THE DISTRICT OF COLUMBIA REVISED UNIFORM PARTNERSHIP ACT AND LIMITED LIABILITY PARTNERSHIPS

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By Nicholas G. Karambelas, Esq.

I. INTRODUCTION AND BACKGROUND

The Partnership is the oldest of all forms of business organizations in history. Legal historians find evidence of partnership law as early as the Code of Hammurabi (circa. 1 750 B.C.). Roman law and the codes of Justinian recognize the Partnership as a form of doing business. The Partnership has been recognized in English law since the 13th Century. During the Middle Ages, the Partnership was called a "Societas" and was a common form of business organization among merchants in Europe. The Partnership entered American law through the English common law. The Uniform Partnership Act (the "UPA") was approved in 1916 and was enacted in the District of Columbia in 1962.

The Revised Uniform Partnership Act ("RUPA") was approved by National Conference of Commissioner Uniform State Laws ("NCCUSL") in 1994 and amended in 1996 to add the Limited Liability Partnership ("LLP") provisions. The City Council of the District of Columbia approved Bill 11-344 on December 3, 1996 and the Mayor approved it on December 24, 1996 as D.C. Act 11-494. Except for certain technical amendments, D.C. has enacted the RUPA as proposed by The effective date of the RUPA in D.C. is April 9, 1997. The RUPA governs all Partnerships formed after April 9, 1997. The RUPA also governs any Partnership formed before April 9, 1997 that affirmatively elects to be governed by the RUPA. The election is made by

amending the partnership agreement to provide that the Partnership is governed by the RUPA.

After January 1, 1998, all Partnerships whenever formed in D.C. shall be governed by the RUPA.

II. TERMS AND DEFINITION OF A PARTNERSHIP

A. Terminology

Like the corporations and LLCs, the Partnership has a terminology that is specific to Partnerships:

1. "Partner" means an individual or entity who or that owns an interest in a partnership and is the functional equivalent of a "member" in an LLC or a "shareholder" in a corporation.

2. "Partnership" means a partnership that is subject to the default provisions of either the Uniform Partnership Act (referred to as UPA) or the Revised Uniform Partnership Act (referred to as RUPA) and in which each of the partners have unlimited personal liability for the debts and obligations incurred by the partnership, (referred to as a Partnership).

3. "Limited Partnership" means a partnership that is subject to the default provisions of the Uniform Limited Partnership Act (referred to as ULPA) or the Revised Uniform Limited Partnership Act (referred to as RULPA) and in which at least one partner is personally liable for the debts and obligations incurred by the partnership to the extent of the partner's personal assets and at least one partner is not personally liable for the debts and obligations of the partnership.

4. "Limited Liability Partnership" means a Partnership or Limited Partnership that files a Certificate of Limited Liability Partnership and in which a Partner is not personally liable for the debts and obligations of the Partnership solely because that Partner is a Partner in the Partnership, (referred to as LLP).

5. "Limited Liability Limited Partnership" means a Limited Partnership in which the General Partner is not personally liable for the debts and obligations of the Limited Partnership solely because the General Partner is the General Partner of the Limited Partnership.

6. "General Partner" means a Partner in a General Partnership or the Partner in a Limited Partnership that is personally liable for the debts and obligations of the Limited Partnership and manages the business of the Limited Partnership.

7. “Limited Partner” means a Partner in a Limited Partnership that is not personally liable for the debts and obligations of the Limited Partnership and usually does not manage the business of the Limited Partnership.

8. "Partnership Agreement" is the contract made by the Partners that governs the relationship between the Partners and the Partnership and the relationship between and among the Partners. Serving the same purpose as the operating agreement in an LLC or the shareholder agreement in a corporation, the partnership agreement orders the internal affairs of the Partnership and the manner in which the business will be conducted. A Partnership Agreement can be either oral, in writing or implied by conduct.

9. “Ownership Interest” means the percentage interest of the total of the 100% of the interests in the partnership that is owned by a Partner at any particular time. All benefits, liabilities and obligations contemplated by the Partners will flow to the Partners in accordance with their respective Ownership Interests. An Ownership Interest is the functional equivalent of membership interests in an LLC and shares of a corporation. An Ownership Interest consists of governance rights financial rights and management rights.

B. Definition of a Partnership

A Partnership is created by a contract between two or more persons to engage as co-owners in a business for profit. A Partnership can be implied at law or be deemed to exist by estoppel. No document such as articles of organization or articles of incorporation need be filed with a state authority to create a Partnership. A Partnership is an unincorporated association that does not have perpetual duration but it can live forever. and can be formed by and exist only as long as it has two or more Partners. A Partner can be a natural person, a corporation, an LLC or another partnership.

A Partnership will be classified as a partnership for tax purposes unless it chooses to be classified as an association and taxed as a corporation by filing IRS Form 8832. A Partnership is a “pass-through” entity and not subject to corporate income tax for both federal and state income tax purposes. A Partnership may pursue any business purpose as long as the purpose is a lawful

one. The Partners may limit the powers of the Partnership or restrict how the powers are exercised as long as the limit or restriction is contained in a Partnership Agreement. If no such limit or restriction is contained in a Partnership Agreement, then the Partnership may possess and exercise all powers that are necessary or convenient to carry out the business purpose of the Partnership.

C. Aggregation vs. Entity Theory of Partnership

The Partnership as a relationship cognizable by law derives from a voluntary agreement by or among the partners. A corporation or an LLC are a creation of statute because they can be formed only with the consent of the state, i.e. by filing articles of incorporation or articles of organization. Because they are formed by the state, corporations and LLCs are entities that have a legal existence that is separate and apart from the shareholders or members. By contrast, the Partnership was traditionally deemed not to be a legal entity separate and distinct from the partners but rather simply the aggregation of the partners.

The UPA was based on the aggregation theory. Consequently, under the UPA, a Partnership could not be sued or sue in its own name and the Partnership could not own property in its own name. The RUPA rejects the aggregation theory and expressly adopts the entity theory for Partnerships, (RUPA, § 201). As a result a Partnership formed under the RUPA is a legal entity that is separate and distinct from the partners in the same way that a corporation and an LLC are separate and distinct from their shareholders or members. The adoption of the entity theory is the most fundamental difference between the UPA and the RUPA.

D. Conversion and Merger

A Partnership can convert to a Limited Partnership and a Limited Partnership can convert

to a Partnership. In each such event, the resulting Limited Partnership or Partnership, as the case may be, is the same as the entity from which it converted, (RUPA, §§901-904). A Partnership may merge with another Partnership or a Limited Partnership, (RUPA, §905-907).

E. Comparison with Other Forms of Business Organization

A review of the primary attributes of other forms of business organization is useful to understand the nature of Partnerships:

1. C Corporation: The shareholders have limited liability but the corporation is taxable at the entity-level. The shareholders must comply with corporate formalities such as annual meetings, minutes and resolutions, by-laws and elections of boards and officers. A corporation does not dissolve upon the dissociation of a shareholder.

2. Statutory Close Corporation: The shareholders have limited liability but the corporation is taxable at the entity level. The shareholders can dispense with corporate formalities and operate with only a shareholder agreement. The number of shareholders is limited usually to 35 and cannot make a public offering of its shares. The corporation does not dissolve upon the dissociation of a shareholder.

3. S Chapter Corporation: The shareholders have limited liability and the S election enables the corporation to be taxed in a manner similar to pass through entities. The number of shareholders is limited to 75 and all of them must be U.S. citizens or permanent residents. The S corporation can have only one class of shares. The corporation does not dissolve upon the dissociation of a shareholder.

4. Limited Liability Company: The members have limited liability. The LLC is taxed as a pass through entity. The LLC is formed upon the filing of articles of organization. The LLC dissolves upon the dissociation of a member but may continue if two or more remaining members agree to continue.

5. Limited Partnership: At least one partner must be a general partner who lacks limited liability, (except for limited liability limited partnerships; available in Virginia). The liability of the other partners is limited to the amount of their contributions to the partnership. It is taxed as a pass

through entity. The partnership dissolves upon the dissociation of the general partner unless there are two or more remaining limited partners who agree to continue with a new general partner.

6. Sole Proprietorship: The proprietor has no limited liability and is taxed as an individual. There are no prescribed formalities for organizing and maintaining a sole proprietorship.

III. PROPERTY IN A PARTNERSHIP

A. Partnership Property

At common law, partners in a Partnership were deemed to be joint tenants with right of survivorship of the personal property of the Partnership and tenants in common of the real property of the Partnership. Creditors of individual partners were able to levy and execute against Partnership property and disrupt the business of the Partnership. Courts sitting in equity fashioned an ambiguous and contradictory body of principles and remedies to rectify this harsh result.

The purpose of the UPA was to establish a clear and predictable legal theory of property rights in a Partnership. The UPA sets forth an intricate scheme of Partnership rights that is simple in theory but complicated in practice. To remain consistent with the aggregation theory, the UPA provides that a partner has rights in specific Partnership property and is a co-owner with the other partner(s) of Partnership property which is held under a "tenancy in partnership". The "tenancy in partnership" enables a partner to possess Partnership property only for Partnership purposes. The right of a partner in specific Partnership property is not assignable unless all of the rights of all of the partners in that specific property are assigned.

Because the RUPA adopts the entity theory, it eliminates the concept of "tenancy in partnership". The RUPA simply provides that property that is acquired by or in the name of the

Partnership is the property of the Partnership and not the property of any individual partner, (RUPA, § 203). The Partnership can hold and dispose of property in the same way in which a corporation or an LLC can hold and dispose of property.

B. Distinguishing Between Partnership Property and Property of Individual Partners

Because of the informal manner in which Partnerships operate, it is often difficult to determine which property belongs to the Partnership and which property belongs to individual partners. The UPA created a rebuttable presumption that property acquired with Partnership assets is Partnership property. The RUPA contains that same rebuttable presumption. It adds another rebuttable presumption that property acquired in the name of a partner(s) without an indication that the partner is a partner in a Partnership and without the use of Partnership assets is the property of the partner and not the Partnership even if the property is used in the business of the Partnership, (RUPA, §204).

C. Transferring Partnership Property

At common law, the manner in which a Partnership could transfer property was a significant issue. Since a Partnership was not a legal person, it could not hold or transfer title to property. If property was transferred to the Partnership in the name of the Partnership, the Partnership acquired only equitable title but not legal title to the property. Consequently, a subsequent transferee for value could have a claim to the property that was superior to the claim of the Partnership. The UPA resolved this issue by, in effect, creating an exception to the aggregation theory and treating the Partnership as an entity for the purpose of holding and transferring property that the Partnership had acquired in its own name. The RUPA refines this principle and premises the validity of a transfer of Partnership property on the validity of the

authority of the partner executing an instrument of transfer on behalf of the Partnership, (RUPA, §302).

IV. THE PARTNERS AND THIRD PERSONS DEALING WITH THE PARTNERSHIP

A. Partners As Agents of the Partnership

The RUPA retains the fundamental principle of partnership law developed at common law and contained in the UPA that each partner is an agent of the Partnership for the purpose of the business, (RUPA § 301). An act of a partner binds the Partnership where the act is committed in the apparent ordinary course of business or the business of the Partnership unless the partner had no authority to act on behalf of the Partnership and the third person knew or had notice that the partner lacked such authority. An act of a partner does not bind the Partnership where the act committed is not apparently in the ordinary course of business or the business of the Partnership unless the act is authorized by the other partners.

Since 1916 when the UPA was enacted, courts in all jurisdictions have produced a contradictory and "un-seamless" web of case law construing "ordinary course of business" and whether the third person knew or had notice of the authority of the acting partner. To avoid these issues from arising, the RUPA adopts a system by which a Partnership can execute and file a statement of authority with the Mayor that specifies or limits the authority of a partner to bind the Partnership, (RUPA, §§303, 105). A duly filed statement of authority that supplements or grants authority is deemed conclusive evidence to third persons of the authority of a partner to act in connection with any matter set forth in the statement, (RUPA § 303(d)(1)). A duly filed statement of authority that limits the statutory authority of a partner to act is conclusive evidence of authority to the other partners but, except in real property transactions, not conclusive

evidence to third persons, (RUPA, §303(f)). A partner or person deemed to be a partner may file a statement of denial that denies an alleged fact such as the authority of any such person or the status of any such person as a partner, (RUPA, §304). A statement of denial is deemed a limitation on authority and will not be conclusive evidence to third persons, (RUPA, *Ibid.*).

The statement of authority/statement of denial enables a Partnership or a partner to alter the agency relationship of a partner and the Partnership. By filing a statement of authority, the Partnership can either grant authority to a partner to bind the partnership through acts committed outside the ordinary course of business or to limit the authority of the partner to bind the Partnership through acts committed within the ordinary course of business.

As a practical matter, issues about the authority of a partner to bind the Partnership have arisen most often with respect to real property transactions. The RUPA provides that, where a statement limiting the authority of a partner to act with respect to real property owned by the Partnership is filed against the real property with the Recorder of Deeds, the limitation will be conclusive evidence of authority to third persons, (RUPA §303(e)).

B. Actions By and Against the Partnership and the Partners

At common law and under the UPA, a Partnership lacked the capacity to sue or be sued in its own name because a Partnership was not a legal person or entity. An action against a Partnership had to name each partner as a defendant and each partner had to be served with process. An action by a Partnership had to name each partner as a plaintiff. If a party failed to name each partner as a defendant, it could be precluded from levying on Partnership property to satisfy a judgment. Because the RUPA adopts the entity theory, the capacity of a Partnership to sue or be sued is not no longer an issue. The RUPA expressly enables a Partnership to sue or be

sued in its own name, (RUPA, §307).

The capacity to sue or be sued as an entity should not be confused with satisfying federal subject matter jurisdiction requirements. Under federal subject matter jurisdiction, a person or entity can sue or be sued in a federal district court only if the matter involves a substantial federal question (federal question jurisdiction) or if the state citizenship of the adverse parties is completely diverse and the amount in controversy exceeds $75,000 (diversity jurisdiction), (See 28 U.S.C. §§1331, 1332). If the action is based on federal question jurisdiction, the juridical character of a Partnership is irrelevant. If, however, the action is based on diversity jurisdiction, the juridical character of a Partnership as a non-corporate entity renders it incapable of having state citizenship for diversity purposes. Consequently, the state citizenship of each partner must be diverse with each adverse party. If any partner has the same state citizenship as any adverse party, then the federal district court lacks subject matter jurisdiction to hear the action.

C. Liability of the Partnership for Acts of the Partners

The RUPA retains the common law and UPA principle that the Partnership is liable for any loss or injury caused to a third person by an act or omission of a partner where that partner was acting in the ordinary course of business or with the authority of the Partnership, (RUPA, §305). The RUPA eliminates the UPA principle that shielded the Partnership from liability for loss or injury suffered by a partner as the result of the act or omission of another partner acting in the ordinary course of business or with the authority of the Partnership.

D. Liability of the Partners for the Obligations of the Partnership

The RUPA retains the common law and UPA principle that each partner in a partnership (that is not an LLP) is liable for the obligations of the Partnership, (RUPA §306). Unlike the

UPA, the RUPA characterizes all obligations of the Partnership, whether in tort or in contract, as both joint and several obligations of the Partnership. This means that in an action against a Partnership that is not an LLP, a third person can seek to recover against the Partnership assets without having to join each partner over whom personal jurisdiction can be obtained in the action as a defendant. Under the UPA, contract obligations were joint but not several. This meant that a third person could not recover against the Partnership assets unless each partner over whom personal jurisdiction could be obtained was joined as a defendant.

E. Judgments Against the Partnership

A judgment against the Partnership is not a judgment against any partner so that a judgment against the Partnership cannot be satisfied against the personal assets of a partner unless there is also a judgment against that partner, (RUPA, §307). Therefore, if a third person seeks to recover only against the Partnership assets, it need not join each of the partners as defendants. However, if the third person seeks to recover against the personal assets of the partners, it must join each such partner as a defendant.

Subject to certain exceptions (RUPA, §307(d)(2)-(5)), even where a judgment creditor of the Partnership has obtained a judgment against a partner who is personally liable as a partner (see this Tab, Section D), the judgment creditor must first satisfy the judgment out of the Partnership assets. If such a judgment is unsatisfied in whole or in part, then the judgment creditor may levy on the assets of the partner against whom it has obtained a judgment, (RUPA, §307(d)(1)).

V. THE PARTNERS AND THE PARTNERSHIP

A. The Rights and Duties of Partners and the Partnership Agreement

Like the UPA, the RUPA fundamentally serves as a default statute. Most of the provisions of the RUPA govern a partnership only in those instances where the partners have not manifested an agreement, (RUPA, §103(a)). The RUPA does, however, contain several principles that are mandatory provisions and which shall govern the Partnership without regard to whether or not the partners have made an agreement with respect to the issues governed by the mandatory provisions (RUPA, §103(b)). Under mandatory provisions of the RUPA, the partners cannot by agreement:

1. Eliminate the duty of loyalty or unreasonably reduce the duty of care,
2. Eliminate the obligation of good faith and fair dealing,
3. Vary the right of a partner to dissociate,
4. Vary the law applicable to LLPs, and
5. Restrict the rights of third persons.

The Partnership Agreement should distinguish between and among the governance rights, financial rights and management rights of the members. Governance rights enable members to decide on the fundamental structure and include admission of new members, assignment of membership interests and dissolution. Financial rights enable members to receive distributions from the revenues of the Partnership business. Management rights enable the members to conduct and pursue the business and business purpose of the Partnership. Other than the rights and duties specified in the mandatory provisions, the partners may arrange the internal affairs of the Partnership as they deem appropriate. If there is no agreement as to any of the financial, management and governance rights of the partners, the RUPA essentially apportions those rights equally between and among the partners on a per capita basis, (RUPA, §401). The other

significant default provisions are:

1. A person can be admitted to the Partnership only with the consent of all of the partners,

2. A disagreement arising as to a matter in the ordinary course of business will be decided by a majority of the partners on a per capita basis,

3. A disagreement arising as to a matter outside of the ordinary course of business will be decided by all of the partners on a per capita basis.

Unlike an operating agreement in an LLC which must be in writing to be enforced, the Partnership Agreement can be written, oral or implied by conduct. The Partnership Agreement is the only constitutive evidence of the existence of the Partnership. If the partners do not desire to be governed by the default provisions of the RUPA, the better practice is to have a written Partnership Agreement.

B. Fiduciary Duties Between and Among the Partners and the Partnership

Unlike the corporations and LLC statutes, the RUPA mandates that the fiduciary duties of the duty of loyalty and the duty of care shall govern the relations between and among the partners and the Partnership, (RUPA, §404(a)-(c)). Reflecting the contractual nature of the Partnership, the RUPA also mandated that each partner shall act and perform its duties in a manner consistent with the implied obligations of good faith and fair dealing, (RUPA, §404(d)-(e)).

C. Transfer of Financial Rights of a Partner

Unless otherwise agreed by the partners, a partner may without any consents or approvals of the partners or the Partnership transfer its financial rights to a third person, (RUPA, 503). The transfer does not cause a dissociation from or dissolution of the Partnership. The transferee does not become a partner and is not entitled to exercise any management or governance rights.

A judgment creditor of a partner essentially has the same rights as a transferee of financial rights. A judgment creditor can foreclose on and liquidate the Ownership Interest of a partner but the partner remains a partner and can continue to exercise its management and governance rights, (RUPA, §504).

D. Actions Between and Among the Partners and the Partnership

At common law and under the UPA, the equitable remedy of an accounting was generally a prerequisite to any other action between and among partners and the Partnership. To the extent that an accounting remains such a prerequisite under modern theories of pleading, the RUPA eliminates any such requirement and enables partners and Partnerships to sue each other on any applicable legal or equitable cause of action, (RUPA, §405).

VII. DISSOCIATION AND DISSOLUTION

Under the UPA, a dissolution occurred upon a change in the relations of the partners caused by a partner ceasing to be associated in the business such as the death, withdrawal or bankruptcy of a partner. While a dissolution was a prerequisite to winding up and terminating the Partnership, the partners could, in the alternative, agree to continue the Partnership after an event in dissolution had occurred and not wind up and terminate the Partnership. The RUPA fundamentally changes the UPA meaning of the term "dissolution" and adds the new concept of "dissociation". Under the RUPA, if an event in dissolution occurs, the Partnership must wind up and terminate. If an event in dissociation occurs that is not also an event in dissolution, the Partnership shall not dissolve, wind up and terminate.

A. Events in Dissociation

1. Dissociation by Express Will of a Partner

A partner dissociates from a Partnership if it expresses its will to dissociate to the Partnership, either orally or in writing, (RUPA §601(1)). The power to dissociate by express will is a mandatory provision and the partners cannot agree to limit that power in any way.

2. Other Events in Dissociation

The partners may vary or eliminate by agreement any of the other events in dissociation set forth in RUPA §601(2)-(10). These events include:

1. An event contained in the Partnership Agreement.

2. The expulsion of a partner.

3. The death, dissolution or bankruptcy of a partner.

B. When an Event in Dissociation Causes a Dissolution

Whether an event in dissociation causes a dissolution depends on whether the Partnership is an at will Partnership or a Partnership for a definite term or undertaking.

1. At Will Partnership

An at will Partnership will dissolve when a partner dissociates by express will under RUPA §601(1). Unless otherwise agreed by the partners, no other event in dissociation under RUPA §601(2)-(10) will dissolve an at will Partnership.

2. Partnership for a Definite Term or Undertaking

A Partnership for a definite term or undertaking will dissolve when a partner dissociates by any event set forth in RUPA §601(6)-(10), i.e., death, dissolution, bankruptcy unless a majority in interest of the partners agree to continue the Partnership within 90 days after the date on which the event occurred. Unless otherwise agreed by the partners, neither dissociation by the express will of a partner (RUPA, §601(1)) nor the expulsion of a partner (RUPA, §601(2)-(5)) will

dissolve a Partnership for a definite term or undertaking.

C. Effect of an Event in Dissociation that Does Not Cause a Dissolution

Upon the occurrence of an event in dissociation that does not cause a dissolution, the dissociated partner no longer possesses or exercises any financial rights, management rights or governance rights. The Partnership remains in existence and in business. Unless otherwise agreed, the Partnership must purchase the Ownership Interest of the dissociated partner for essentially the value that the Ownership Interest would have had if the Partnership had dissolved and wound up, (RUPA, §§701-705).

D. Effect of an Event in Dissociation that Does Cause a Dissolution

Upon the occurrence of an event in dissociation that does cause a dissolution, the Partnership ceases to conduct new business but continues only for the purpose of winding up. The winding up process involves settling accounts and returning contributions, (RUPA, §§801-807. When the wind up is complete, the Partnership ceases to exist.

VIII. LIMITED LIABILITY PARTNERSHIPS (LLPs)

A. Definition and Formation of LLPs

The LLP is a special form of Partnership in which the fundamental principle of Partnership law that each partner is personally liable for the wrongful acts or omissions of another partner is altered. Under the RUPA, a partner in an LLP is not liable for any obligation of the Partnership whether grounded in tort or contract solely by reason of being or acting as a partner. Under the prior D.C. LLP Act, limited liability was afforded to the non-malfeasing partner only as to the tortious acts of another partner. As long as the non-malfeasing partner did not participate in the tortious act, or have knowledge of the tortious act or supervise the partner who committed the

tortious act, the non-malfeasing partner could not be held personally liable for the tortious acts of the malfeasing partner. Tortious acts were defined as errors, omissions, negligence, incompetence or malfeasance committed in the course of the partnership business. However, the non-malfeasing partner remained personally liable for a tortious cause of action against a malfeasing partner that was grounded in contract. Therefore, if an aggrieved client asserted a cause of action for malpractice that was styled as a breach of contract rather than as a tort, the non-malfeasing partner would be personally liable despite the partnership being a limited liability partnership.

The RUPA eliminates the distinction between actions in tort and actions in contract. The RUPA affords limited liability to a non-malfeasing partner in any action whether grounded in tort or contract. Note that the limited liability extends also to commercial obligations of the partnership unless a partner has personally guaranteed any such obligation.

A Partnership (as well as a Limited Partnership) becomes an LLP by filing a Statement of Qualification that contains:

1. The name of the Partnership
2. The address of the chief executive office of the Partnership and, if different, the address of the Partnership in D.C.
3. If the Partnership does not have a D.C. office, the name and address of an agent to receive service of process. (Must be D.C. resident; attach consent of agent)
4. Affirmative statement of election to be an LLP
5. Deferred effective date, if any.

The Statement is filed with the D.C. Department of Consumer and Regulatory Affairs, Corporations Division at 614 H Street, N.W. Room 407 Washington, D.C. 20001. Note that the

Corporations Division has taken the position that the RUPA including the LLP provisions do not take effect until January 1, 1998, the effective date of the repeal of the UPA. At least until January 1, 1998, the Corporations Division will accept for filing only applications for LLP status that comply with the prior D.C. LLP Act and include the declaration to maintain the insurance, (see this Part, Section B).

B. Insurance or Financial Responsibility Requirement

The prior D.C. LLP Act had required that the LLP carry liability insurance equal to the greater of either $100,000 or the amount of insurance carried by the individual partner carrying the greatest amount of individual liability insurance. The insurance requirement has been eliminated by the RUPA.

C. Indemnification and Contribution

The partners may agree as to whether to indemnify a malfeasing partner or compel the partners to contribute to a judgment against the partnership incurred by reason of the malfeasance of a partner. If no such agreement exists, the RUPA controls. Under RUPA, a partner has a right to indemnification from the Partnership for personal liabilities incurred in the ordinary course of business to preserve the business or property of the partnership. The Virginia LLP statute alters this principle and provides that a non-malfeasing partner has no obligation to indemnify a malfeasing partner. While the RUPA does not contain any such provision, the Partnership could probably avoid the indemnification requirement on the grounds that acts of malpractice are not within the ordinary course of business.

Under the UPA, partners were required to contribute to satisfy a judgment if the

partnership assets are insufficient. In contrast to indemnification, the obligation to contribute applied to any liability whether incurred in the ordinary course of business or not. The prior D.C. LLP Act had been silent on the issue so that non-malfeasing partners would be obligated to contribute to satisfy any such judgment. The RUPA makes clear that the non-malfeasing partner cannot be compelled to contribute to any such judgment.

IX. PROFESSIONAL PRACTICE THROUGH LLCs AND LLPs

In most states including the area jurisdictions professional services can be rendered though LLCs and LLPs. The more complicated issue is whether the authority that regulates a particular profession enables professionals to render services through LLCs and LLPs. Since 1992, the AICPA has specifically enabled CPAs to practice through LLCs and LLPs. Neither the D.C. Court of Appeals nor the D.C. Bar has specifically ruled on whether attorneys can practice through LLCs and LLPs. The latest amendments to the D.C. Rules of Professional Conduct that took effect on November 1, 1996 did not address the issue.

Rule 1.8(g)(1) of the D.C. Rules of Professional Conduct prohibits an attorney from limiting his or her malpractice liability. Since both the LLC statutes and LLP statutes mandate that attorneys who commit acts or omissions of malpractice shall be personally liable for those acts, neither LLC form nor the LLP form should violate that Rule. Despite the lack of an affirmative mandate, it is unlikely that attorneys would be prohibited from practicing through LLCs or LLPs.

The D.C. Professional Corporation statute (D.C. Code § 29-608) requires that all shareholders, directors and officers be licensed to practice the profession that the PC practices. Neither LLCs not LLPs are subject to that requirement. Rule 5.4(b) of the D.C. Rules of

Professional Conduct permits attorneys to practice in business organizations where non-attorneys have managerial authority or a financial interest as long as (1) the business organization provides only legal services, (2) the non-attorneys undertake to comply with the Rules (3) the attorneys undertake to be responsible for the conduct of the non-attorneys and (4) the foregoing conditions are in writing.

Because limited liability is afforded to the non-malfeasing partner against malpractice actions grounded in contract as well as in a tort, the LLP and the LLC provide the same protection. Beyond the liability protection afforded by the LLP and the LLC, consider the effect on the collegiality within the firm of personal liability protection for partners or members who do not participate in a potential act or omission of malpractice or can demonstrate that they had no knowledge of the act or omission.

A. Exclusion from Limited Liability under LLC Statute (D.C. Code § 29-1314

The limited liability afforded by the LLC statute does not extend to:

1. A partner's own tortious acts,

2. The tortious acts of another partner or employee while being supervised by the partner,

3. The debts and obligations guaranteed by a partner.

B. Exclusion from Limited Liability under Professional Corporation Statute D.C. Code § 29-611

1. A professional's own tortious acts,

2. The tortious acts of another professional or employee while being supervised by the professional or under the control of that professional,

3. The debts and obligations guaranteed by a professional-shareholder.

C. Exclusion from Limited Liability under the RUPA

Unlike the former D.C. LLP Act, the RUPA does not contain a specific exclusion from limited liability for the malfeasing partner. The provision that affords the limited liability states that a partner cannot be personally liable *solely by reason of being or acting as a partner,* (RUPA, 306(c)). The language is interpreted to mean that the partner can be held personally liable for any other reason including acts of personal malfeasance or nonfeasance.