

Part 2 Nature of Partnership

48-1d-201 Partnership as entity.

- (1) A partnership is an entity distinct from its partners.
- (2) A partnership is the same entity regardless of whether the partnership has a statement of qualification in effect under Section 48-1d-1101.

Enacted by Chapter 412, 2013 General Session

48-1d-202 Formation of partnership.

- (1) Except as otherwise provided in Subsection (2), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.
- (2) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.
- (3) In determining whether a partnership is formed, the following rules apply:
 - (a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.
 - (b) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
 - (c) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:
 - (i) of a debt by installments or otherwise;
 - (ii) for services as an independent contractor or of wages or other compensation to an employee;
 - (iii) of rent;
 - (iv) of an annuity or other retirement or health benefit to a deceased or retired partner or a beneficiary, representative, or designee of a deceased or retired partner;
 - (v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
 - (vi) for the sale of the goodwill of a business or other property by installments or otherwise.

Enacted by Chapter 412, 2013 General Session

48-1d-203 Partnership property.

Property acquired by a partnership is property of the partnership and not of the partners individually.

Enacted by Chapter 412, 2013 General Session

48-1d-204 When property is partnership property.

- (1) Property is partnership property if acquired in the name of:
 - (a) the partnership; or

- (b) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.
- (2) Property is acquired in the name of the partnership by a transfer to:
 - (a) the partnership in its name; or
 - (b) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.
- (3) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.
- (4) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

Enacted by Chapter 412, 2013 General Session