

***Superseded 5/12/2015***

**48-1-38 Liability of persons continuing the business in certain cases.**

- (1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representatives of a deceased partner assign) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first, or dissolved, partnership are also creditors of the partnership so continuing the business.
- (2) When all but one partner retire and assign (or the representatives of a deceased partner assign) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.
- (3) When any partner retires or dies and the business of the dissolved partnership is continued, as set forth in paragraphs (1) and (2) of this section, with the consent of the retired partner or the representatives of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of creditors of the person or partnership continuing the business shall be as if such assignment had been made.
- (4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.
- (5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of Section 48-1-35(2)(b), either alone or with others and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.
- (6) When a partner is expelled and the remaining partners continue the business, either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.
- (7) The liability of a third person becoming a partner in the partnership continuing the business under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.
- (8) When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representatives of the deceased partner, have a prior right to any claim of the retired partner or the representatives of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership, or on account of any consideration promised for such interest, or for his right in partnership property.
- (9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.
- (10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.