

Part 9

Dissolution and Winding Up

48-1d-901 Events causing dissolution.

A partnership is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

- (1) in a partnership at will, the partnership has notice of a person's express will to withdraw as a partner, other than a partner that has dissociated under Subsections 48-1d-701(2) through (10), but, if the person specifies a withdrawal date later than the date the partnership had notice, on the later date;
- (2) in a partnership for a definite term or particular undertaking:
 - (a) within 90 days after a person's dissociation by death or otherwise under Subsections 48-1d-701(6) through (10) or wrongful dissociation under Subsection 48-1d-702(2), the affirmative vote or consent of at least half of the remaining partners to wind up the partnership's activities and affairs, for which purpose a person's rightful dissociation pursuant to Subsection 48-1d-702(2)(b)(i) constitutes the expression of that partner's consent to wind up the partnership's activities and affairs;
 - (b) the express consent of all the partners to wind up the partnership's activities and affairs; or
 - (c) the expiration of the term or the completion of the undertaking;
- (3) an event or circumstance that the partnership agreement states causes dissolution;
- (4) on application by a partner, the entry by the district court of an order dissolving the partnership on the ground that:
 - (a) the conduct of all or substantially all the partnership's activities and affairs is unlawful;
 - (b) the economic purpose of the partnership is likely to be unreasonably frustrated;
 - (c) another partner has engaged in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the business in partnership with that partner; or
 - (d) it is not otherwise reasonably practicable to carry on the partnership's activities and affairs in conformity with the partnership agreement;
- (5) on application by a transferee, the entry by the district court of an order dissolving the partnership on the ground that it is equitable to wind up the partnership's activities and affairs:
 - (a) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or
 - (b) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer; or
- (6) the passage of 90 consecutive days during which the partnership does not have at least two partners.

Enacted by Chapter 412, 2013 General Session

48-1d-902 Winding up.

- (1) A dissolved partnership shall wind up its activities and affairs and, except as otherwise provided in Section 48-1d-903, the partnership continues after dissolution only for the purpose of winding up.
- (2) In winding up its activities and affairs, the partnership:

- (a) shall discharge the partnership's debts, obligations, and other liabilities, settle and close the partnership's activities and affairs, and marshal and distribute the assets of the partnership; and
- (b) may:
 - (i) deliver to the division for filing a statement of dissolution stating the name of the partnership and that the partnership is dissolved;
 - (ii) preserve the partnership's activities and affairs and property as a going concern for a reasonable time;
 - (iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
 - (iv) transfer the partnership's property;
 - (v) settle disputes by mediation or arbitration;
 - (vi) deliver to the division for filing a statement of termination stating the name of the partnership and that the partnership is terminated; and
 - (vii) perform other acts necessary or appropriate to the winding up.
- (3) A person whose dissociation as a partner resulted in dissolution may participate in winding up as if still a partner, unless the dissociation was wrongful.
- (4) If a dissolved partnership does not have a partner and no person has the right to participate in winding up under Subsection (3), the personal or legal representative of the last person to have been a partner may wind up the partnership's activities and affairs. If the representative does not exercise that right, a person to wind up the partnership's activities and affairs may be appointed by the consent of transferees owning a majority of the rights to receive distributions at the time the consent is to be effective. A person appointed under this Subsection (4) has the powers of a partner under Section 48-1d-904 but is not liable for the debts, obligations, and other liabilities of the partnership solely by reason of having or exercising those powers or otherwise acting to wind up the partnership's activities and affairs.
- (5) On the application of any partner or person entitled under Subsection (3) to participate in winding up, the district court may order judicial supervision of the winding up of a dissolved partnership, including the appointment of a person to wind up the partnership's activities and affairs, if:
 - (a) the partnership does not have a partner, and within a reasonable time following the dissolution no person has been appointed under Subsection (4); or
 - (b) the applicant establishes other good cause.

Enacted by Chapter 412, 2013 General Session

48-1d-903 Rescinding dissolution.

- (1) A partnership may rescind its dissolution, unless a statement of termination applicable to the partnership is effective or the district court has entered an order under Subsection 48-1d-901(4) or (5) dissolving the partnership.
- (2) Rescinding dissolution under this section requires:
 - (a) the affirmative vote or consent of each partner;
 - (b) if a statement of dissolution applicable to the partnership has been filed by the division but has not become effective, delivery to the division for filing of a statement of withdrawal under Section 48-1d-114 applicable to the statement of dissolution; and
 - (c) if a statement of dissolution applicable to the partnership is effective, the delivery to the division for filing of a statement of correction under Section 48-1d-115 stating that dissolution has been rescinded under this section.
- (3) If a partnership rescinds its dissolution:

- (a) the partnership resumes carrying on its activities and affairs as if dissolution had never occurred;
- (b) subject to Subsection (3)(c), any liability incurred by the partnership after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and
- (c) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

Enacted by Chapter 412, 2013 General Session

48-1d-904 Power to bind partnership after dissolution.

- (1) A partnership is bound by a partner's act after dissolution which:
 - (a) is appropriate for winding up the partnership's activities and affairs; or
 - (b) would have bound the partnership under Section 48-1d-301 before dissolution, if, at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.
- (2) A person dissociated as a partner binds a partnership through an act occurring after dissolution if at the time the other party enters into the transaction:
 - (a) less than two years has passed since the dissociation;
 - (b) the other party does not have notice of the dissociation and reasonably believes that the person is a partner; and
 - (c) the act:
 - (i) is appropriate for winding up the partnership's activities and affairs; or
 - (ii) would have bound the partnership under Section 48-1d-301 before dissolution, and at the time the other party enters into the transaction the other party does not know or have notice of the dissolution.

Enacted by Chapter 412, 2013 General Session

48-1d-905 Liability after dissolution.

- (1) If a partner having knowledge of the dissolution causes a partnership to incur an obligation under Subsection 48-1d-904(1) by an act that is not appropriate for winding up the partnership's activities and affairs, the partner is liable:
 - (a) to the partnership for any damage caused to the partnership arising from the obligation; and
 - (b) if another partner or person dissociated as a partner is liable for the obligation, to that other partner or person for any damage caused to that other partner or person arising from the liability.
- (2) If a person dissociated as a partner causes a partnership to incur an obligation under Subsection 48-1d-904(2), the person is liable:
 - (a) to the partnership for any damage caused to the partnership arising from the obligation; 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 obligation.

Enacted by Chapter 412, 2013 General Session

48-1d-906 Disposition of assets in winding up -- When contributions required.

- (1) In winding up its activities and affairs, a partnership shall apply its assets, including the contributions required by this section, to discharge the partnership's obligations to creditors, including partners that are creditors.
- (2) After a partnership complies with Subsection (1), any surplus must be distributed in the following order, subject to any charging order in effect under Section 48-1d-604:
 - (a) to each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and
 - (b) among partners in proportion to their respective rights to share in distributions immediately before the dissolution of the partnership, except to the extent necessary to comply with any transfer effective under Section 48-1d-603.
- (3) If a partnership's assets are insufficient to satisfy all its obligations under Subsection (1), with respect to each unsatisfied obligation incurred when the partnership was not a limited liability partnership, the following rules apply:
 - (a) Each person that was a partner when the obligation was incurred and that has not been released from the obligation under Subsections 48-1d-803(3) and (4) shall contribute to the partnership to enable the partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of partner in effect for each of those persons when the obligation was incurred.
 - (b) If a person does not contribute the full amount required under Subsection (3)(a) with respect to an unsatisfied obligation of the partnership, the other persons required to contribute by Subsection (3)(a) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of partner in effect for each of those other persons when the obligation was incurred.
 - (c) If a person does not make the additional contribution required by Subsection (3)(b), further additional contributions are determined and due in the same manner as provided in that subsection.
 - (d) A person that makes an additional contribution under Subsection (3)(b) or (3)(c) may recover from any person whose failure to contribute under Subsection (3)(a) or (3)(b) necessitated the additional contribution. A person may not recover under this Subsection (3) more than the amount additionally contributed. A person's liability under this Subsection (3) may not exceed the amount the person failed to contribute.
- (4) If a partnership does not have sufficient surplus to comply with Subsection (2)(a), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.
- (5) All distributions made under Subsections (2) and (4) must be paid in money.

Enacted by Chapter 412, 2013 General Session

48-1d-907 Known claims against dissolved limited liability partnership.

- (1) Except as otherwise provided in Subsection (4), a dissolved limited liability partnership may give notice of a known claim under Subsection (2), which has the effect provided in Subsection (3).
- (2) A dissolved limited liability partnership may in a record notify its known claimants of the dissolution. The notice must:
 - (a) specify the information required to be included in a claim;
 - (b) state that the claim must be in writing and provide a mailing address to which the claim is to be sent;

- (c) state the deadline for receipt of a claim, which may not be less than 120 days after the date of the notice is received by the claimant;
 - (d) state that the claim will be barred if not received by the deadline; and
 - (e) unless the partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any partner or person dissociated as a partner which is based on Section 48-1d-305.
- (3) A claim against a dissolved limited liability partnership is barred if the requirements of Subsection (2) are met and:
- (a) the claim is not received by the specified deadline; or
 - (b) if the claim is timely received but rejected by the limited liability partnership:
 - (i) the partnership causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the partnership to enforce the claim not later than 90 days after the claimant receives the notice; and
 - (ii) the claimant does not commence the required action not later than 90 days after the claimant receives the notice.
- (4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

Enacted by Chapter 412, 2013 General Session

48-1d-908 Other claims against dissolved limited liability partnership.

- (1) A dissolved limited liability partnership may publish notice of its dissolution and request persons having claims against the dissolved limited liability partnership to present them in accordance with the notice.
- (2) A notice under Subsection (1) must:
- (a) be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited liability partnership's principal office is located or, if the principal office is not located in this state, in the county in which the office of the dissolved limited liability partnership's registered agent is or was last located and in accordance with Section 45-1-101;
 - (b) describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent;
 - (c) state that a claim against the dissolved limited liability partnership is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice; and
 - (d) unless the dissolved limited liability partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the dissolved limited liability partnership will also bar any corresponding claim against any partner or person dissociated as a partner which is based on Section 48-1d-306.
- (3) If a dissolved limited liability partnership publishes a notice in accordance with Subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited liability partnership not later than three years after the publication date of the notice:
- (a) a claimant that did not receive notice in a record under Section 48-1d-907;
 - (b) a claimant whose claim was timely sent to the partnership but not acted on; and
 - (c) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

- (4) A claim not barred under this section or Section 48-1d-907 may be enforced:
- (a) against a dissolved limited liability partnership, to the extent of its undistributed assets;
 - (b) except as otherwise provided in Section 48-1d-909, if assets of the dissolved limited liability partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the dissolved limited liability partnership's assets distributed to the partner or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution; and
 - (c) against any person liable on the claim under Sections 48-1d-306, 48-1d-803, and 48-1d-905.

Enacted by Chapter 412, 2013 General Session

48-1d-909 Court proceedings.

- (1) A dissolved limited liability partnership that has published a notice under Section 48-1d-908 may file an application with the district court in the county where the dissolved limited liability partnership's principal office is located or, if the principal office is not located in this state, where the office of its registered agent is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the dissolved limited liability partnership, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved limited liability partnership, are reasonably expected to arise after the effective date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under Subsection 48-1d-907(3).
- (2) Not later than 10 days after the filing of an application under Subsection (1), the dissolved limited liability partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the dissolved limited liability partnership.
- (3) In any proceeding under this section, the district court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability partnership.
- (4) A dissolved limited liability partnership that provides security in the amount and form ordered by the district court under Subsection (1) satisfies the dissolved limited liability partnership's obligations with respect to claims that are contingent, have not been made known to the dissolved limited liability partnership, or are based on an event occurring after the effective date of dissolution, and the claims may not be enforced against a partner or transferee who receives assets in liquidation.
- (5) This section applies only to a debt, obligation, or other liability incurred while a partnership was a limited liability partnership.

Enacted by Chapter 412, 2013 General Session

48-1d-910 Liability of partner and person dissociation as partner when claim against limited liability partnership is barred.

If a claim against a dissolved limited liability partnership is barred under Section 48-1d-907, 48-1d-908, or 48-1d-909, any corresponding claim under Section 48-1d-306, 48-1d-803, or 48-1d-905 is also barred.

Enacted by Chapter 412, 2013 General Session

