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CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

Partnerships: Revise Georgia Uniform Partnership Act

CODE SECTIONS:	O.C.G.A. §§ 14-8-10.1 (new), 14-8-38 to -38.2 (new)
BILL NUMBER:	HB 333
ACT NUMBER:	565
SUMMARY:	The Act introduces minor revisions and additions to Georgia's Uniform Partnership Act (UPA). The contents of statements of partnership are expanded to include information regarding the admission of new partners, and the Act provides that any such inclusion creates a conclusive presumption that an admittee so named is in fact a partner. The Act also amends the UPA to specify that when the business of a partnership is continued after an agreement of dissolution, partnership property may be applied to the liabilities and obligations of the continuing partnership. Title to the predecessor partnership's real property vests in the continuing partnership by operation of law.
EFFECTIVE DATE:	July 1, 1989

History

The 1984 session of the General Assembly substantially revised the law of partnerships in Georgia with the adoption of the Uniform Partnership Act (UPA).¹ The enactment of the UPA in Georgia was intended to give state businesses the benefits of the developing national law under the Act;² however, numerous variations in the version ultimately adopted by the General Assembly continue to lend a unique aspect to the state's UPA.³

1. O.C.G.A. §§ 14-8-1 to -43 (1989).

2. Ribstein, *An Analysis of Georgia's New Partnership Law*, 36 MERCER L. REV. 443, 444 (1985).

3. *Id.* at 447.

HB 333

Georgia's version of the UPA permits, but does not require, a partnership to record a statement of partnership in the office of the clerk of the superior court of any county.⁴ HB 333 adds a new subsection⁵ to the Code to permit a partnership to state, in addition to the previously defined disclosures which may be set forth in such a statement,⁶ the name and date of admission of any new partner. The prior Code provided that all facts in the statement of partnership "shall be conclusively presumed against the partnership."⁷ The Act amends subsection (f) to include explicitly the conclusive presumption "that any partner stated to have been admitted as a new partner has been admitted to the partnership."⁸

Section 14-8-38 provides that upon any dissolution of a partnership, other than wrongful dissolution, partnership property may be applied to discharge the partnership's liabilities or to distribute its assets among the partners, absent a contrary prior agreement among the partners.⁹ The Act extends the statutorily defined transactions which permit such application of property to "includ[e], but not [be] limited to, an agreement to continue the business of the partnership."¹⁰

The prior Code did not specifically provide for the transfer of title of a partnership's real property in the event that the partnership was dissolved without winding up, and its assets were assumed by a successor partnership continuing its business. The Act addresses this omission by adding sections 14-8-38.1 and 14-8-38.2.¹¹ HB 333, as introduced, proposed that the new section 14-8-38.1 provide:

When a partnership is dissolved for any reason, either pursuant to the provisions of this chapter or the partnership agreement or otherwise, and the business is continued as a partnership without the winding up of the partnership affairs, the title to any real property or other property vested in such dissolved partnership shall, by operation of law, be vested in such continued partnership without reversion or impairment and

4. O.C.G.A. § 14-8-10.1(a) (1989).

5. O.C.G.A. § 14-8-10.1(b)(9) (1989).

6. The statement of partnership shall include, generally, the partnership's name, the location of its principal place of business, the names and residences of all of the partners, the term of the partnership, any limitations or extensions of a partner's authority, any property which the partnership may wish to disclose, and whether the partnership is a continuation of a predecessor partnership. O.C.G.A. § 14-8-10.1(b) (1989).

7. O.C.G.A. § 14-8-10.1(f) (1989).

8. *Id.*

9. O.C.G.A. § 14-8-38(a) (1989).

10. *Id.*

11. O.C.G.A. §§ 14-8-38.1 to -38.2 (1989).

without further act or deed or other instrument of transfer or conveyance.¹²

An amendment adopted on the Senate floor struck the phrase "without the winding up of the partnership affairs,"¹³ and replaced the term "continued partnership" with "partnership continuing the business of a dissolved partnership."¹⁴ The changes emphasize that the transferee partnership is not a continuation of the transferor partnership, but a separate entity formed following the dissolution of the transferor partnership.¹⁵

Similarly, section 14-8-38.2 retroactively validates such vesting of property as may have occurred prior to the effective date of the Act for which "no deed or other instrument of transfer or conveyance for any real property or other property to the continued partnership has been duly executed and properly recorded."¹⁶

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12. HB 333, as introduced, 1989 Ga. Gen. Assem.

13. HB 333 (SFA), 1989 Ga. Gen. Assem.

14. *Id.*

15. O.C.G.A. § 14-8-38.1 (1989).

16. O.C.G.A. § 14-8-38.2 (1989).