

Part 4 General Partners

48-2e-401 Becoming general partner.

- (1) A person becomes a general partner:
 - (a) upon formation of a limited partnership, as agreed among the persons that are to be the initial partners; and
 - (b) after formation:
 - (i) as provided in the partnership agreement;
 - (ii) under Subsection 48-2e-801(1)(c)(ii) following the dissociation of a limited partnership's last general partner;
 - (iii) as the result of a transaction effective under Part 11, Merger, Interest Exchange, Conversion, and Domestication; or
 - (iv) with the affirmative vote or consent of all the partners.
- (2) A person may become a general partner without:
 - (a) acquiring a transferable interest; or
 - (b) making or being obligated to make a contribution to the limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-402 General partner agent of limited partnership.

- (1) Each general partner is an agent of the limited partnership for the purposes of its activities and affairs. An act of a general partner, including the signing of a record in the limited partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities and affairs or activities and affairs of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew or had notice that the general partner lacked authority.
- (2) An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities and affairs or activities and affairs of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

Enacted by Chapter 412, 2013 General Session

48-2e-403 Limited partnership liable for general partner's actionable conduct.

- (1) A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities and affairs of the limited partnership or with the actual or apparent authority of the limited partnership.
- (2) If, in the course of a limited partnership's activities and affairs or while acting with actual or apparent authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

Enacted by Chapter 412, 2013 General Session

48-2e-404 General partner's liability.

- (1) Except as otherwise provided in Subsections (2) and (3), all general partners are liable jointly and severally for all debts, obligations, and other liabilities of the limited partnership unless otherwise agreed by the claimant or provided by law.
- (2) A person that becomes a general partner of an existing limited partnership is not personally liable for a debt, obligation, or other liability of the limited partnership incurred before the person became a general partner.
- (3) A debt, obligation, or other liability of a limited partnership incurred while the limited partnership is a limited liability limited partnership is solely the debt, obligation, or other liability of the limited liability limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability limited partnership solely by reason of being or acting as a general partner. This Subsection (3) applies despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability limited partnership under Subsection 48-2e-406(2)(b).
- (4) The failure of a limited liability limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a general partner of the limited liability limited partnership for a debt, obligation, or liability of the limited partnership.
- (5) An amendment of a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership does not affect the limitation in this section on liability of a general partner for a debt, obligation, or other liability of the limited partnership incurred before the amendment became effective.

Enacted by Chapter 412, 2013 General Session

48-2e-405 Actions by and against partnership and partners.

- (1) To the extent not inconsistent with Section 48-2e-404, a general partner may be joined in an action against the limited partnership or named in a separate action.
- (2) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.
- (3) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the general partner is personally liable for the claim under Section 48-2e-404, and:
 - (a) a judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
 - (b) the limited partnership is a debtor in bankruptcy;
 - (c) the general partner has agreed that the creditor need not exhaust limited partnership assets;
 - (d) a court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that the limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or
 - (e) liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-406 Management rights of general partner.

- (1) Each general partner has equal rights in the management and conduct of the limited partnership's activities and affairs. Except as otherwise provided in this chapter, any matter relating to the activities and affairs of the limited partnership is decided exclusively by the general partner or, if there is more than one general partner, by a majority of the general partners.
- (2) The affirmative vote or consent of all partners is required to:
 - (a) amend the partnership agreement;
 - (b) amend the certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership;
 - (c) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities and affairs; and
 - (d) approve a transaction under Part 11, Merger, Interest Exchange, Conversion, and Domestication.
- (3) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.
- (4) A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under Subsection (3) or Subsection 48-2e-408(1) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.
- (5) A general partner is not entitled to remuneration for services performed for the limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-407 Rights to information of general partner and person dissociated as general partner.

- (1) A general partner may inspect and copy required information during regular business hours in the limited partnership's principal office, without having any particular purpose for seeking the information.
- (2) On reasonable notice, a general partner may inspect and copy during regular business hours, at a reasonable location specified by the limited partnership, any record maintained by the limited partnership regarding the limited partnership's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the general partner's rights and duties under the partnership agreement or this chapter.
- (3) A limited partnership shall furnish to each general partner:
 - (a) without demand, any information concerning the limited partnership's activities, affairs, financial condition, and other circumstances which the limited partnership knows and are material to the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter, except to the extent the limited partnership can establish that it reasonably believes the general partner already knows the information; and
 - (b) on demand, any other information concerning the limited partnership's activities, affairs, financial condition, and other circumstances, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.
- (4) The duty to furnish information under Subsection (2) also applies to each general partner to the extent the general partner knows any of the information described in Subsection (2).

- (5) Subject to Subsection (8), on 10 days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in Subsections (1) and (2) at the locations specified in those subsections if:
 - (a) the information or record pertains to the period during which the person was a general partner;
 - (b) the person seeks the information or record in good faith; and
 - (c) the person satisfies the requirements imposed on a limited partner by Subsection 48-2e-304(2).
- (6) The limited partnership shall respond to a demand made pursuant to Subsection (3) in the manner provided in Subsection 48-2e-304(3).
- (7) A limited partnership may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.
- (8) A general partner or person dissociated as a general partner may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the partnership agreement or under Subsection (9) applies both to the agent or legal representative and the general partner or person dissociated as a general partner.
- (9) The rights under this section do not extend to a person as transferee, but if:
 - (a) a general partner dies, Section 48-2e-704 applies; and
 - (b) an individual dissociates as a general partner under Subsection 48-2e-603(7)(b) or (7)(c), the legal representative of the individual may exercise the rights under Subsection (4) of a person dissociated as a general partner.
- (10) In addition to any restriction or condition stated in the partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this Subsection (10), the limited partnership has the burden of proving reasonableness.

Enacted by Chapter 412, 2013 General Session

48-2e-408 Reimbursement, indemnification, advancement, and insurance.

- (1) A limited partnership shall reimburse a general partner for any payment made by the general partner in the course of the general partner's activities on behalf of the limited partnership, if the general partner complied with Sections 48-2e-406, 48-2e-409, and 48-2e-504 in making the payment.
- (2) A limited partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a general partner, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of Section 48-2e-406, 48-2e-409, or 48-2e-504.
- (3) In the ordinary course of its activities and affairs, a limited partnership may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a general partner, if the person promises to repay the limited partnership if the person ultimately is determined not to be entitled to be indemnified under Subsection (2).

- (4) A limited partnership may purchase and maintain insurance on behalf of a general partner against liability asserted against or incurred by the general partner in that capacity or arising from that status even if, under Subsection 48-2e-112(3)(h), the partnership agreement could not eliminate or limit the person's liability to the limited partnership for the conduct giving rise to the liability.

Enacted by Chapter 412, 2013 General Session

48-2e-409 Standards of conduct for general partners.

- (1) A general partner owes to the limited partnership and, subject to Subsection 48-2e-1001(1), the other partners the duties of loyalty and care stated in Subsections (2) and (3).
- (2) The duty of loyalty of a general partner includes the duties:
 - (a) to account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner:
 - (i) in the conduct or winding up of the limited partnership's activities and affairs;
 - (ii) from a use by the general partner of the limited partnership's property; or
 - (iii) from the appropriation of a limited partnership opportunity;
 - (b) to refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities and affairs as or on behalf of a person having an interest adverse to the limited partnership; and
 - (c) to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities and affairs.
- (3) The duty of care of a general partner in the conduct or winding up of the limited partnership's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
- (4) A general partner shall discharge the duties and obligations under this chapter or under the partnership agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.
- (5) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement solely because the general partner's conduct furthers the general partner's own interest.
- (6) All the partners of a limited partnership may authorize or ratify, after full disclosure of all material facts, a specific act or transaction by a general partner that otherwise would violate the duty of loyalty.
- (7) It is a defense to a claim under Subsection (2)(b) and any comparable claim in equity or at common law that the transaction was fair to the limited partnership.
- (8) If, as permitted by Subsection (6) or the partnership agreement, a general partner enters into a transaction with the limited partnership which otherwise would be prohibited by Subsection (2)(b), the general partner's rights and obligations arising from the transaction are the same as those of a person that is not a general partner.

Enacted by Chapter 412, 2013 General Session