

# Ohio Business Litigation Blog

A blog about Ohio business litigation and beyond.

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Wednesday, October 13, 2010

## Effect of a Partner's Death on a General Partnership Under Ohio Law

Beginning January 1, 2010 [chapter 1776 of the Ohio Revised Code](#) became effective and governs all Ohio general partnerships. Based on the Revised Uniform Partnership Act (1997) ("RUPA"), Chapter 1776 replaces Ohio's version of the Uniform Partnership Act ("UPA"), chapter 1775 of the Revised Code and substantially alters existing default rules governing general partnerships.

### Disassociation and Dissolution

Under ORC 1776.51(G), a death of a partner in a general partnership causes the deceased partner to become "disassociated." The term "dissociation" is used in lieu of the UPA term "dissolution" to denote the change in relationship caused by a partner's ceasing to be associated in the carrying on of the business. ORC Ann. 1776.51 (2010) (official comment 1).

The dissociation of a partner does not necessarily cause a dissolution and winding up of the business of the partnership. Under ORC 1776.51, a partnership is dissolved and the partnership's business shall be wound up only upon the occurrence of the following events:

(A) In a partnership at will, there is express notice from a partner wishing to withdraw;

(B) In a partnership for definite term or particular undertaking: (1) within 90 days after a partner's dissociation or death, it is the express will of at least half the remaining partners to wind up the partnership business, (2) it is the express will of all the partners to wind up the partnership business, or (3) the term has expired or the undertaking is complete;

(C) An event agreed to in the partnership agreement resulting in the winding up of



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the partnership business;

(D) An event makes it unlawful for all or substantially all of the business of the partnership to be continued;

(E) On application by a partner, a determination by a tribunal that any of the following is true: (1) the economic purpose of the partnership is likely to be unreasonably frustrated, (2) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner, (3) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

(F) On application by a transferee of a partner's economic interest, a tribunal determines that it is equitable to wind up the partnership business at either of the following times: (1) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; (2) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

In all other situation there is a buyout of the disassociated partner's interest in the partnership, rather than a windup of the partnership business. ORC Ann. 1776.51 (2010) (official comment 1). In those other situations, the partnership entity continues unaffected by the partner's dissociation. Therefore, except in situations listed above in ORC 1776.51, a deceased partner's transferable interest in the partnership will pass to his estate and be bought out. ORC Ann. 1776.51 (2010) (official comment 8).

### **Rights of a Transferee in a Deceased Partner's Interest**

A partner is dissociated upon death and the estate of the deceased partner becomes a transferee, not a partner. ORC Ann. 1776.51 (2010) (official comment 10). A partner's economic interest is the only transferable interest of a partner in the partnership. ORC 1776.48. A transfer does not entitle the transferee, as against the other partners or the partnership, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records. ORC Ann. 1776.49(A) (2010).

If a disassociation or death of a partner causes dissolution of the partnership, a transferee is entitled to an account of partnership transactions from the date of the latest account to which all of the partners agreed (ORCC 1776.49(C)); and, on the application of the transferee, the court of common pleas for good cause shown, may order judicial supervision of the winding up. ORC 1776.63 (A).

Under ORC 1776.49(B), a transferee of a partner's economic interest in the partnership does have a right: (1) to receive, in accordance with the transfer, distributions to which the transferor otherwise would be entitled; (2) to receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; (3) to seek under ORC 1776.61, a determination by a tribunal that it is equitable to wind up the partnership business.

### **Purchase of Dissociated Partner's Interest**

When a partner is dissociated from a partnership and the dissociation does not result in a dissolution of the partnership business under ORC 1776.61, the partnership purchases the dissociated partner's interest in the partnership for a buyout price determined by ORC 1776.54 (B). The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner if, on the date of dissociate, both of the following occurred: (1)

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the partnership sold the assets at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner, and (2) the partnership completed a winding up of the partnership business. ORC 1776.54 (B)(1)(a),(b) (2010). Additionally, interest is paid from the date of dissociation to the date of payment.

Under ORC 1776.54 (C), the partnership shall reduce the buyout price paid to the dissociated partner by any damages for wrongful dissociation under ORC 1776.52 and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership. Interest is also assessed on any amount owed to the partnership from the date the amount owed is due to the date of payment. Additionally, the partnership must indemnify the dissociated partner whose interest is being purchased against all partnership liability whether incurred before or after the dissociation. ORC 1776.54(D).

If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay or cause to be paid, in cash to the dissociated partner, the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets. ORC 1776.54 (E). If the partnership determines that immediate payment of the buyout price would cause undue hardship to the business of the partnership, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation. ORC 1776.54 (F).

A dissociated partner may maintain an action against the partnership pursuant to division (B)(2)(b) of section 1776.45 of the Ohio Revised Code to determine the buyout price of that partner's interest, any offsets, or other terms of the obligation. However, any action must be commenced within 120 days after the partnership tenders payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. ORC 1775.54 (I)(1).

## Dissociated Partner's Liability to Other Persons

A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. ORC 1776.56 (A). By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation. ORC 1776.56 (C). A dissociated partner is also released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation. ORC 1776.56 (D).

A dissociated partner is not liable for partnership obligation incurred after dissociation, except as provided for by principles of apparent authority under agency law. ORC 1776.56 (B). A partner's transferable interest can be subject to the charging order of a partnership creditor under ORC 1776.50.

Posted by Aaron Minc at 2:12 PM 

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