

Part 4

Relations of Partners to Each Other and to Partnership

48-1d-401 Becoming partner.

- (1) Upon formation of a partnership, a person becomes a partner under Subsection 48-1d-202(1).
- (2) After formation of a partnership, a person becomes a partner:
 - (a) as provided in the partnership agreement;
 - (b) as a result of a transaction effective under Part 10, Merger, Interest Exchange, Conversion, and Domestication; or
 - (c) with the consent of all the partners.
- (3) A person may become a partner without either:
 - (a) acquiring a transferable interest; or
 - (b) making or being obligated to make a contribution to the partnership.

Enacted by Chapter 412, 2013 General Session

48-1d-402 Management rights of partners.

- (1) Each partner has equal rights in the management and conduct of the partnership's activities and affairs.
- (2) A partner may use or possess partnership property only on behalf of the partnership.
- (3) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the activities and affairs of the partnership.
- (4) A difference arising among partners as to a matter in the ordinary course of the activities of the partnership shall be decided by a majority of the partners.
- (5) An act outside the ordinary course of the activities and affairs of the partnership may be undertaken only with the consent of all partners. An act outside the ordinary course of business of a partnership, an amendment to the partnership agreement, and the approval of a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication, may be undertaken only with the affirmative vote or consent of all of the partners.

Enacted by Chapter 412, 2013 General Session

48-1d-403 Rights of partners and person dissociated as partner to information.

- (1) A partnership shall keep its books and records, if any, at its principal office.
- (2) On reasonable notice, a partner may inspect and copy during regular business hours, at a reasonable location specified by the partnership, any record maintained by the partnership regarding the partnership's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the partner's rights and duties under the partnership agreement or this chapter.
- (3) The partnership shall furnish to each partner:
 - (a) without demand, any information concerning the partnership's activities, affairs, financial condition, and other circumstances which the partnership knows and is material to the proper exercise of the partner's rights and duties under the partnership agreement or this chapter, except to the extent the partnership can establish that it reasonably believes the partner already knows the information; and

- (b) on demand, any other information concerning the partnership's activities, affairs, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.
- (4) The duty to furnish information under Subsection (3) also applies to each partner to the extent the partner knows any of the information described in Subsection (3).
- (5) Subject to Subsection (8), on 10 days' demand made in a record received by a partnership, a person dissociated as a partner may have access to information to which the person was entitled while a partner if:
 - (a) the information pertains to the period during which the person was a partner;
 - (b) the person seeks the information in good faith; and
 - (c) the person satisfies the requirements imposed on a partner by Subsection (2).
- (6) Not later than 10 days after receiving a demand under Subsection (5), the partnership in a record shall inform the person that made the demand of:
 - (a) the information that the partnership will provide in response to the demand and when and where the partnership will provide the information; and
 - (b) the partnership's reasons for declining, if the partnership declines to provide any demanded information.
- (7) A 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 partner or person dissociated as a 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 (11) applies both to the agent or legal representative and the partner or person dissociated as a partner.
- (9) The rights under this section do not extend to a person as transferee.
- (10) If a partner dies, Section 48-1d-605 applies.
- (11) In addition to any restriction or condition stated in the partnership agreement, a partnership, as a matter within the ordinary course of its business, 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, the partnership has the burden of proving reasonableness.

Enacted by Chapter 412, 2013 General Session

48-1d-404 Reimbursement, indemnification, advancement, and insurance.

- (1) A partnership shall reimburse a partner for any payment made by the partner in the course of the partner's activities on behalf of the partnership, if the partner complied with Sections 48-1d-402 and 48-1d-405 in making the payment.
- (2) A 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 partner, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of Section 48-1d-402, 48-1d-405, or 48-1d-504.
- (3) In the ordinary course of its activities and affairs, a 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 partner, if the person promises to repay the partnership if the person ultimately is determined not to be entitled to be indemnified under Subsection (2).

- (4) A partnership may purchase and maintain insurance on behalf of a partner against liability asserted against or incurred by the partner in that capacity or arising from that status even if, under Subsection 48-1d-106(3)(g), the partnership agreement could not eliminate or limit the person's liability to the partnership for the conduct giving rise to the liability.
- (5) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.
- (6) A payment or advance made by a partner which gives rise to a partnership obligation under Subsection (1) or (5) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

Enacted by Chapter 412, 2013 General Session

48-1d-405 Standards of conduct for partners.

- (1) A partner owes to the partnership and the other partners the duties of loyalty and care stated in Subsections (2) and (3).
- (2) The duty of loyalty of a partner includes the duties:
 - (a) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner:
 - (i) in the conduct or winding up of the partnership's activities and affairs;
 - (ii) from a use by the partner of the partnership's property; or
 - (iii) from the appropriation of a partnership opportunity;
 - (b) to refrain from dealing with the partnership in the conduct or winding up of the partnership's activities and affairs as or on behalf of a person having an interest adverse to the partnership; and
 - (c) to refrain from competing with the partnership in the conduct of the partnership's activities and affairs before the dissolution of the partnership.
- (3) The duty of care of a partner in the conduct or winding up of the 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 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 partner does not violate a duty or obligation under this chapter or under the partnership agreement solely because the partner's conduct furthers the partner's own interest.
- (6) All the partners may authorize or ratify, after full disclosure of all material facts, a specific act or transaction 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 partnership.
- (8) If, as permitted by Subsection (6) or the partnership agreement, a partner enters into a transaction with the partnership which otherwise would be prohibited by Subsection (2)(b), the partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

Enacted by Chapter 412, 2013 General Session

48-1d-406 Actions by partnership and partners.

- (1) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

- (2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities and affairs, to:
 - (a) enforce the partner's rights under the partnership agreement;
 - (b) enforce the partner's rights under this chapter; or
 - (c) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.
- (3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Enacted by Chapter 412, 2013 General Session

48-1d-407 Continuation of partnership beyond definite term or particular undertaking.

- (1) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.
- (2) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

Enacted by Chapter 412, 2013 General Session