

48-1d-106 Partnership agreement -- Scope, function, and limitations.

- (1) Except as otherwise provided in Subsections (3) and (4), the partnership agreement governs:
 - (a) relations among the partners as partners and between the partners and the partnership;
 - (b) the activities and affairs of the partnership and the conduct of those activities and affairs; and
 - (c) the means and conditions for amending the partnership agreement.
- (2) To the extent the partnership agreement does not provide for a matter described in Subsection (1), this chapter governs the matter.
- (3) A partnership agreement may not:
 - (a) vary the law applicable under Section 48-1d-104;
 - (b) vary the provisions of Section 48-1d-111;
 - (c) vary the provisions of Section 48-1d-307;
 - (d) unreasonably restrict the duties and rights under Section 48-1d-403, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;
 - (e) eliminate the duty of loyalty or the duty of care, except as otherwise provided in Subsection (4);
 - (f) eliminate the contractual obligation of good faith and fair dealing under Subsection 48-1d-405(4), but the partnership agreement may prescribe the standards, if not unconscionable or against public policy, by which the performance of the obligation is to be measured;
 - (g) relieve or exonerate a person from liability for conduct involving bad faith, willful misconduct, or recklessness;
 - (h) vary the power to dissociate as a partner under Subsection 48-1d-702(1), except to require the notice under Subsection 48-1d-701(1) to be in a record;
 - (i) vary the right of a court to expel a partner in the events specified in Subsection 48-1d-701(5);
 - (j) vary the causes of dissolution specified in Subsection 48-1d-901(4), (5), or (6);
 - (k) vary the requirement to wind up the partnership's activities and affairs as specified in Subsections 48-1d-902(1), (2)(a), and (4);
 - (l) vary the right of a partner to approve a merger, interest exchange, conversion, or domestication under Subsection 48-1d-1023(1)(b), 48-1d-1033(1)(b), 48-1d-1043(1)(b), or 48-1d-1053(1)(b);
 - (m) vary any requirement, procedure, or other provision of this chapter pertaining to:
 - (i) registered agents; or
 - (ii) the division, including provisions pertaining to records authorized or required to be delivered to the division for filing under this chapter; or
 - (n) except as otherwise provided in Section 48-1d-107 and Subsection 48-1d-108(2), restrict the rights under this chapter of a person other than a partner.
- (4) Subject to Subsection (3)(e), without limiting other terms that may be included in a partnership agreement, the following rules apply:
 - (a) The partnership agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.
 - (b) If not unconscionable or against public policy, the partnership agreement may:
 - (i) alter or eliminate the aspects of the duty of loyalty stated in Subsection 48-1d-405(2);
 - (ii) identify specific types or categories of activities that do not violate the duty of loyalty;
 - (iii) alter the duty of care, except to authorize intentional misconduct or knowing violation of law; and

- (iv) alter or eliminate any other fiduciary duty.
- (5) The court shall decide as a matter of law whether a term of a partnership agreement is unconscionable or against public policy under Subsection (3)(f) or (4)(b). The court:
 - (a) shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and
 - (b) may invalidate the term only if, in light of the purposes and business of the partnership, it is readily apparent that:
 - (i) the objective of the term is unconscionable or against public policy; or
 - (ii) the means to achieve the term's objective is unconscionable or against public policy.

Enacted by Chapter 412, 2013 General Session