THE REVISED UNIFORM PARTNERSHIP ACT--BREAKING UP (OR BREAKING OFF) IS HARD TO DO: WHY THE RIGHT TO "LIQUIDATION" DOES NOT GUARANTEE A FORCED SALE UPON DISSOLUTION OF THE PARTNERSHIP

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NOTES

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"A partnership, like a marriage, often is far easier to start than it is to end." 1

INTRODUCTION

In 1914, the National Conference of Commissioners on Uniform State Laws (the Conference) presented the states with a Uniform Partnership Act (UPA).2 UPA provided a blanket set of rules governing all aspects of a general partnership, including a partner’s withdrawal, in the absence of a partnership agreement.3 Because UPA’s provisions governing a partner’s withdrawal were modeled on the aggregate theory,4 the departure of any partner from the partnership marked the legal end of that partnership.5 When one partner withdrew from a partnership-at-will, the partnership assets were sold. The surplus was distributed to the partners regardless of

4. Under the aggregate theory, the partnership is viewed “[a]s a collection of sole proprietors engaged in the same business. For example, where one or another general partner is held fully liable for any obligation of the partnership, the partnership is being treated as an aggregation of individuals.” BURTON J. DEFREN, PARTNERSHIP DESK BOOK 103 (1978). This theory is reflected in the UPA’s definition of partnership as “an association of two or more persons to carry on as co-owners a business for profit.” UNIF. P’SHP ACT § 6(1) (1914), 6 U.L.A. 393 (2001). For a discussion of the aggregate theory and two other theories of partnership, the entity theory and the functional approach to partnership, see generally Gary S. Rosin, The Entity-Aggregate Dispute: Conceptualism and Functionalism in Partnership Law, 42 ARK. L. REV. 395 (1989).
5. UNIF. P’SHP ACT § 38(1) (1914); UNIF. P’SHP ACT § 801 cmt. 1 (amended 1997); see also UNIF. P’SHP ACT § 29 (1914).

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the event that caused the dissolution, provided that the dissolution was not "in contravention of the partnership agreement."\(^6\)

At first, because of UPA's aggregate basis, some courts prohibited a buyout\(^7\) and required a forced sale\(^8\) of assets following dissolution of the partnership.\(^9\) However, the prevailing view among jurisdictions that adopted UPA was to recognize a "common law gloss"\(^10\) to the liquidation provision, effectively permitting the remaining partners to buyout the withdrawing partner's interest.\(^11\) These courts relied on the statutory language of UPA, which merely guaranteed a dissociating partner his interest in cash.\(^12\) Further support for the common law gloss came from UPA's acknowledgement of the courts' power to supplement the Act through their equitable discretion.\(^13\)

In 1992, the Conference proposed a Revised Uniform Partnership Act (RUPA) to replace UPA.\(^14\) RUPA contains many of the same provisions as UPA but is based on the entity theory,\(^15\) which provides two distinct pathways for partnership dissociation and dis-

\(^6\). See Unif. P'SHIP Act § 38(1) (1914). Dissolution is defined as "the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business." Id. § 29.

\(^7\). A buyout is "[t]he purchase of all or a controlling percentage of the assets . . . of a business." Black's Law Dictionary 213 (8th ed. 1999). In this Note, the term "buyout" is used to refer to the purchase by a non-withdrawing partner or partners.

\(^8\). A forced sale is defined as "[a] hurried sale by a debtor because of financial hardship or a creditor's action." Id. at 1365. A forced sale typically results in reduced prices because there is no time to find a willing buyer.


\(^10\). The "common law gloss" was an equitable interpretation of UPA section 38(1) whereby the courts recognized that a forced sale was not required in every case of partnership dissolution. See Bromberg & Ribstein, supra note 3, § 7.11(f).


\(^12\). See Unif. P'SHIP Act § 38(1) (1914), 6 U.L.A. 487 (2001); see also Guntle, 871 P.2d at 627 (holding that under UPA, a buyout is permissible so long as the dissociating partner receives the value of his interest in cash).

\(^13\). See Unif. P'SHIP Act § 5 (1914) (acknowledging that the rules of law and equity supplement the Act).


\(^15\). The entity theory sees the partnership as a legal person. Rosin, supra note 4, at 398.
solution. Certain events, such as death of a partner, trigger RUPA’s dissociation pathway. Upon dissociation, the partnership does not dissolve but continues according to the entity theory. As such, the partnership must buyout the deceased partner’s interest and continue the partnership business.

On the other hand, RUPA’s dissolution pathway is triggered by certain events including a judicial decree or, in the case of a partnership-at-will, the express will of a partner to withdraw. Following either of these events, the partnership begins the winding-up process, during which the assets of the partnership are sold. In terms of both statutory language and result, the effect of RUPA dissolution is identical to UPA dissolution.

Despite RUPA’s adherence to the entity theory and the similarities between RUPA and UPA dissolution, some courts have held that dissolution under RUPA requires a forced sale of all partnership assets. They mistakenly interpret the plain language of the statute to require a forced sale and prohibit a buyout by the remaining partners. Moreover, using a faulty negative implication argument, they assert that because RUPA’s dissociation pathway provides for a mandatory buyout, it precludes a buyout of any kind when the partnership proceeds down the dissolution pathway.

16. UNIF. P'SHIP ACT, at prefatory note (amended 1997).
17. Id. § 601(7)(i).
18. See id. § 601 cmt. 1 (“The entity theory of partnership provides a conceptual basis for continuing the firm itself despite a partner’s withdrawal from the firm.”).
19. Id. § 701(a); see also id. § 603 cmt. 1 (“[A] partner’s dissociation will always result in either a buyout . . . or a dissolution and winding up of the business.”).
20. See id. § 801(1), (5).
21. See id. §§ 801, 807.
22. Compare id. § 807(a) (The procedures for settling accounts under RUPA require that “the assets of the partnership . . . be applied to discharge its obligations to creditors . . . , [and] any surplus . . . be applied to pay in cash the net amount distributable to partners . . . .” (emphasis added)), with UNIF. P'SHIP ACT § 38(1) (1914), 6 U.L.A. 487 (2001) (Upon dissolution, the partners “may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners.” (emphasis added)).
25. See McCormick, 96 P.3d at 703 (explaining that a buyout is only permissible where there has been a dissociation); see also BROMBERG & RIBSTEIN, supra note 3, § 7.11(f).
Lastly, these courts fail to exercise their own equitable discretion to allow one partner to buyout the other even though such judicial power is expressly granted in the Act.26

Part I of this Note will provide a history of both UPA and RUPA and will discuss the differences and similarities between the two acts as well as the policy reasons behind them. Part II of this Note will discuss some of the cases considering whether RUPA requires a forced sale upon winding up, focusing on the different interpretations of the statutory language. Part II will specifically examine the courts' different meanings of the term "liquidation."

Part III will argue that RUPA does not require a forced sale. This is not to say that a buyout is necessary or mandated in all cases. The argument, rather, is that courts should consider a buyout as an alternative to a forced sale when implementing RUPA's dissolution provision. The rationale for this argument will include an examination of the statutory language, which, as in UPA, only guarantees a partner the right to receive his interest in cash. Further support for this position will rely on the entity nature of the partnership under RUPA. Because RUPA is modeled on the entity theory and not the aggregate theory, the partnership exists as a legal entity despite one partner's withdrawal from the firm. Part III will also present a counterargument to the interpretation that RUPA dissociation must preclude a buyout by negative implication. Because RUPA dissociation only provides for a mandatory buyout, the court is not prohibited from allowing a voluntary or court-approved buyout when partners seek dissolution. Lastly, Part III will argue that the term "liquidation" as used in the statute is ambiguous at best. As a result, courts are free to defer to their equitable powers and permit a buyout.

I. IN SEARCH OF UNIFORMITY: THE UNIFORM PARTNERSHIP ACTS

As early as 1902, the drafters of UPA were "split on philosophical grounds" over which theory, aggregate or entity, would provide

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26. Cf. Inv. Mgmt., Inc. v. Jordan Realty, Inc., No. C3-01-2162, 2002 WL 1751259, at *7 (Minn. Ct. App. July 30, 2002) ("Using its equitable powers, . . . the district court chose to preserve the partnership assets of [the partners], rather than ordering those assets sold and converted to cash. We do not read [Minnesota's version of RUPA] so narrowly as to preclude such a resolution.").
the backbone of the act. This split remains a presence throughout partnership law. The corresponding question that arises as part of this controversy is what RUPA actually retained from UPA, principally regarding whether RUPA dissolution is synonymous with UPA dissolution. This inquiry has particularly strong consequences for partners "breaking up with" or "breaking off from" the partnership. An examination of the legislative history suggests that the philosophical nature of the acts and their plain language provides sufficient backing for both sides of the argument.

A. The Road to a Uniform Partnership Act

Common law principles governing partnership emerged in the American legal system during the nineteenth century. Because of confusion surrounding the rights and obligations of partners and creditors under common law, codification of partnership law was inevitable. The establishment of a uniform partnership law in the United States began in 1902, when the Conference recognized a need for uniformity in partnership law.

The road to a uniform partnership act was, however, a long and arduous process. The death of the original chief draftsman and
the debate over whether to follow an aggregate or entity model of partnership contributed to a twelve-year drafting process. Before his death, James Barr Ames submitted two drafts to the Committee, both adopting the entity theory of partnership. In contrast, William Draper Lewis, Ames's successor, expressed doubt as to whether strict adherence to an entity theory would best clarify the law of partnership. To aid in the decision, Lewis presented two drafts to the Committee: one based on the aggregate theory and another based on the entity theory. Upon examination and assessment of both drafts, the Conference, members of the legal profession, and "[p]ractically all teachers and writers on the law of partnership in the United States" agreed on the aggregate theory. The result was that UPA, as approved by the Conference in 1914, embodied the aggregate theory.

33. Under the common law, or aggregate theory, a partnership is defined as "an association of two or more persons carrying on business as co-principals." Lewis, supra note 30, at 639; see also supra note 4 and accompanying text. Opponents of the aggregate theory argue that it places "too much emphasis on the individual rights of each partner, and too little on the collective rights of all the partners." Rosin, supra note 4, at 397.

34. In contrast to the aggregate theory, the entity theory provides that the law should regard a partnership as "having a legal personality distinct from the individual legal personalities of each partner." Lewis, supra note 30, at 639. The distinction between the two theories is particularly relevant to the procedures required to continue a partnership following the departure of one or more partners. See Committee Report, supra note 27, at 124 (equating an increased emphasis on the entity theory with prevention of a technical dissolution upon a buyout by non-dissociating partners).

35. Lewis, supra note 30, at 639-40.

36. Id. Dean Ames would have defined partnership as "a legal person formed by the association of two or more individuals for the purpose of carrying on business with a view to profit." William Draper Lewis, The Uniform Partnership Act—A Reply to Mr. Crane's Criticism, 29 HARV. L. REV. 158, 165 (1915) (emphasis added).

37. Lewis, supra note 30, at 640.

38. Id.

39. Id.

40. See Rosin, supra note 4, at 401 ("Both the language and history of the UPA reflect the adoption of a general aggregate concept of partnerships as associations of partners, rather than as separate legal persons."). However, the Conference claims that the UPA embodies both theories. See UNIF. P'SHIP ACT, at prefatory note (amended 1997), 6 U.L.A. 5 (2001). But see Donald J. Weidner, Three Policy Decisions Animate Revision of Uniform Partnership Act, 46 BUS. LAW. 427, 428-29 (1991) [hereinafter Weidner, Three Policy Decisions] ("[T]he extent to which the final product incorporates the aggregate as opposed to entity theory is very much in the eye of the beholder."). Unlike RUPA, which contains a clear adoption of the entity theory in section 201, UPA did not provide such unequivocal guidance. Compare UNIF. P'SHIP ACT § 201 (amended 1997) ("A partnership is an entity distinct from its partners."), with UNIF. P'SHIP ACT § 6 (1914), 6 U.L.A. 393 (2001). Although UPA contains aspects of both theories, the dissolution provisions adhere exclusively to an aggregate theory of partnership. UNIF. P'SHIP ACT § 801 cmt. 1 (amended 1997) (explaining that UPA section
B. The Uniform Partnership Act of 1914

The appeal of UPA was evidenced by its widespread adoption without revision.\(^{41}\) By 1986, UPA had been adopted in every state except Louisiana.\(^{42}\) The omnipresence of UPA made it convenient to compare cases across jurisdictions.\(^{43}\) This became increasingly important as firms did business in more than one state and were led by partners living in more than one state.\(^{44}\) UPA provided the states with a comprehensive set of rules governing relations of a general partnership\(^{45}\) in the absence of an agreement,\(^{46}\) including how to end a partnership.\(^{47}\)

In order for a partnership governed by UPA to conclude, "dissolution," "winding up," and "termination" must take place in that order.\(^{48}\) Despite the definitions provided in UPA, the three terms were a constant source of confusion in the legal community due to their indiscriminate use by many courts and lawyers.\(^{49}\) Dissolution under UPA refers to "the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business."\(^{50}\) Dissolution can be triggered by, \textit{inter alia}, "the express will of any partner" in a

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29 was intended to conform to the aggregate theory); Donald J. Weidner, \textit{The Revised Uniform Partnership Act Midstream: Major Policy Decisions}, 21 U. Tol. L. REV. 825, 836 (1990) [hereinafter Weidner, \textit{RUPA Midstream}] (Dissolution under RUPA "is an aggregate conception that partnership is a unique aggregation of individuals, a specific cast of characters. The cast is 'dissolved' whenever anyone leaves.").


42. \textit{UNIF. P'SHIP ACT}, at prefatory note (amended 1997); BROMBERG & RIBSTEIN, supra note 3, § 1.02(b).

43. \textit{UNIF. P'SHIP ACT}, at prefatory note (1914).

44. See id.

45. Partnership is defined as "an association of two or more persons to carry on as co-owners a business for profit." \textit{Id.} § 6.

46. UPA contains both "default" and "mandatory" provisions. Weidner, \textit{Three Policy Decisions}, supra note 40, at 453. Mandatory rules apply in all circumstances despite a contrary partnership agreement. \textit{Id.} A default rule only applies if a partnership agreement does not provide otherwise. \textit{Id.} At least where default provisions are concerned, UPA is best thought of as a "standard form contract" that can be varied by the parties through a partnership agreement. BROMBERG & RIBSTEIN, supra note 3, § 1.02(b). For a discussion on the uncertainty of UPA's default and mandatory rules, see Weidner, \textit{Three Policy Decisions}, supra note 40, at 453 ("It is not completely clear which [UPA] rules are default rules and which are mandatory rules.").

47. BROMBERG & RIBSTEIN, supra note 3, § 1.02(b).

48. \textit{UNIF. P'SHIP ACT} §§ 29-32 (1914); see also \textit{Committee Report}, supra note 27, at 160.

49. ALAN R. BROMBERG, CRANE AND BROMBERG ON PARTNERSHIP 416 (1968).

50. \textit{UNIF. P'SHIP ACT} § 29 (1914).
partnership at will,51 "the death of any partner,"52 or the court's decree.53 Following dissolution, winding up54 of the partnership is required, and only upon the completion of the winding-up process will the partnership terminate.55

Consistent with UPA's aggregate theory of partnership, the withdrawal of any member from a partnership effectively dissolves that partnership.56 Even if the remaining members choose to continue with their former business, they must form a new partnership for purposes of UPA.57 Upon the dissolution of a partnership, UPA provides that any partner has a right to compel liquidation of partnership assets in order to receive his share.58 UPA section 38(1) states that a partner "may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners."59 The statutory limits placed on this right only require that dissolution was not caused "in contravention of the partnership agreement," that the partner was not expelled within the terms of the partnership agreement, and that the partnership agreement does not provide otherwise.60

The right to force liquidation under UPA "refers to the dissociating partner's right to compel a sale of all the partnership assets at an auction."61 This differs from a buyout where "non-dissociating partners have the legal right to continue the business if they can purchase the interest of the other at an agreed upon or judicially

51. Id. § 31(1)(b).
52. Id. § 31(4).
53. Id. §§ 31(6), 32.
54. Winding up is "the process of settling partnership affairs after dissolution." Id. § 29 cmt.; Bromberg, supra note 49, at 416.
55. Unif. P'Ship Act § 30 (1914) ("On dissolution the partnership is not terminated, but continues after the winding up of partnership affairs is completed."); see also id. § 29 cmt. ("[T]ermination is the point in time when all the partnership affairs are wound up."); Bromberg, supra note 49, at 416.
56. Unif. P'Ship Act § 801 cmt. 1 (amended 1997), 6 U.L.A. 190 (2001) ("Under the UPA Section 29, a partnership is dissolved every time a partner leaves. That reflects the aggregate nature of the partnership under the UPA.").
57. Id. (Under UPA section 29, "[e]ven if the business of the partnership is continued by some of the partners, it is technically a new partnership.").
58. Unif. P'Ship Act § 38(1) (1914); see also Bromberg & Ribstein, supra note 3, § 7.11(b)(1).
59. Unif. P'Ship Act § 38(1) (1914); see, e.g., Dreifuerst v. Dreifuerst, 280 N.W.2d 335, 339 (Wis. Ct. App. 1979) (holding that the right to liquidation under section 38(1) gives a partner the right to order a forced sale).
60. Unif. P'Ship Act § 38(1) (1914); see also Bromberg & Ribstein, supra note 3, § 7.11(b)(1).
determined price.\textsuperscript{62} Even though the text of section 38(1) provides for a liquidation right over a buyout option,\textsuperscript{63} courts have traditionally adhered to a common law principle permitting buyout.\textsuperscript{64} In fact, many courts insist that

\[\text{[c]onstruing together pertinent provisions of the statute leads to the conclusion that it was not the intention of the legislature in the enactment of the Uniform Partnership Act to impose a mandatory requirement that, under all circumstances, the assets of a dissolved partnership shall be sold and the money received therefor divided among those entitled to it, particularly \ldots where there are no debts to be paid from the proceeds.}\textsuperscript{65}\]

In order to align this common law rule with UPA section 38, some courts reach the conclusion that a buyout is permissible in almost all circumstances so long as the departing party receives his interest in cash.\textsuperscript{66} This insistence on the "in cash" rule generally

\begin{itemize}
  \item \textsuperscript{62} \textit{Id.} at 367-68 (explaining that the difference between liquidation and a buyout is the remaining partners' right of first refusal where a business is purchased as a going concern). A similar buyout definition exists in section 38(2)(c)(II) where the Act expressly provides for the buyout of a partner who wrongfully caused the dissolution when all other partners agree to continue the partnership business. \textit{See} UNIF. P'SHIP ACT § 38(2)(c)(II) (1914).

  \item \textsuperscript{63} For cases in which courts interpreted UPA to forbid a buyout and require a forced sale, see Davis v. Davis, 366 P.2d 857 (Colo. 1961); Polikoff v. Levy, 270 N.E.2d 540 (Ill. App. Ct. 1971); Young v. Cooper, 203 S.W.2d 376 (Tenn. Ct. App. 1947). For a criticism of the liquidation right under UPA, as well as liquidation rights in general, see ALAN R. BROMBERG & LARRY E. RIBSTEIN, SPECIAL RELEASE ON THE REVISED UNIFORM PARTNERSHIP ACT: BROMBERG AND RIBSTEIN ON PARTNERSHIP 106-07 (1993). Bromberg and Ribstein criticize the liquidation right because:

  \begin{itemize}
    \item [a]s a practical matter, the liquidation right puts the whole group at the mercy of an individual partner who can time the call to facilitate a takeover of the firm at an advantageous price.

    \begin{itemize}
      \item \ldots [T]he UPA drafters probably did not consider carefully the costs of the liquidation right. Whatever the UPA drafters thought, 80 years of the UPA have demonstrated the inappropriateness of the liquidation right as indicated by the standard practice of drafting around the right and the judicial decisions that have found some way to qualify it.
    \end{itemize}

  \item \textit{Id.} (footnote omitted).

  \item \textsuperscript{64} \textit{BROMBERG \\ & RIBSTEIN, supra} note 3, § 7.11(f); \textit{see supra} note 10 and accompanying text. For cases holding that under UPA, a forced sale is not required, see Logoluso v. Logoluso, 43 Cal. Rptr. 678 (Cal. Dist. Ct. App. 1965); Nicholes v. Hunt, 541 P.2d 820 (Or. 1975); Guntle v. Barnett, 871 P.2d 627 (Wash. Ct. App. 1994).

  \item \textsuperscript{65} Rinke v. Rinke, 48 N.W.2d 201, 207 (Mich. 1951); \textit{see also} Nicholes, 541 P.2d at 828 (quoting \textit{Rinke}, 48 N.W.2d at 207).

  \item \textsuperscript{66} \textit{See, e.g., Guntle}, 871 P.2d at 632 (explaining that since the language of UPA only requires the dissociating partner to receive the value of his interest \textit{in cash}, a buyout may be permitted).
\end{itemize}
allows for a buyout but distinctly prohibits distribution in kind absent consent of the partners.\textsuperscript{67} A court’s willingness to permit a buyout stems from equitable concerns that liquidation “[will] result in a loss of value because of the nature of the asset, current market conditions, or the costs and risks of sale.”\textsuperscript{69} Statutory support for the court’s equitable discretion comes from section 5 of UPA, which states that the principles of law and equity supplement the act.\textsuperscript{70} Specifically, a buyout is appropriate where it reduces economic waste by avoiding administrative costs associated with a public sale.\textsuperscript{71} For example, in \textit{Disotell v. Stiltnern}, the court allowed a buyout because expenses relating to a public sale of the real estate would have cost as much as twelve percent of the property’s total value.\textsuperscript{72} Likewise, a buyout insulates partners from the risk of receiving an unfairly low price at a public sale.\textsuperscript{73} When this risk presents itself, “partners are frequently the best prospects for purchase ... [because of their] knowledge of the business, experience in its operations, and, perhaps, confidence in its future.”\textsuperscript{74} 

Opponents of buyouts argue that a private sale does not provide partners with the fair market value of the assets because of the prospect of a higher return at a public auction.\textsuperscript{75} While this argument is not without merit, the concern for fair market value can be partially eliminated by ordering judicial supervision of the sale to ensure a fair price.\textsuperscript{76} In addition, a buyout is an effective counter-
balance to the risk of exploitation brought on by a right to liquidation,\textsuperscript{77} where a dissociated partner may compel liquidation simply to freeze out other partners and appropriate the partnership business for herself at less than fair market value.\textsuperscript{78}

C. \textit{Problems with UPA}

As partnership law developed over the next seventy-five years, general partnerships began to outgrow UPA.\textsuperscript{79} Vast changes in the magnitude of partnerships and the rebirth of limited partnerships\textsuperscript{80} in the 1970s required that the Conference reconsider both old and new problems with UPA.\textsuperscript{81} In 1986, pressure from the American Bar Association (ABA) prompted the Conference to issue a detailed report recommending revisions to UPA.\textsuperscript{82} The main goal of the Committee Report was to determine whether desired changes to UPA were so extensive as to require a completely new act or if amendments would suffice.\textsuperscript{83} Among the problems that resurfaced during the examination was the dispute between the entity and aggregate theories of partnership that had been present during the first drafting of UPA.\textsuperscript{84} There was also the issue of UPA’s failure to

\textsuperscript{77} Ribstein, \textit{supra} note 61, at 380-92 (weighing the benefits and costs of a buyout right and concluding that partners would likely agree to a buyout right if they were to draft their own partnership agreement).

\textsuperscript{78} See \textit{Disotell v. Stiltner}, 100 P.3d 890, 894 (Alaska 2004) (holding that a buyout is appropriate where “[l]iquidation exposed [the defendant] to the risk that no buyer would offer to pay fair market value for the property”).

\textsuperscript{79} Weidner, \textit{RUPA Midstream, supra} note 40, at 825-27 (arguing that partnership law has been influenced by federal income tax law, federal securities law, and bankruptcy law, all of which have undergone substantial changes over the past seventy-five years while partnership law has remained essentially the same).

\textsuperscript{80} A limited partnership is “an entity, having one or more general partners and one or more limited partners, which is formed under [the Uniform Limited Partnership Act] by two or more persons . . . .” \textit{Unif. Ltd. P'Ship Act § 102(11)}, 6A U.L.A. 359 (2008). In some situations a limited partnership is favored over a general partnership because it provides limited partners with the tax benefits of a general partnership and the limited liability of a corporation. \textit{Joseph Shade, Business Associations in a Nutshell} 33 (2d ed. 2006).

\textsuperscript{81} The Committee established a subcommittee in April 1984 for purposes of reviewing UPA and recommending changes to the Conference. \textit{Committee Report, supra} note 27, at 122; Weidner, \textit{RUPA Midstream, supra} note 40, at 825-26.

\textsuperscript{82} See generally \textit{Committee Report, supra} note 27.

\textsuperscript{83} Id. at 122.

\textsuperscript{84} Id. at 124 (stressing the importance of incorporating the entity theory into a revision of UPA whenever possible); Weidner, \textit{Three Policy Decisions, supra} note 40, at 429 (“Seventy-five years later, the consensus seems to be that a revised UPA should more directly adopt an entity model.”).
provide explicit language specifying which provisions were mandatory and which were default. 85 Finally, the issue of dissolution once again emerged as a logical result of the watershed between the entity and the aggregate theories. 86 Drafters of RUPA initially sought to completely eliminate the word “dissolution” from the act. 87 However, it was reinstated at the eleventh hour due to tax concerns 88 and the fear that there might be strong opposition to the act if the term were omitted. 89

85. See Weidner, Three Policy Decisions, supra note 40, at 453. Donald J. Weidner, the Reporter for the Revised Uniform Partnership Act, commented on the uncertainty concerning UPA default provisions:

The UPA has a wide range of provisions that govern the rights and obligations among partners. It is not completely clear which of these rules are default rules and which are mandatory rules. . . .

Some but not all of the UPA rules governing the relations among partners state that they are “subject to” a contrary agreement. . . . There are . . . other provisions governing the relations among partners that do not expressly state they are subject to contrary agreement. Does expressio unius est exclusio alterius, the maxim of statutory construction, require or at least suggest that the remaining rules in the UPA are mandatory because they lack qualifying language?

Id.

86. See id. at 435. Courts’ inconsistent treatment of dissolution over the years suggests uncertainty as to its meaning and application:

Seventy-five years later the law of partnership is still couched in terms of dissolution and is still confused. There are cases that find a dissolution and apply the strict logic of dissolution even though justice seems to require otherwise. There are cases that struggle to reach a right result by refusing to find a dissolution even though the statute seems to require a dissolution. More basically, there are cases that appear to reflect a complete misunderstanding of the concept of dissolution as it is used in the statute.

Id. at 435-36 (footnotes omitted). Lewis believed dissolution was “perfectly logical but sadly misunderstood.” Id. at 435.

87. Id. at 448.

88. General partnerships provide advantageous tax treatment to their partners by allowing for pass-through taxation. Shade, supra note 80, at 31. This means that individual partners pay taxes only on the partnership income they receive. Id. The partnership itself is not a taxable entity. Id. This essentially gives a tax break to partners who have yet to realize a return on their investment. The Committee was concerned that recommended changes to UPA, particularly a change to the aggregate nature, may reduce or eliminate pass-through taxation because the partnership would be viewed as a separate legal (taxable) entity. Committee Report, supra note 27, at 124. The inclusion of the term “dissolution” in RUPA alleviated some of these concerns.

89. Weidner, Three Policy Decisions, supra note 40, at 448. Weidner jokingly refers to “dissolution” as “the D word.” Id. He objected vehemently to the inclusion of “the D word” because he felt that “[c]ontinued use of the word is likely to generate confusion for two reasons: (i) it always has; and (ii) RUPA now defines dissolution in a very different way than it has been defined for over 75 years.” Id. at 452.
After reviewing the act, the Committee Report recommended one hundred and fifty changes to UPA. Many of the proposed changes were borrowed from Georgia's partnership act, which had undergone revision in 1984. Among the changes were sixty-six proposed revisions to the dissolution provisions of UPA. Because of the expanse of the prescribed changes and the transformation to a different legal theory, specifically the shift from aggregate to entity, the Committee suggested a comprehensive revision of UPA. In 1987, the Committee named a new drafting committee, which presented the first draft two years later.

In 1992, RUPA was approved by a unanimous vote of the states. However, drafting errors and objections by the ABA evidenced the act's flaws, and it soon required another round of revisions. Attempts to salvage the act led to revisions in 1993, 1994, 1996, and 1997, culminating with the 1997 version of RUPA. This constant flux of amendments and changes effectively destroyed the legislative uniformity enjoyed under UPA. Wyoming, Montana, and Texas adopted the 1992 version of RUPA, whereas Connecticut, Florida, and West Virginia adopted variations on the 1994 version. As of May 2008, only thirty-seven states had enacted versions of RUPA. As such, the advantage of cross-state comparisons, which had existed under UPA, has diminished.

90. See Committee Report, supra note 27, at 124.
92. Specifically, these changes were in regards to UPA sections 29-42. Committee Report, supra note 27, at 125.
93. Id. at 184.
95. UNIF. P'SHIP ACT, at prefatory note (amended 1997).
97. UNIF. P'SHIP ACT, at prefatory note (amended 1997).
98. See Hurst, supra note 96, at 578 ("As of early 1997, it appears probable that the era of uniformity in the law of general partnerships is coming to a close.").
101. See UNIF. P'SHIP ACT (amended 1997) (listing thirty-seven jurisdictions, including the District of Columbia, that have adopted a version of RUPA).
D. **Highlights of Major Changes Made by RUPA**

The differences between RUPA and UPA are best understood within the framework of "three policy decisions"\(^\text{102}\) considered throughout the drafting process:

First, RUPA makes a major move away from the aggregate or conduit theory of partnerships and toward the entity theory of partnerships. Second, RUPA rewrites the rules on partnership breakups and in the process gives more stability to partnerships. Third, RUPA reflects the supremacy of the partnership agreement and minimizes mandatory rules among partners.\(^\text{103}\)

Specifically, section 201 of RUPA expressly commits to the entity theory by stating that "[a] partnership is an entity distinct from its partners."\(^\text{104}\) This modification has substantial effects on the dissociation process.\(^\text{105}\) Instead of necessarily requiring a new partnership to be formed every time a partner dissociates, RUPA allows the partnership to continue as a going concern.\(^\text{106}\)

RUPA clarifies the discrepancy that existed under UPA regarding which provisions were default and which were mandatory. Section 103(b) lists the provisions that may not be waived or varied by a partnership agreement.\(^\text{107}\) As a matter of policy, RUPA reflects

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\(^\text{103}\). Id. at 428.

\(^\text{104}\). *Unif. P'Ship Act* § 201(a) (amended 1997).

\(^\text{105}\). Id. § 601 cmt. 1 ("The entity theory of partnership provides a conceptual basis for continuing the firm itself despite a partner's withdrawal from the firm."). For a discussion on the effects of the entity theory on RUPA's breakup provisions as discussed during drafting, see generally Weidner, *Three Policy Decisions*, supra note 40, at 431-32; Reporters' Overview, supra note 1, at 3-16.

\(^\text{106}\). See *Unif. P'Ship Act* § 201 cmt. 6 (amended 1997) ("Under RUPA, there is no 'new' partnership just because of membership changes."). "Going concern" is defined as "[a] commercial enterprise actively engaging in business with the expectation of indefinite continuance." *Black's*, supra note 7, at 712.

\(^\text{107}\). *Unif. P'Ship Act* § 103(b) (amended 1997). Section 103(b) of RUPA provides in pertinent part:

The partnership agreement may not:

- (6) vary the power to dissociate as a partner under Section 602(a), except to require the notice under Section 601(1) to be in writing;
- (7) vary the right of a court to expel a partner in the events specified in Section 601(5);
- (8) vary the requirement to wind up the partnership business in cases specified in Section 801(4), (5), or (6);
- (10) restrict rights of third parties under this [Act].
the notion "that the agreement of the partners is supreme—unless the rights of third parties are involved." In adopting this policy, the drafters of RUPA wanted to create a uniform act that would closely imitate what the partners themselves would likely agree to if they were to draft their own partnership agreement, yet without the necessary expense.

Perhaps the most significant change made by RUPA was the establishment of two separate and distinct pathways that the partnership might take following a partner's withdrawal. Under UPA, there existed only the dissolution pathway, which necessarily required winding up of the partnership and "suggest[ed] that the partnership business [was] coming to a close when all that [might have been] coming to a close [was] one partner's participation." In contrast, RUPA acknowledges that a partner's dissociation results in either the dissolution and winding up of the partnership or a mandatory buyout of the dissociated partner's interest.

In determining whether a mandatory buyout or winding up is appropriate under RUPA, partners must first look to section 801, which specifies the events causing dissolution and winding up of the partnership.

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108. Reporters' Overview, supra note 1, at 3; see also Unif. P'SHIP ACT § 103(a) (amended 1997). Section 103(a) of RUPA states:

Except as otherwise provided in subsection (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this [Act] governs relations among the partners and between the partners and the partnership.


110. Unif. P'SHIP ACT § 601 cmt. 1 (amended 1997). RUPA dramatically changes the law governing partnership breakups and dissolution. An entirely new concept, "dissociation," is used in lieu of the UPA term "dissolution" to denote the change in the relationship caused by a partner's ceasing to be associated in the carrying on of the business. "Dissolution" is retained, but with a different meaning.

111. Reporters' Overview, supra note 1, at 5. This statement assumes that dissolution was not wrongful and thus no election under section 38(2)(b) was made. See Unif. P'SHIP ACT § 38(2)(b) (1914), 6 U.L.A. 487 (2001) (providing that when dissolution is caused in contravention of the partnership agreement, the partners who have not caused the dissolution wrongfully may continue the partnership business by unanimous vote provided that they compensate the wrongfully dissolving partner for his interest pursuant to section 38(2)(c)(II)).

112. Bromberg & Ribstein, supra note 3, § 7.01(b) ("R.U.P.A. clarifies the continuity of the partnership by providing in § 603 that mere dissociation of a partner under § 601 does not necessarily dissolve the partnership under § 801.").

partnership business. Under RUPA, only certain events trigger the drastic measure of dissolution and winding up. Among these events are notice of a partner's express will to withdraw in an at-will partnership or a judicial determination that carrying on the partnership business is impracticable. The Act specifies that "[a]ll other dissociations not enumerated in section 801 of RUPA result in a mandatory buyout of the partner's interest under Article 7 and a continuation of the partnership entity and business by the remaining partners."

The occurrence of an event enumerated in section 801 marks the partnership for dissolution, and the partnership then proceeds down the winding-up pathway. Dissolution under RUPA, however, "merely marks the beginning of the winding up process and not the termination of the partnership." Because of this, partners may unanimously agree at any point after dissolution of the partnership, but before winding up is completed, to continue the business pursuant to section 802(b). Otherwise, the partnership is wound up according to section 807, which requires "liquidation" of the partnership assets. Liquidation under RUPA "is de-

114. Id. § 801.
115. Id. § 801 cmt. 1.
116. Id. § 801(1).
117. Id. § 801(5)(iii).
118. Id. § 801 cmt. 1; see also id. § 603(a) ("If a partner's dissociation results in a dissolution and winding up of the partnership business, [Article] 8 applies; otherwise, [Article] 7 applies." (alteration in original)).
119. This can be varied by a statement in the partnership agreement regarding the procedures for winding up under section 801(1)-(3). See id. § 103(a). However, the partnership agreement may not "vary the requirement to wind up the partnership business in cases specified in Section 801(4), (5), or (6)." Id. § 103(b)(8).
120. Reporters' Overview, supra note 1, at 8; see also UNIF. P'SHIP ACT § 802 (amended 1997) (Dissolution does not automatically lead to termination of the partnership because "[a]t any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners . . . may waive the right to have the partnership business wound up and the partnership terminated.").
121. Reporters' Overview, supra note 1, at 8.
122. Section 807 provides in pertinent part:
(a) In winding up a partnership's business, the assets of the partnership ... must be applied to discharge its obligations to creditors ... Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b).
(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts.
UNIF. P'SHIP ACT § 807 (amended 1997) (emphasis added).
123. Id.; Reporters' Overview, supra note 1, at 6.
rived in part from UPA Sections 38(1) and 40." Specifically, RUPA continues the "in cash" rule of UPA section 38(1), which provides for a partner's right to receive his interest in cash following dissolution of the partnership.125

When the event causing dissociation of a partner is not listed in section 801, the partnership proceeds down the pathway providing for a buyout of the dissociated partner’s interest.126 Specifically, section 701 states that a dissociated partner whose dissociation does not result in dissolution under section 801 has the right to a buyout of the partnership interest by the remaining partners at a price determined by the Act.127 Unless the partnership agreement provides otherwise, this buyout is "mandatory,"128 and "the partnership is obligated to buy out the dissociating partner's" interest.129 The default buyout price governed by section 701(b) provides the dissociated partner with the greater of either "the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner."130 The policy behind valuing the partnership assets this way is to provide the dissociating partner with fair compensation whether the business assets are put up for public sale or there is a buyout by the partnership.131

125. Id. § 807 cmt. 2.
126. Id. § 701(a). Section 601 expressly provides for events causing dissociation but not dissolution and winding up of the partnership. However, a discussion of this section is not necessary because a dissociation that does not result in dissolution and winding up under section 801 automatically results in a buyout. See id.
127. Id.
128. Id. § 701 cmt. 2. Mandatory, as opposed to default, refers to the partners' ability to override the rule by providing otherwise in a partnership agreement. See supra notes 85, 107-109 and accompanying text. Because of this, the buyout may not be considered "mandatory" because section 701 is not listed in section 103(b). See UNIF. P'SHIP ACT § 103(b) (amended 1997). For a discussion of whether the buyout is actually mandatory, see ALAN R. BROMBERG & LARRY E. RIBSTEIN, BROMBERG AND RIBSTEIN ON LIMITED LIABILITY PARTNERSHIPS, THE REVISED UNIFORM PARTNERSHIP ACT, AND THE UNIFORM LIMITED PARTNERSHIP ACT (2001) § 8.701 (2008 ed.).
129. Reporters' Overview, supra note 1, at 11 (emphasis added). Because RUPA "obligate[s]" partners to buyout dissociated partners, a determination of whether the buyout is "mandatory" is unnecessary. See supra note 128 and accompanying text.
130. UNIF. P'SHIP ACT § 701(b) (amended 1997). As explained in the comments to section 701, the phrase "[l]iquidation value is not intended to mean distress sale value." Id. § 701 cmt. 3. The buyout price is "the price that a willing and informed buyer would pay a willing and informed seller, with neither being under any compulsion to deal." Id.
131. Reporters' Overview, supra note 1, at 11-12.
Like UPA, RUPA also contains a provision expressly acknowledging the courts' power to use equitable discretion. As under UPA, rulings based on equitable concerns are common under RUPA. The statutory language serves as the only limit to the courts' equitable discretion. That is, a court's ruling based on equitable concerns will stand as long as it does not contradict one or more provisions of the act.

II. The Various Meanings of "Liquidation"

Current confusion under RUPA concerns the definition of "liquidation" used in the dissolution and winding-up pathway. It is well-established that a partner who withdraws under one of the events listed in section 801 has the right to compel liquidation of an at-will partnership's assets in the absence of an agreement. However, it is not clear what Congress intended the term "liquidation" to mean because it is not defined in the statute. Specifically, courts disagree over whether "liquidation" under RUPA necessarily requires a forced sale. As an alternative to a forced sale, some courts construe "liquidation" as synonymous with the "in cash"

132. See Unif. P'SHIP Act § 104(a) (amended 1997) (stating that RUPA is supplemented by the principles of law and equity).
133. See, e.g., In re Dissolution of Midnight Star Enters., 724 N.W.2d 334 (S.D. 2006) (holding that majority partners may buyout interest of minority partners where majority partners intended to continue the partnership business and had put forth efforts towards an amicable dissolution); Horne v. Aune, 121 P.3d 1227 (Wash. Ct. App. 2005) (holding that a partner was entitled to buyout the other partner upon dissolution of the partnership where the partnership property included the partner's house).
134. See Unif. P'SHIP Act § 104(a) (amended 1997).
135. See id. ("Unless displaced by particular provisions of this [Act], the principles of law and equity supplement this [Act].").
136. See id. § 807; see also Welder v. Green, 985 S.W.2d 170, 177 (Tex. App. 1998) ("The general rule is that a partner, absent an agreement to the contrary, may dissolve the partnership at will . . . .").
137. The comments to RUPA section 701 explain that "[l]iquidation value is not intended to mean distress sale value." Unif. P'SHIP Act § 701 cmt. 3 (amended 1997). Black's Law Dictionary defines "liquidation" as:

1. The act of determining by agreement or by litigation the exact amount of something (as a debt or damages) that before was uncertain. 2. The act of settling a debt by payment or other satisfaction. 3. The act or process of converting assets into cash, esp. to settle debts.
Black's, supra note 7, at 950. This definition arguably encompasses a buyout. For the definition of buyout, see supra note 7.
138. Compare Horne, 121 P.3d at 1234 (holding that "liquidation" under RUPA merely guarantees the dissociating partner the right to receive fair value of his interest in cash), with McCormick v. Brevig, 96 P.3d 697, 704-05 (Mont. 2004) (holding that under RUPA, "liquidation" is synonymous with a forced sale). For the definition of a forced sale, see supra note 8.
Further, there is substantial disagreement over whether the term "liquidation" in RUPA section 807 is equivalent to a departing partner's right to liquidation under UPA section 38(1), and, if so, whether equitable concerns recognized under UPA carry over to RUPA.

A. Liquidation Does Not Mean a "Fire Sale of Assets"

The Court of Appeals of Maryland, in Creel v. Lilly, held that RUPA did not give a departing partner the right to order a "fire sale" by mandating a forced sale. In permitting a buyout, the court explained that its goal was "to prevent the disruption and loss that are attendant on a forced sale, while at the same time preserving the right of the deceased partner's estate to be paid his or her fair share of the partnership." In a rather unique situation, the Creel court faced the issue of whether a forced sale was necessary for winding up during a phase-in period where UPA and RUPA coexisted as Maryland law.

In Creel, a three-person partnership operated a NASCAR racing memorabilia business until the death of one of the partners dissolved the partnership. Although there was no dispute as to the value of the partnership assets, the deceased partner's estate objected to a buyout that would allow the other two partners to continue the partnership business. The deceased partner's estate demanded a forced sale of the partnership assets pursuant to UPA.

In denying the deceased partner's estate the right to a "fire sale of assets" under either RUPA or UPA, the court stated, "[w]inding up is not always synonymous with liquidation, which can be a harsh and unnecessary measure towards arriving at the true value of the business." A contrary holding, the court explained, would

139. See Horne, 121 P.3d at 1234.
140. A "fire sale" is "[a]ny sale at greatly reduced prices, esp. due to an emergency." BLACK'S, supra note 7, at 1365. The Creel court equated a forced sale with a fire sale because of the hurried nature of a forced sale and the reduced prices that would occur if the partnership assets were required to be sold to a third party in a hurry. See Creel v. Lilly, 729 A.2d 385, 401-03 (Md. 1999).
141. See Creel, 729 A.2d at 392.
142. Id. at 401.
143. Id. at 387.
144. Id. at 388-89.
145. Id. at 389-90.
146. Id.
147. Id. at 403.
vest[ ] excessive power and control in the estate of the deceased partner, to the extreme disadvantage of the surviving partners.”148 After describing a forced sale as destructive, the court noted RUPA’s trend away from the “harsh UPA provision of automatic dissolution and compelled liquidation.”149

B. Liquidation Means a Forced Sale

Traditional notions of liquidation, such as the one adhered to by the court in McCormick v. Brevig, equate the term with a forced sale. This counter-analysis of liquidation under RUPA maintains that because RUPA mitigates the automatic liquidation rule of UPA, the common law gloss providing for a buyout option no longer applies.150 In McCormick, the Supreme Court of Montana held that because of the two distinct tracks available to the exiting partner under RUPA, the drafters of RUPA did not intend to allow a buyout where partners’ actions force them down the dissolution pathway.151 McCormick involved a ranching partnership between a brother and sister dissolved by judicial decree pursuant to Montana’s version of RUPA section 801.152

Relying on “the common purpose and plain meaning,” the McCormick court interpreted “liquidation” to require that partners “reduce the partnership assets to cash, pay creditors, and distribute to partners the value of their respective interests.”153 Furthermore, the court rejected the defendant’s argument that the court could make use of judicially acceptable alternatives to a forced sale.154 It factually distinguished Creel because Creel involved the death of a partner (as opposed to a court-ordered dissolution); thus, dissociation of the partnership was not governed by RUPA section 801.155 Instead, Article 7 governed the dissociation and buyout pathway.156 In the case of a court-ordered dissolution, the court explained, “the

148. Id. at 402.
149. Id. at 392.
150. Bromberg & Ribstein, supra note 3, § 7.11(f).
151. McCormick v. Brevig, 96 P.3d 697, 703 (Mont. 2004) (“[T]he only possible result under RUPA was for the partnership assets to be liquidated and the proceeds distributed between the partners proportionately.”).
152. Id. at 700-01.
153. Id. at 704.
154. Id. at 704-05.
155. Id.
partnership assets necessarily must be reduced to cash . . . ”157 As a result, McCormick held that a forced sale was a “statutorily mandated requirement” of RUPA dissolution.158

The Supreme Court of Montana reaffirmed its refusal to allow a buyout under RUPA in Pankratz Farms, Inc. v. Pankratz.159 The facts of Pankratz involved a partner’s request for judicial dissolution of a farming partnership.160 At trial the district court found that although dissolution and winding up was proper based on the circumstances, a forced sale of the partnership’s assets would have significant adverse tax consequences for all partners, including the partner requesting judicial dissolution.161 In light of the negative tax consequences and the desire of the remaining partners to continue the business, the district court ordered the remaining partners to purchase the dissolving partner’s interest.162 On appeal, the remaining partners further argued that a buyout was proper since the departing partner requested monetary damages as an alternative to dissolution.163

Despite the negative tax consequences and alternative request, the court refused to deviate from its commitment to require a forced sale.164 Relying on McCormick, the court explained that in every case the statute “require[s] liquidation of the partnership assets through a forced sale, and distribution of the net surplus in cash to the partners.”165

C. Liquidation Means the “In Cash” Rule

Liquidation under RUPA has also been interpreted to guarantee partners the right to receive the fair value of their partnership interest in cash upon dissolution and winding up166 by means other than a forced sale.167 In Horne v. Aune, the Court of Appeals of Washington based its holding on three underlying principles: (1)

157. McCormick, 96 P.3d at 705 (emphasis added).
158. Id.
160. Id. at 678.
161. Id. at 679.
162. See id.
163. Id. at 680.
164. See id. at 679-81.
165. Id. at 680.
166. This is the “in cash” rule elucidated under UPA section 38. See UNIF. P'SHIP ACT § 807 cmt. 2 (amended 1997), 6 U.L.A. 207 (2001) (explaining that the “in cash” rule of UPA section 38 carries to RUPA section 807). For a discussion of the “in cash” rule under UPA, see supra notes 66-68 and accompanying text.
that the statutory language of RUPA section 807 amounted to the "in cash" rule; (2) that RUPA did not change UPA's procedures for winding up; and (3) that the court had equitable discretion at its disposal.\(^{168}\)

In interpreting the statutory language, the \textit{Horne} court found that the statute only guaranteed the partners the right to receive their interests in cash—not to compel a forced sale.\(^{169}\) The court acknowledged that this result could be achieved by means other than a forced sale and still comply with the statute.\(^{170}\) The language did not extend to preclude a buyout. Part of the court's reasoning for this interpretation of the statutory language, however, came from analogy to cases interpreting UPA.\(^{171}\)

In adopting the "in cash" rule, the court in \textit{Horne} embraced the analysis of \textit{Creel} despite factual distinctions between the two cases.\(^{172}\) While the dissociation in \textit{Creel} was triggered by the death of a partner and was thus subject to both UPA and RUPA,\(^{173}\) \textit{Horne} involved a suit for judicial dissolution and winding up solely under RUPA.\(^{174}\) The court failed to distinguish \textit{Creel} despite the fact that death is not among those events listed in RUPA section 801, and, therefore, by default, leads to the pathway for dissociation and buyout.\(^{175}\) The court acknowledged that RUPA provided for two distinct pathways: one for a buyout and another for winding up of the partnership.\(^{176}\) The court insisted, however, that "when partners choose the path of dissolution and winding up, the procedures are substantially the same under RUPA as they were under UPA."\(^{177}\)

\textit{Horne}'s analysis was consistent with \textit{Creel} in relying on equitable considerations present under both RUPA and UPA to reach its result. After acknowledging that "winding up generally has been equated with the forced sale of partnership assets," the court rationalized the association between winding up and a forced sale as a matter of convenience since a forced sale was historically seen as the most accurate way to ensure fair market value for partnership assets.
The court then determined that winding up was not required by the statute, citing examples of cases that had adopted alternatives to winding up under UPA when the value of the assets was known. In concluding that RUPA does not require a forced sale, the court reasoned that “[a]lthough the court’s equitable discretion is subject to partnership statutes, RUPA does not do away altogether with equitable considerations” present under UPA.

III. DISSOLUTION UNDER RUPA DOES NOT REQUIRE A FORCED SALE

RUPA’s use of the word “liquidation” in section 807 does not mandate a forced sale. Rather, under the plain language approach, “liquidation” is synonymous with the “in cash” rule. However, even if the plain language of section 807 is ignored, it is indisputable that the term “liquidation” is ambiguous as used in the act. As such, the court may use its equitable discretion to permit a buyout.

A. The Plain Language Argument

1. The Statutory Language Does Not Define Liquidation

The statutory language of RUPA does not require a forced sale upon winding up. Instead, it merely requires that partners receive their interest in cash. Section 807(a) states that, upon winding up the partnership, the partnership assets “must be applied to discharge its obligations to creditors,” and “[a]ny surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b).” No specific language requires the reduction of assets to cash, as long as accounts with creditors are settled and partners receive cash for their interests. Furthermore, this cash requirement applies only to partners and does not preclude creditors from receiving their interests in kind. Thus, a partner who can settle all
outstanding obligations on the partnership property and provide
the other partners with their respective interests in cash is entitled
to receipt of the partnership property upon winding up. 185

Although the plain language of RUPA does not necessarily re­
quire a forced sale, it does confer on partners the right to compel
liquidation of the partnership assets. 186 Subsection (b) of section
807 provides for the settlement rights of each partner upon winding
up. 187 Specifically, when settling accounts among partners, the stat­
ute provides that “profits and losses that result from the liquidation
of the partnership assets must be credited and charged to the part­
ners’ accounts.” 188 However, the statute does not define liquida­
tion. 189 Instead, when subsection (a) is read in conjunction with
subsection (b), two competing definitions of liquidation give rise to
different interpretations of the statute. 190

The first possibility is to define liquidation as a forced sale. 191
This interpretation suggests that a partner who pays creditors and
other partners their respective interests in cash is entitled to receipt
of the partnership property upon winding up unless the other part­
ners exercise their right to compel a forced sale of the partnership
assets. 192 If, however, partners fail to exercise the right to a forced
sale, they may be bought out. Thus, a forced sale is not required in
every instance; it is only required where the right is exercised. The
other possible interpretation is that liquidation is synonymous with
the “in cash” rule. 193 Under this interpretation, a partner who pays
creditors and other partners their respective interests in cash is enti­
tled to receipt of the partnership property upon winding up even
when partners exercise their liquidation right. 194 The “in cash” in­
interpretation merely equates the liquidation right with the right to refuse an in-kind distribution.


In McCormick v. Brevig, the Supreme Court of Montana's interpretation of liquidation as requiring a forced sale was purportedly based on the plain language of sections 807(a) and (b). After interpreting the language of the statute, the court concluded that the meaning of liquidation was "to reduce the partnership assets to cash, pay creditors, and distribute to partners the value of their respective interest." There are three problems with the McCormick definition of liquidation. First, the order of proceedings, which requires reduction of the assets to cash before creditors and partners are paid, has no basis in the statutory language. Second, even if liquidation requires first reducing the partnership assets to cash, such a definition does not preclude a court-supervised buyout by one of the partners. Third, the court failed to address why the definition of liquidation under RUPA was different from that under UPA even though the statutory language that served as the basis for the liquidation right remained the same.

The statutory language does not require reducing the partnership assets to cash before creditors are paid and partners' interests are allocated. The statute only requires that the assets be applied and that the partners receive their interest in cash. If, in fact, liquidation of partnership assets is required by the statute, it would be required only after creditors are paid in cash or in kind. That is, first creditors receive their interest in cash or in kind. Then, any surplus partnership assets are reduced to cash. Lastly, the surplus is divided among the partners. See id.; see also id. § 807 cmt. 2 (mentioning the "in cash" rule only with regard to the partners' distributions).

195. See McCormick, 96 P.3d at 704 (interpreting MONT. CODE ANN. § 35-10-629(1)-(2), Montana's codified version of UNIF. P'SHIP ACT § 807(a)-(b) (amended 1997)).
196. Id. at 704 (emphasis added).
197. See UNIF. P'SHIP ACT § 807(a)-(b) (amended 1997) (requiring that partners receive their interest in cash but not requiring that creditors receive their interest in cash). If, in fact, liquidation of partnership assets is required by the statute, it would be required only after creditors are paid in cash or in kind. That is, first creditors receive their interest in cash or in kind. Then, any surplus partnership assets are reduced to cash. Lastly, the surplus is divided among the partners. See id.; see also id. § 807 cmt. 2 (mentioning the "in cash" rule only with regard to the partners' distributions).
198. See McCormick, 96 P.3d at 704-05 (distinguishing Creel, which held that liquidation under UPA and RUPA did not require a forced sale, either legally or factually).
199. See UNIF. P'SHIP ACT § 807 (a)-(b) (amended 1997).
But since creditors are not granted this right, if reduction of the assets to cash is required at all by the statute, reduction must take place following settlements with creditors. However, if the *McCormick* definition were adopted, it would necessitate reduction of the assets to cash before creditors are paid, which is in contravention of the plain language of section 807.

Furthermore, *McCormick*'s definition of liquidation sought to reconcile subsections (a) and (b) of the statute in such a way that yielded an irrational reading of the statutory language. *McCormick* defined liquidation, which appeared in subsection (b) of the statute, by loosely relying on language appearing in subsection (a). A careful reading of the statute gives two possible interpretations that reconcile subsections (a) and (b). However, the *McCormick* court's definition was inharmonious with both interpretations.

The *McCormick* court's interpretation of liquidation as requiring a forced sale does not support either reasonable interpretation of the statute. *McCormick* essentially ruled that a partner who pays creditors and other partners their respective interests in cash is never entitled to receipt of the partnership property upon winding up under subsection (a), even if partners fail to exercise the right to compel liquidation of the partnership assets under subsection (b). The Supreme Court of Montana's decision in *Pankratz Farms, Inc. v. Pankratz* further confirmed its staunch position that a forced sale would always be required under the statute even if partners alternatively request monetary damages. This interpretation is inconsistent with subsection (a), the two possible interpretations of the statute based on the two definitions of liquidation, the comments to section 807, and other provisions of RUPA.

The *McCormick* court failed to explain why a buyout was not within the court's definition of liquidation. Certainly a buyout by one partner, who provides other partners with their respective interests in cash, satisfies the court's requirement of first reducing the assets to cash. In *McCormick*, the lower court's analysis of the

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200. For an explanation of the two possible interpretations, see discussion *supra* notes 189-194 and accompanying text.


202. *See UNIF. P'SHIP ACT § 103(b)(8) (amended 1997)* (implying that section 807 is a default provision that comes into play only in the absence of a contrary agreement between the partners); *id. § 802(b)(1)* (providing that any time before completion of the winding-up phase, partners may decide to continue the partnership business by a majority vote).

203. The only difference between a forced sale and a buyout rests on the legal rights of the parties under the circumstances. Ribstein, *supra* note 61, at 375. In a
statute also began with the plain-meaning approach. After looking at the plain language of the statute, the district court determined that section 807 required liquidation of the partnership assets and division of the proceeds between the two partners. However, upon finding no clear definition of the term "liquidate" in the statute itself, the court adopted the Black's definition, "to assemble and mobilize the assets, settle with the creditors and debtors and apportion the remaining assets, if any, among the stockholders or owners."

Relying on the plain-language approach, the Supreme Court of Montana rejected the lower court's conclusion that a buyout was within the definition of liquidation. Instead of acknowledging the ambiguous definition of liquidation or the possibility that the lower court's remedy fell squarely within the definition articulated by the court, the court stated that a buyout was a "judicially created alternative to [the] statutorily mandated requirement" of a forced sale.

The McCormick court failed to recognize that "liquidation" has substantially the same meaning under RUPA and UPA. The statutory language held to require liquidation under UPA is nearly identical to that of RUPA. Thus, the same liquidation right that was once given to all withdrawing partners under UPA carries over to partners undergoing dissolution and winding up under RUPA.

buyout, a former partner has the advantage of buying the partnership business at fair market value or a judicially determined price. Id. In contrast, a forced sale involves a sale of the partnership assets at auction where neither party receives first option to buy. Id. at 367-68.

205. Id. at 703-04 (quoting BLACK'S LAW DICTIONARY 930 (6th ed. 1990)). Note that McCormick relied on the definition of the word "liquidate" and not "liquidation." See supra note 137 for the definition of "liquidation."
206. See McCormick, 96 P.3d at 703-04 (rejecting the lower court's analysis, which recognized that "liquidate" had a variety of possible meanings," including a judicially mandated buyout).
207. Id. at 705.
208. Compare UNIF. P'SHIP ACT § 807(a) (amended 1997), 6 U.L.A. 206 (2001) (explaining that winding up under RUPA requires "the assets of the partnership . . . [to] be applied to discharge its obligations to creditors" and "[a]ny surplus [to] be applied to pay in cash the net amount distributable to partners" (emphasis added)), with UNIF. P'SHIP ACT § 38(1) (1914), 6 U.L.A. 487 (2001) (explaining that upon dissolution, the partners "may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners" (emphasis added)).
The defendant, who urged the court to follow *Creel v. Lilly*, made this very argument. Nevertheless, the court rejected *Creel* altogether, stating that it was “both legally and factually distinguishable.” Although the court correctly distinguished *Creel*'s analysis of dissociation under RUPA, it failed to recognize that the revision had not changed the language conferring a right of liquidation or the definition of liquidation itself.

**B. A Buyout in One Instance Does Not Preclude Its Use in Another: Why the Negative Implication Argument Fails**

Challengers to the statutory interpretation that liquidation means the “in cash” rule chiefly base their argument on the structure of RUPA’s dissociation provisions. These opponents argue that since RUPA provides one path for a buyout and another path for liquidation, the two pathways are mutually exclusive. By including a separate path for buyout, the drafters, by negative implication, must not have intended for liquidation to encompass a buyout. Likewise, since the drafters of RUPA mitigated the harsh liquidation provision of UPA, the common law gloss does not carry over to RUPA.

The argument that the common law gloss does not carry over to RUPA is without merit. Aside from the similarities in the language of the winding-up provisions of UPA and RUPA, requiring only that payment of a partnership interest be in cash, the statutory language expressly provides for the use of a court’s equitable discretion to supplement the act. Furthermore, it cannot be said that [RUPA’s] structural changes hide the fundamental similarity between RUPA and UPA: under both, a single partner can compel liquidation of the firm at any time. The only significant difference between the approaches of the two acts is that, under RUPA, a partnership does not necessarily “dissolve” as a result of a partner’s dissociation.

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211. *McCormick*, 96 P.3d at 704; see also *supra* Part II.A for a discussion of *Creel*.
213. See id. at 704-05.
215. The “common law gloss” refers to the court’s allowance of a buyout to avoid the inequities of a forced sale. For a discussion of the common law gloss, see *supra* note 10 and accompanying text.
216. See *Bromberg & Ribstein, supra* note 3, § 7.11(f).
217. See *UNIF. P'SHIP ACT* § 104(a) (amended 1997) (acknowledging that the court may use the principles of equity and law to supplement this Act); see also *UNIF. P'SHIP ACT* § 5 (1914), 6 U.L.A. 391 (2001) (same).
that RUPA's move to separate dissociation events into two pathways eliminated every possible equitable concern existing under UPA.218

For example, if liquidation requires a forced sale, RUPA's structural changes would provide little benefit in the following situation: Partners A and B bought a residence as partnership property. The two partners each contributed equally to the down payment of the property and obtained joint financing for the balance. Solely due to Partner A's conduct, the partnership suffered, and Partner B took possession of the property. After Partner B assumed all expenses and obligations related to the property for a period of months, Partner A sought judicial dissolution and winding up of the partnership. Partner B requested that the court order the sale of the property. She also requested that the court give her an option to purchase the property. In mediation, both partners stipulated as to the property's fair market value and agreed that it would be in the best interest of the parties for one party to buy the property instead of offering it at public sale. However, they disagreed about who should be allowed to purchase the property. Administrative costs associated with a public sale were estimated to cost as much as twelve percent of the property's value.219

Interpreting RUPA to obviate UPA's equitable considerations and require a forced sale in this case would result in economic waste and a significant injustice to Partner B. This was clearly not what the legislature intended by trying to remedy the UPA’s inequities in RUPA.220 As such, if liquidation is interpreted as a forced sale, the common law gloss must exist in order to avoid these inequitable outcomes.

The negative implication argument fails in this context for one simple reason: the buyout under the dissociation pathway is

218. See, e.g., In re Dissolution of Midnight Star Enters., 724 N.W.2d 334 (S.D. 2006) (allowing majority partners to buyout interests of minority partners where majority partners sought to continue the business and had unsuccessfully attempted an amicable dissolution).


220. See UNIF. P'SHIP ACT § 801 cmt. 1 (amended 1997) ("RUPA's move to the entity theory is driven in part by the need to prevent a technical dissolution or its consequences."); see also Committee Report, supra note 27, at 125 (making recommendations that would soften the rules to prevent a technical dissolution, including authorizing the court to order remedies other than dissolution in a dissolution suit).
mandatory. With this in mind, the negative implication argument is only effective to the extent that, because the legislature provides one track for a mandatory buyout and another track for liquidation, the drafters did not intend for liquidation to include a mandatory buyout. However, exclusion of a mandatory buyout from the meaning of liquidation does not prohibit a voluntary or court-ordered buyout from the scope of the definition of liquidation.

C. The Equitable Discretion Approach: The Arguments Against a Mechanical Misreading of the Statute

1. Looking Out for the Best Interests of the Partnership

If the plain language of the statute is not held to connote liquidation as the “in cash” rule, then the term must be construed as ambiguous. As such, a court may use equitable discretion to find judicially created alternatives to a forced sale. RUPA specifically authorizes a court’s use of equitable discretion by stating that “[u]nless displaced by particular provisions of this [act], the principles of law and equity supplement this [act].” This provision provides statutory support for courts to consider judicial alternatives to RUPA’s black-letter law where appropriate. Such alternatives are particularly appropriate where, as in winding up a partnership business, a certain interpretation of the statute may negatively affect all partners. Likewise, the court’s equitable discretion is required to avoid a situation where a partner may purchase the partnership business at public auction for an unfairly low price. Such a result is likely where the court requires a forced sale upon dissolution of

221. Unif. P’ship Act § 701 cmt. 2 (amended 1997) (stating that the buyout in section 701 is mandatory, but may be fulfilled by other partners or a third party); see also id. § 701(a) (stating that a dissociated partner not dissociated under section 801 has the right to a buyout of the partnership business).

222. The statute does not specifically define liquidation. See id. § 807. Furthermore, no legislative history directly addresses this precise issue.

223. Id. § 104(a).

224. The substantial financial costs attributed to a forced sale sometimes constitute economic waste. See Disotell v. Stiltner, 100 P.3d 890 (Alaska 2004) (holding that a buyout was appropriate where transactions of a forced sale totaled twelve percent of the property’s value). Even if transaction costs of a forced sale do not amount to economic waste, they nonetheless subtract from the value of the partnership interest.

the partnership and one party is better-off financially than the other.226

Aside from the possibility of one partner having the upper hand, courts must also consider the facts under the equitable approach. For instance, the court may take into account whether the partnership property served as the residence of one of the partners;227 whether one partner developed the business;228 whether a forced sale would likely cause hardship to one partner;229 and whether one partner's actions caused harm to the partnership.230 Under an equitable approach, the court reaches a decision based on the best interests of the parties while remaining true to the language of the statute.


In Horne v. Aune, the court’s conclusion that “liquidation” means the “in cash” rule was based on the court’s equitable discretion and the partners’ stipulation concerning the value of the partnership property.231 The court enumerated both common law and statutory support for use of its equitable discretion when deciding whether the statute required a forced sale. In the beginning of the analysis, the court stated that, since the adoption of UPA, “the court’s equitable discretion has been subject to partner statutes.”232 As long as the court’s judgment does not directly contradict the statute, the court is free to make a decision based on whatever equitable concerns it chooses. The court gave further support for this assertion by pointing to section 104(a) of RUPA, which expressly allows for the court to supplement RUPA’s provisions with equitable principles.233

226. Cf. Page v. Page, 359 P.2d 41 (Cal. 1961). Page involved a wealthy partner who was accused of winding up the partnership before a co-partner could recover his investment. See id. at 42. The court explained that a partner may not freeze out a co-partner and exploit the partnership business for his own use. See id. at 44.
229. See Bromberg & Ribstein, supra note 3, § 7.11(f) (noting the likelihood that an unforeseen death of a partner would result in hardship to the partnership).
230. See Horne, 121 P.3d at 1229.
231. Id. at 1234.
232. Id. at 1231.
233. Id. at 1234 (quoting WASH. REV. CODE § 25.05.020(1) (1998), Washington’s codified version of section 104 of RUPA).
Allowing a court to supplement the statute with equitable principles provides the court some discretion; however, such a statement still requires the court to interpret the statute. This statutory interpretation serves as the only limit to the court’s equitable discretion; that is, the court may do everything but directly contradict the statute. In *Horne*, the court examined the statute by first looking at the plain language, which the court determined only required that upon winding up of the partnership the partners receive their interest in cash.\textsuperscript{234} The court explained that a partner could receive his interest in cash “by means other than forced sale.”\textsuperscript{235} In support of this analysis, the court relied heavily on cases that interpreted UPA’s winding-up provision instead of RUPA’s winding-up provision.\textsuperscript{236} As justification for the use of pre-RUPA cases, the court reasoned that “when partners choose the path of dissolution and winding up, the procedures are substantially the same under RUPA as they were under UPA.”\textsuperscript{237} In examining the case law, the court mentioned several equitable factors that would support the interpretation that the statute did not compel a forced sale. These factors included: (1) the prospect of economic waste; (2) the inability to obtain fair value for the partnership interest at public auction; (3) the residential nature of the partnership property;\textsuperscript{238} and (4) stipulation as to the value of the partnership property.\textsuperscript{239} So long as the court interpreted the statute in a way that still required payment to partners in cash upon winding up, the court’s judgment was consistent with the winding up statute.

The court went on to qualify times when the statute should be interpreted to require a forced sale. Specifically, the court left open the prospect of a forced sale when there is “a valid dispute concerning the value of the partnership property.”\textsuperscript{240} The court’s reasoning for this qualification was based on the historical precedent that forced sales were considered “the most accurate method of valuing partnership assets.”\textsuperscript{241}

\begin{itemize}
\item \textsuperscript{234} *Id.*
\item \textsuperscript{235} *Id.*
\item \textsuperscript{236} *See id.* at 1231-34 (citing Disotell v. Stiltner, 100 P.3d 890 (Alaska 2004); Logoluso v. Logoluso, 43 Cal. Rptr. 678 (Cal. Dist. Ct. App. 1965); Creel v. Lilly, 729 A.2d 385 (Md. 1999); Nicholes v. Hunt, 541 P.2d 820 (Or. 1975); Gunter v. Barnett, 871 P.2d 627 (Wash. Ct. App. 1994)).
\item \textsuperscript{237} *Id.* at 1231.
\item \textsuperscript{238} *See id.* at 1233 (citing Disotell, 100 P.3d 890).
\item \textsuperscript{239} *See id.* (citing Creel, 729 A.2d 385).
\item \textsuperscript{240} *Id.* at 1234.
\item \textsuperscript{241} *Id.*
Although Horne was correct to rely on its equitable discretion to permit a buyout, there are three problems with the court's overall approach. First, the court did not explain why the procedures for winding up were substantially the same under RUPA and UPA. Second, the court inappropriately relied on cases interpreting UPA. Third, the court could have—and should have—reached its holding without qualifying the language of the statute to require a forced sale when a valid dispute about the partnership property exists.

The procedures for winding up are substantially the same under RUPA and UPA due to the statutory language. The Horne court failed to recognize this, citing only RUPA's winding-up provision and repeatedly stating that the two statutes provide for the same procedures. A direct comparison of the statutory language would have made the court's analysis less confusing and more persuasive. Furthermore, the court could have used the fact of the similar statutory language as support for similar equitable considerations. That is, the same equitable considerations under UPA hold under RUPA because the statutory language and the revisions did not do away with them.

The Horne court's reliance on pre-RUPA holdings, particularly Creel v. Lilly, was misplaced. The court cited Creel as its main support for the proposition that winding up does not equal a forced sale. Although Creel was decided based in part on RUPA, its facts were distinguishable from those of Horne due to the nature of the event (the death of a partner) that caused dissociation in Creel. Under RUPA, the death of a partner would trigger a mandatory buyout of the partnership interest and not liquidation. In contrast, a court-ordered dissolution, as in Horne, would proceed down the path for dissolution and winding up under RUPA. The current controversy, and the issue in Horne, involves not the mandatory buyout pathway but the definition of liq-

242. See supra notes 15, 22, 209 and accompanying text.
244. See supra note 208 for a direct comparison of the statutory language.
245. See Horne, 121 P.3d at 1233-34 (citing Creel v. Lilly, 729 A.2d 385 (Md. 1999)).
246. At the time of the case, Maryland law included both UPA and RUPA because of the introduction of RUPA to the legislature. See Creel, 729 A.2d at 387.
247. Compare id. at 389 (dissociation caused by the death of a partner), with Horne, 121 P.3d at 1230 (partner sought court-ordered dissolution).
249. See id. §§ 801, 807.
liquidation in the dissolution and winding-up pathway. As such, the holding in Creel is distinguishable and should have had no bearing on the Horne court’s decision.

Finally, it was unnecessary for the Horne court to expressly acknowledge the merits of a forced sale when partners dispute the value of the partnership property. The court could have reached its conclusion based only on its equitable discretion and the interpretation of the statute as not requiring a forced sale. The implication that the statute requires a forced sale when there is a dispute about the value of the partnership property only serves to weaken the court’s argument. This proposition is particularly true under current practices where the judge has the power to employ other ways to determine the asset’s value, such as a court-ordered appraisal of the partnership property. Moreover, by repeatedly emphasizing the importance of the court’s equitable discretion, the court leaves the door open for later decisions to order a forced sale when principles of law and equity require one—for example, where there is a dispute concerning the partnership property’s value. But by essentially stating that a forced sale is required when the partnership property’s value is in dispute, the court is actually limiting equitable discretion in future cases.

Thus, although Horne was correct to rely on its equitable discretion under Washington’s codified version of RUPA section 104(a), the court’s reasoning would have been more effective had it compared the statutory language of RUPA and UPA dissolution; declined to qualify the buyout option; and rebutted, instead of simply rejecting, the McCormick court’s reasoning.

CONCLUSION

RUPA does not require a forced sale. The statutory language only provides that, upon dissolution and winding up, partners must receive their interest payable in cash. Under section 807, a part-

250. See Horne, 121 P.3d at 1234.
251. See Unif. P'ship Act § 104(a) (amended 1997).
252. See Horne, 121 P.3d at 1234 (“Absent a valid dispute concerning the value of the partnership property, [a partner] has no legal right, under the winding-up statute, to force the public sale of partnership assets.”). Based on the court’s statement, by negative implication it would follow that where there is a valid dispute concerning the value of the partnership property, the partner would have a legal right, under the winding-up statute, to force the public sale of partnership assets. See id.
253. See id. (recognizing that a forced sale may be appropriate where there is a dispute as to the value of the partnership property before concluding that no forced sale was required based on equitable discretion).
ner’s “liquidation” right upon winding up of the partnership is limited to a right to refuse distribution in kind. This interpretation is supported by nearly identical language in UPA, which permits judicially created alternatives to a forced sale upon dissolution and winding up of the partnership, so long as cash is the method of payment to the partners. The court in *McCormick* incorrectly construed the statute to require a forced sale even if partners fail to request a public sale. Adopting this interpretation effectively turns the liquidation right into a necessity despite decisions by partners to the contrary. Furthermore, it conflicts with the entity theory of RUPA, which gives remaining partners the option of continuing the partnership following the departure of a partner.

Likewise, the statutory scheme of RUPA’s breakup provisions does not preclude a buyout and require a forced sale. By providing that certain dissolution-causing events gave rise to a mandatory buyout, the legislature did not prohibit voluntary buyouts upon winding up and dissolution of the partnership. Instead, RUPA’s statutory scheme was intended to incorporate the entity theory and correct some of the prevailing inequities existing under UPA. Because RUPA did not mend every possible inequity, the drafters must have intended for courts to permit a buyout when they saw fit, even in the face of dissolution.

By providing that courts may supplement the statute with the principles of law and equity, RUPA implicitly authorizes courts to order a buyout when a partnership is marked for dissolution and winding up. Because the statute does not provide a definition of “liquidation,” courts may use any definition, provided it does not contravene the statute. Since the statute only requires payment to partners in cash, a court’s allowance of a buyout is in harmony with the statute. Accordingly, because the allowance for a buyout under RUPA may come from the statutory language, the entity theory, the statutory scheme, or the principles of equity, it follows that dissolution under RUPA does not require a forced sale.

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255. *See McCormick v. Brevig, 96 P.3d 697, 705 (Mont. 2004).*