup> A statement of dissociation also cancels the conclusive effect of a previously filed statement of authority.<sup>117</sup>

A statement of dissociation also alters a dissociated partner's liability to third parties. A dissociated partner generally is not liable for any partnership obligation incurred after dissociation,<sup>118</sup> but under some circumstances the dissociated partner may be liable to third parties for transactions entered into by the partnership within two years after the dissociation.<sup>119</sup> A statement of dissociation provides constructive notice to third parties that the partner has dissociated, thus shortening the time period for the dissociated partner's potential liability for obligations the partnership incurs in the future.<sup>120</sup> Therefore, the dissociated partner has an interest in filing a statement of dissociation if the partnership does not do so. A dissociated partner is not, however, liable as a partner *merely* because the partner fails to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner has dissociated.<sup>121</sup> The dissociated partner is no longer a partner and does not have the joint and several liability for partnership obligations that would come with status as a partner. If a creditor enters a transaction with the partnership relying on a representation that the dissociated partner is a partner, the former partner is liable to the creditor. If the representation of partner status was made before the dissociation, there may well be disputes about the reasonableness of the creditor's reliance, or the obligation of the partnership to update the creditor about changes of partnership status. Filing the statement of dissociation limits the period during which these problems can arise.

When Chapter 1776 was enacted, the fictitious name filing requirements in Chapter 1329 were also amended. After the amendments, a partnership filing to register an entity name or a fictitious name with the secretary of state must set forth the name and address of at least one partner or the identifying number the secretary of state assigns to the partnership.<sup>122</sup> An amendment is required only when "any

---

<sup>115</sup> *Id.* § 1776.55(A). A dissociated partner is liable to the partnership for obligations the partner improperly incurs on behalf of the partnership within two years after dissociation. *Id.* § 1776.55(B).

<sup>116</sup> *Id.* § 1776.57(C); *see also id.* § 1776.31(A) (noting that a partnership is bound by a partner's acts unless the third party received notification that the partner lacked authority).

<sup>117</sup> *Id.* § 1776.57(B).

<sup>118</sup> *Id.* § 1776.56(A).

<sup>119</sup> *Id.* § 1776.56(B). Ohio has altered the RUPA provisions regarding the potential liability of a dissociated partner to provide greater protection for the former partner. *See infra* note 142 and accompanying text .

<sup>120</sup> *Id.* § 1776.57(C).

<sup>121</sup> *Id.* § 1776.38(D).

<sup>122</sup> *Id.* § 1329.01(B)(1)(a), (D)(1)(a). Before the change, the filing made by the partnership was required to set forth the name and address for each of the partners in the

partner named on its registration or report ceases to be a partner.”<sup>123</sup> These changes to Chapter 1329 became effective on August 6, 2008. A partnership will now file reports and registrations less frequently, and partnerships will no longer be required to identify all the partners in a public filing.

## VII. LIMITED LIABILITY PARTNERSHIPS

As the name suggests, limited liability partnerships are partnerships in which the partners have limited liability. All fifty states have amended their partnership laws to allow partners to limit their liability by making a simple filing. There was, initially, some variation in the scope of the protection afforded to partners by limited liability status. Today most states, including Ohio, give “full shield” protection, meaning that a partner in a limited liability partnership is not personally liable for any partnership obligation. Of course, an individual always remains liable for his or her own malpractice.<sup>124</sup>

The filing requirements for a partnership to be treated as a limited liability partnership are not significantly changed in Chapter 1776.<sup>125</sup> The statute expressly recognizes that limited liability partnerships formed under Chapter 1775 retain that status under the new law.<sup>126</sup> The “full shield” protection for a limited liability partnership continues.<sup>127</sup> Ohio law only requires a renewal filing once every two years, rather than the annual filing required under RUPA.<sup>128</sup>

---

partnership. This was very cumbersome for large partnerships and very hard (if not impossible for very large partnerships) to keep up to date.

<sup>123</sup> *Id.* § 1329.04. Renewals every five years are still required. *Id.*

<sup>124</sup> Section 1775.14(C)(1) was explicit about partners’ liability for their own conduct saying that the section limiting partners’ liability in a limited liability partnership does not affect the liability of a partner “for that partner’s own negligence, wrongful acts, errors, omissions, or misconduct, including . . . in directly supervising any other partner or any employee, agent, or representative of the partnership.” *Accord* SUP. CT. R. GOV’T BAR OHIO R. III, § 4(C).

<sup>125</sup> *Compare* OHIO REV. CODE ANN. § 1775.64 with § 1776.81. Ohio’s provisions vary slightly from RUPA. Ohio continues to allow limited liability partnerships to be designated as a “partnership having limited liability,” P.L.L. or PLL. *Id.* § 1776.82. Foreign limited liability partnerships may be required by the Secretary of State to present evidence of their existence in the jurisdiction in which they are formed. *Id.* § 1776.86.

<sup>126</sup> *Id.* § 1776.81(I).

<sup>127</sup> *Id.* §§ 1775.14(B), 1776.36(C). When Chapter 1775 was first amended to provide for limited liability partnership in 1997, partners were only protected against personal liability for malpractice claims (other than their own malpractice). By becoming a limited liability partnership, partners were protected against “liabilities of any kind of, or chargeable to, the partnership or another partner or partners arising from negligence or from wrongful acts, errors, omissions, or misconduct, whether or not intentional or characterized as tort, contract, or otherwise.” H.B. 350, 121st Gen. Assem., Reg. Sess., § 1775.14(B) (Ohio 1996). Since 2007, partners have been protected against any liability incurred while the partnership is a registered limited liability partnership. Any obligation incurred while the registration is in effect “whether arising in contract, tort or otherwise, is solely the obligation of the partnership.” OHIO REV. CODE ANN. § 1775.14(B).

<sup>128</sup> OHIO REV. CODE ANN. § 1776.83; REVISED UNIF. P’SHP ACT § 1003 (1997).

Chapter 1776 also has a non-RUPA provision that limits distributions by a limited liability partnership. The statute says that a limited liability partnership cannot make distributions to its partners if the distribution would cause the liabilities of the limited liability partnership to exceed its assets.<sup>129</sup> The relevant provision also states that distributions do not include “reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.”<sup>130</sup> This is new protection for partners and retired partners who receive reasonable compensation for services rendered to a limited liability partnership. Partners who render services to a partnership are not employees; as co-owners of the business, they receive distributions from the partnership as compensation for their services. This provision of Chapter 1776 recognizes that partners should be paid for their services to keep the business operating, and that creditors should not be able to reclaim that compensation from the partners.

With respect to foreign entities active in Ohio, the revised code does not, in other chapters of title 17, attempt to define “doing business” or identify activities that require registration. Chapter 1776 continues that approach, but it does identify activities of limited liability partnerships that do not constitute doing business. If a partnership engages only in those activities, it is not required to register as a foreign limited liability partnership.<sup>131</sup>

#### VIII. OTHER RUPA VARIATIONS IN OHIO

In many instances, practitioners and judges working to understand new Chapter 1776 will be able to rely on the extensive comments to RUPA to gain an understanding of Chapter 1776. The new Ohio statute is substantially based on RUPA. But, as discussed, Chapter 1776 does intentionally depart from RUPA in a number of substantive ways. It is particularly important to recognize the provisions of Chapter 1776 that are deliberate deviations from RUPA and that should therefore affect the meaning or scope of the statute.

To make the drafting of Chapter 1776 consistent with the language conventions of other parts of the Ohio Revised Code, the Legislative Service Commission made language changes to RUPA to conform Chapter 1776 to Ohio’s statutory drafting style. There are instances when the Ohio statute does not use the exact language from RUPA, but no difference in meaning was intended.<sup>132</sup>

---

<sup>129</sup> OHIO REV. CODE ANN. § 1776.84(A).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* § 1776.88.

<sup>132</sup> For example, changes made in RUPA section 102(c) and (d), codified in section 1776.02(C) and (D) of the Ohio Revised Code, are:

(c) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of ~~that notification~~.

(d) A person receives a notification when the notification:

(1) comes to the person’s attention; or

Several conscious choices to make Chapter 1776 different from RUPA have already been noted. Ohio defines “tribunal” to allow partners to agree to arbitration or to use another forum to resolve disputes among themselves or with the partnership, while RUPA may, if narrowly construed, limit certain matters to court proceedings.<sup>133</sup> Variations affecting limited liability partnerships have already been noted.<sup>134</sup> The power for an Ohio partnership to defer or to stage the buyout of a dissociated partner if the partnership determines “that immediate payment of the buyout price would cause undue hardship to the business of the partnership” has been discussed.<sup>135</sup> Ohio’s additional protections for a dissociated partner have also been noted.<sup>136</sup>

Ohio law, including existing Chapter 1775, already allowed for mergers and consolidations that involve different types of entities and permit conversions from one type of entity into another.<sup>137</sup> The RUPA provisions governing merger, consolidation, and conversion allow partnerships and limited partnerships to engage in mergers and consolidations with each other, and for conversions into each other, but RUPA would not allow these actions or transactions to involve corporations or other non-partnership entities. Before the adoption of Chapter 1776, Ohio law was more flexible and expansive, allowing partnerships to engage in these transactions with limited liability companies and corporations as well. Chapter 1776 continues the flexibility found in the earlier Ohio law, and the merger and consolidation provisions in Chapter 1776 are broader than the RUPA provisions.<sup>138</sup>

---

(2) is ~~only~~ delivered at the person’s place of business or at any other place ~~held out~~ by the person holds out as a place for receiving communications.

The first sentence of RUPA section 103(a) was modified and codified in section 1776.03(A) of the Ohio Revised Code:

Except as otherwise provided in ~~subsection (b)~~ division (B) of this section, the partnership agreement governs relations among the partners and between the partners and the partnership, ~~are governed by the partnership agreement.~~

Changes were also made in the language of the last two sentences of RUPA section 306(c), codified in section 1776.36(C) of the Ohio Revised Code:

A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such a ~~partnership an~~ partnership obligation solely by reason of being or ~~so~~ acting as a partner. This ~~subsection~~ division applies notwithstanding anything inconsistent in the partnership agreement that existed ~~immediately before the any~~ before the any vote required to become a limited liability partnership under ~~Section 1001(b)~~ division (B) of section 1776.81 of the Revised Code.

There are numerous other examples of similar word changes. There is no reason to think these were meant to change the meaning of the RUPA provision.

<sup>133</sup> See *supra* notes 82-84 and accompanying text.

<sup>134</sup> See *supra* text accompanying notes 126-29.

<sup>135</sup> See *supra* notes 74-76 and accompanying text.

<sup>136</sup> See *supra* note 81 and accompanying text.

<sup>137</sup> OHIO REV. CODE ANN. §§ 1775.45-.46, 1775.53-.54.

<sup>138</sup> *Id.* §§ 1776.68-.69, 1776.72-.73.

Ohio partnerships cannot raise the defense of usury, nor can partners raise that defense with respect to their obligations to the partnership.<sup>139</sup> RUPA has no comparable provisions.

Chapter 1776 specifically authorizes the partners to select the law of Ohio or of another jurisdiction to govern their agreement.<sup>140</sup> This difference in language is more of a drafting change than a substantive change. Except for the provisions specifically designated as non-waivable in RUPA, the partners can, by agreement, establish the rules that will govern the partnership. This would logically include the ability for the partners to select the governing law and to override the default choice of law provided in RUPA. Chapter 1776 is more explicit on this point.

Chapter 1776 uses the term “economic interest” to describe the rights that a partner can transfer.<sup>141</sup> This is merely a difference in terminology; RUPA uses the term “transferable interest” to describe the same bundle of rights that a partner can transfer. Economic interest includes the transferor’s rights in profits and losses and also rights to receive distributions.<sup>142</sup> Economic interest does not include management or consent rights. Those are encompassed in the term “partnership interest,” which is defined consistently in Chapter 1776 and RUPA. When a transfer is being made, Ohio allows a partnership to require not only notice of a transfer, but also adds language that is not in RUPA allowing a partnership to require “reasonable proof of the transfer” before recognizing the rights of a transferee.<sup>143</sup> Chapter 1776 also overrides the provisions of secured transactions law that would allow a debtor to grant a security interest in the debtor’s partnership interest.<sup>144</sup> RUPA does not have comparable language. Since those provisions of UCC Article 9 do not apply to a partnership formed under Chapter 1776, prohibitions on assignment or restrictions on the creation of a security interest should be given effect.

The Ohio statute has several non-RUPA provisions that deliberately create consistency among the laws governing different forms of business entity. Ohio is explicit that the powers of a partnership are comparable to the authority of a corporation or limited liability company.<sup>145</sup> Similarly, the statutory language describing the contributions that partners may make to a partnership are the same types of property and rights that are recognized as consideration for stock in a corporation or membership interests in a limited liability company.<sup>146</sup>

Secretary of state filings for partnerships create special issues. Because there has been no central filing for partnerships, the law cannot parallel the law governing other entities with respect to the name of the entity. Corporations, limited

---

<sup>139</sup> *Id.* § 1776.04(C)-(D).

<sup>140</sup> *Id.* § 1776.06; *cf.* DEL. CODE ANN. tit. 6, § 15-106 (2009).

<sup>141</sup> OHIO REV. CODE ANN. § 1776.01(F).

<sup>142</sup> *Id.*; *cf.* UNIF. LTD. P'SHIP ACT § 102(22) (2001) (defining transferable interest to include only the right to receive distributions).

<sup>143</sup> OHIO REV. CODE ANN. § 1776.49(E).

<sup>144</sup> *Id.* § 1776.49(G); *cf.* DEL. CODE ANN. tit. 6, § 15-104(C).

<sup>145</sup> OHIO REV. CODE ANN. § 1776.21(C).

<sup>146</sup> *Id.* § 1776.24; *cf. id.* § 1701.18(A)(1) (consideration for shares in a corporation); *id.* § 1705.09(A) (contributions by a member of a limited liability company).

partnerships, and limited liability companies can only be formed if the new entity has a name that is distinguishable on the record from other entities. That requirement was considered unworkable for partnerships because there are already so many partnerships. There could be local partnerships in different parts of the state using the same or similar names. If the name of each partnership was required to be distinguishable on the record, it would have required one or more existing partnerships to change their name(s). To address this, the statute requires that the Secretary of State assign to each partnership an identifying number.<sup>147</sup> Subsequent filings for that partnership must include that number so that the record of filings related to that partnership can be distinguished from those relating to another partnership with a similar name but a different number. The provisions regarding an agent for service of process are similar to those that apply to other forms of entity in Ohio.<sup>148</sup>

Ohio also provides some extra flexibility for those persons charged with winding up the business of a partnership. RUPA requires that persons winding up the business “discharge the partnership’s liabilities” and distribute the remainder to settle accounts among the partners.<sup>149</sup> Chapter 1776 expressly allows those charged with the winding up not only to pay or discharge obligations to creditors, but to “make reasonable provision” for obligations of the partnership.<sup>150</sup> The Ohio language is clearer that escrows, contribution agreements, insurance, and other arrangements to pay contingent, unliquidated, or potential future obligations are tools available to persons conducting the winding-up.

In considering RUPA commentary, or in interpreting court decisions from other states, it will be important to keep in mind how the Ohio statute consciously departs from RUPA and is the same or different from the statutes in other states. Statutory differences may dictate a different result, depending on the facts and circumstances.

#### IX. CONCLUSION

Partnership law is most important for “default” partnerships. These are informal relationships, often formed without the benefit of legal advice. The partners in these partnerships will typically be governed by the default rules set out in the partnership statute because they will not have agreed to different terms. Ohio’s “old” law establishing the default rules governing partnerships was based on the original Uniform Partnership Act promulgated in 1914. Nearly a century has now passed, and the assumptions that underlie business relationships and the expectations that people bring to a business have evolved. RUPA better reflects the assumptions that

---

<sup>147</sup> *Id.* § 1776.05(G). Registered limited liability partnerships were required by section 1775.62 to have a name that was distinguishable from any trade name and from the name of any corporation, limited liability company, or limited partnership registered with the Secretary of State. Chapter 1776 does not require that limited liability partnerships have a distinctive name.

<sup>148</sup> *Id.* § 1776.07-.12. For a more nuanced analysis of these provisions, see OHIO STATE BAR ASS’N, *Report of the Corporation Law Committee* 24-26 (2006), available at <http://www.ohiobar.org/Council of Delegates/pubs/Report of the Corporation Law Committee 06.pdf>.

<sup>149</sup> REVISED UNIF. P’SHIP ACT §§ 803, 807 (1997).

<sup>150</sup> OHIO REV. CODE ANN. §§ 1776.63(C), 1776.67(A), (G).

most business people bring to their relationships in the twenty-first century. Chapter 1776 makes those changes. Chapter 1776 also reflects some Ohio-specific choices that should be kept in mind when considering questions relating to Ohio partnerships, and the relations between and among their partners.

APPENDIX A  
 Finding List  
 Chapter 1776 and RUPA

1. General Provisions		
1776.01	101	Definitions
.02	102	Knowledge and Notice
.03	103	Effect of Partnership Agreement; Non-Waivable Provisions
.04	104	Supplement Principle of Law
.05	105	Execution, Filing and Recording of Statements
.06	106	Governing Law
NA	107	Partnership Subject to Amendment or Repeal of [Act]
.07	NA	Agent for Service of Process
.08	NA	Sec. of State Record of Process Served
.10	NA	Service on Partners or Liquidating Trustee
.11	NA	Court Petition to Correct Statement
.12	NA	Correction of Filed Statement
2. Nature of Partnership		
.21	201	Partnership as Entity
.22	202	Formation of Partnership
.23	203	Partnership Property
	204	When Property is Partnership Property
.24	NA	Contributions by Partners
3. Relations of Partners to Persons Dealing with Partnership		
.31	301	Partner Agent of Partnership
.32	302	Transfer of Partnership Property
.33	303	Statement of Partnership Authority
.34	304	Statement of Denial
.35	305	Partnership Liable for Partner's Actionable Conduct
.36	306	Partner's Liability
.37	307	Actions By and Against Partnership and Partners
.38	308	Liability of Purported Partner
4. Relations of Partners to Each Other and to Partnership		
.41	401	Partner's Rights and Duties
.42	402	Distributions in Kind
.43	403	Partner's Rights and Duties With Respect to Information
.44	404	General Standards of Partner's Conduct
.45	405	Actions by Partnership and Partners
.46	406	Continuation of Partnership Beyond Definite Term or Particular Undertaking
5. Transferees and Creditors of Partner		
.47	501	Partner Not Co-Owner of Partnership Property

.48	502	Partner's Transferable Economic Interest in Partnership
.49	503	Transfer of Partner's Transferable Economic Interest
.50	504	Partner's Transferable Economic Interest Subject to Charge and Order
6. Partner's Dissociation		
.51	601	Events Causing Partner's Dissociation
.52	602	Partner's Power to Dissociate; Wrongful Dissociation
.53	603	Effect of Partner's Dissociation
7. Partner's Dissociation When Business Not Wound Up		
.54	701	Purchase of Dissociated Partner's Interest
.55	702	Dissociated Partner's Power to Bind and Liability to Partnership
.56	703	Dissociated Partner's Liability to Other Persons
.57	704	Statement of Dissociation
.58	705	Continued Use of Partnership Name
8. Winding Up Partnership Business		
.61	801	Events Causing Dissolution and Winding Up of Partnership Business
.62	802	Partnership Continues After Dissolution
.63	803	Right to Wind Up Partnership Business
.64	804	Partner's Power to Bind Partnership After Dissolution
.65	805	Statement of Dissolution
.66	806	Partner's Liability to Other Partners After Dissolution
.67	807	Settlement of Accounts and Contributions Among Partners
9. Conversions and Mergers		
	901	Definitions
	902	Conversion of Partnership to Limited Partnership
	903	Conversion of Limited Partnership to Partnership
	904	Effect of Conversion; Entity Unchanged
	905	Merger of Partnerships
	906	Effect of Merger
	907	Statement of Merger
	908	Non-Exclusive
.68	NA	Merger or Consolidation into Domestic Partnership
.69	NA	Domestic Partnership Merger into Another Entity
.70	NA	Certificate of Merger or Consolidation
.71	NA	Effect of Merger or Consolidation
.72	NA	Conversion into Domestic Partnership
.73	NA	Domestic Partnership Conversion into Another Entity

.74	NA	Certificate of Conversion
.75	NA	Effect of Conversion
.76	NA	Dissents in Merger, Consolidation for Conversion
.77	NA	Procedures in Case of Dissent
.78	NA	Court Proceeding for Dissent
.79	NA	Rights of Creditors Against Disappearing Partnership
10. Limited Liability Partnerships		
.81	1001	Statement of Qualification
.82	1002	Name
.83	1003	Annual Report
.84	NA	Limitation on Distributions
11. Foreign Limited Liability Partnerships		
.85	1101	Law Governing Foreign Limited Liability Partnership
.86	1102	Statement of Foreign Qualification
.87	1103	Effect of Failure to Qualify
.88	1104	Activities Not Constituting Transacting Business
.89	1105	Action by Attorney General
12. Miscellaneous Provisions		
.91	1201	Uniformity of Application and Construction
.92	1202	Short Title
NA	1203	Severability Clause
NA	1204	Effective Date
NA	1205	Repeals
.95	1206	Applicability/Effective Date
.96	1207	Savings Clause
NA	1208	Effective Date
NA	1209	Repeals
NA	1210	Applicability
NA	1211	Savings Clause