

Part 8

Partner's Dissociation When Business Not Wound Up

48-1d-801 Purchase of interest of person dissociated as partner.

- (1) If a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership's activities and affairs under Section 48-1d-901, the partnership shall cause the person's interest in the partnership to be purchased for a buyout price determined pursuant to Subsection (2).
- (2) The buyout price of the interest of a person dissociated as a partner is the amount that would have been distributable to the person under Subsection 48-1d-906(2) if, on the date of dissociation, the assets of the partnership were sold and the partnership were wound up, with the sale price equal to the greater of:
 - (a) the liquidation value; or
 - (b) the value based on a sale of the entire business as a going concern without the person.
- (3) Interest accrues on the buyout price from the date of dissociation to the date of payment, but damages for wrongful dissociation under Subsection 48-1d-702(2), and all other amounts owing, whether or not presently due, from the person dissociated as a partner to the partnership, must be offset against the buyout price.
- (4) A partnership shall defend, indemnify, and hold harmless a person dissociated as a partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the person dissociated as a partner under Section 48-1d-802.
- (5) If no agreement for the purchase of the interest of a person dissociated as a partner is reached not later than 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in money to the person the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under Subsection (3).
- (6) If a deferred payment is authorized under Subsection (8), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under Subsection (3), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.
- (7) The payment or tender required by Subsection (5) or (6) must be accompanied by the following:
 - (a) a statement of partnership assets and liabilities as of the date of dissociation;
 - (b) the latest available partnership balance sheet and income statement, if any;
 - (c) an explanation of how the estimated amount of the payment was calculated; and
 - (d) written notice that the payment is in full satisfaction of the obligation to purchase unless, not later than 120 days after the written notice, the person dissociated as a partner commences an action to determine the buyout price, any offsets under Subsection (3), or other terms of the obligation to purchase.
- (8) A person that wrongfully dissociates as a partner before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any part of the buyout price until the expiration of the term or completion of the undertaking, unless the person establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.
- (9) A person dissociated as a partner may maintain an action against the partnership, pursuant to Subsection 48-1d-406(2), to determine the buyout price of that person's interest, any offsets under Subsection (3), or other terms of the obligation to purchase. The action must be

commenced not later than 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the person's interest, any offset due under Subsection (3), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under Subsection (8), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with Subsection (7).

Enacted by Chapter 412, 2013 General Session

48-1d-802 Power to bind and liability of person dissociated as partner.

- (1) After a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership's activities and affairs and before the partnership is merged out of existence, converted, or domesticated under Part 10, Merger, Interest Exchange, Conversion, and Domestication, or dissolved, the partnership is bound by an act of the person only if:
 - (a) the act would have bound the partnership under Section 48-1d-301 before dissociation; and
 - (b) at the time the other party enters into the transaction:
 - (i) less than two years has passed since the dissociation; and
 - (ii) the other party does not know or have notice of the dissociation and reasonably believes that the person is a partner.
- (2) If a partnership is bound under Subsection (1), the person dissociated as a partner which caused the partnership to be bound is liable:
 - (a) to the partnership for any damage caused to the partnership arising from the obligation incurred under Subsection (1); and
 - (b) if a partner or another person dissociated as a partner is liable for the obligation, to the partner or other person for any damage caused to the partner or other person arising from the liability.

Enacted by Chapter 412, 2013 General Session

48-1d-803 Liability of person dissociated as partner to other persons.

- (1) A person's dissociation as a partner does not of itself discharge the person's liability as a partner for a debt, obligation, or other liability of the partnership incurred before dissociation. Except as otherwise provided in Subsection (2), the person is not liable for a partnership obligation incurred after dissociation.
- (2) A person that has dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership's activities and affairs is liable on a transaction entered into by the partnership after the dissociation only if:
 - (a) a partner would be liable on the transaction; and
 - (b) at the time the other party enters into the transaction:
 - (i) less than two years has passed since the dissociation; and
 - (ii) the other party does not have knowledge or notice of the dissociation and reasonably believes that the person is a partner.
- (3) By agreement with a creditor of a partnership and the partnership, a person dissociated as a partner may be released from liability for an obligation of the partnership.

- (4) A person dissociated as a partner is released from liability for an obligation of the partnership if the partnership's creditor, with knowledge or notice of the person's dissociation but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

Enacted by Chapter 412, 2013 General Session

48-1d-804 Statement of dissociation.

- (1) A person dissociated as a partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.
- (2) A statement of dissociation is a limitation on the authority of a person dissociated as a partner for the purposes of Subsections 48-1d-303(4) and (5).

Enacted by Chapter 412, 2013 General Session

48-1d-805 Continued use of partnership name.

Continued use of a partnership name, or name of a person dissociated as a partner as part of the partnership name, by partners continuing the business does not of itself make the person dissociated as a partner liable for an obligation of the partners or the partnership continuing the business.

Enacted by Chapter 412, 2013 General Session