

Part 5

Contributions and Distributions

48-2e-501 Form of contribution.

A contribution may consist of property transferred to, services performed for, or another benefit provided to the limited partnership or an agreement to transfer property to, perform services for, or provide another benefit to the limited partnership.

Enacted by Chapter 412, 2013 General Session

48-2e-502 Liability for contribution.

- (1) A person's obligation to make a contribution to a limited partnership is not excused by the person's death, disability, dissolution, or other inability to perform personally.
- (2) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited partnership to contribute money equal to the value, as stated in the required information, of the part of the contribution which has not been made.
- (3) The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all partners. If a creditor of a limited partnership extends credit or otherwise acts in reliance on an obligation described in Subsection (1) without notice of any compromise under this subsection, the creditor may enforce the original obligation.

Enacted by Chapter 412, 2013 General Session

48-2e-503 Sharing of and right to distributions before dissolution.

- (1) Except to the extent necessary to comply with a transfer effective under Section 48-2e-702 or charging order in effect under Section 48-2e-703, any distributions made by a limited partnership before its dissolution and winding up must be in equal shares among partners and persons dissociated as partners.
- (2) A person has a right to a distribution before the dissolution and winding up of a limited partnership only if the limited partnership decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.
- (3) A person does not have a right to demand or receive a distribution from a limited partnership in any form other than money. Except as otherwise provided in Subsection 48-2e-813(5), a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.
- (4) If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or a person dissociated as a partner on whose account the distribution is made.

Enacted by Chapter 412, 2013 General Session

48-2e-504 Limitations on distributions.

- (1) A limited partnership may not make a distribution, including a distribution under Section 48-2e-813, if after the distribution:

- (a) the limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities and affairs; or
 - (b) the limited partnership's total assets would be less than the sum of its total liabilities plus, unless the partnership agreement permits otherwise, the amount that would be needed, if the limited partnership were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of partners and transferees whose preferential rights are superior to those of persons receiving the distribution.
- (2) A limited partnership may base a determination that a distribution is not prohibited under Subsection (1) on:
- (a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or
 - (b) a fair valuation or other method that is reasonable under the circumstances.
- (3) Except as otherwise provided in Subsection (5), the effect of a distribution under Subsection (1) is measured:
- (a) in the case of distribution as defined in Subsection 48-2e-102(4)(a), as of the earlier of:
 - (i) the date money or other property is transferred or debt is incurred by the limited partnership; or
 - (ii) the date the person entitled to the distribution ceases to own the interest or right being acquired by the limited partnership in return for the distribution;
 - (b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
 - (c) in all other cases, as of the date:
 - (i) the distribution is authorized, if the payment occurs not later than 120 days after that date; or
 - (ii) the payment is made, if payment occurs more than 120 days after the distribution is authorized.
- (4) A limited partnership's indebtedness to a partner or transferee incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.
- (5) A limited partnership's indebtedness, including indebtedness issued as a distribution, is not considered a liability for purposes of Subsection (1) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.
- (6) In measuring the effect of a distribution under Section 48-2e-813, the liabilities of a dissolved limited partnership do not include any claim that has been disposed of under Section 48-2e-806, 48-2e-807, or 48-2e-808.

Enacted by Chapter 412, 2013 General Session

48-2e-505 Liability for improper distributions.

- (1) If a general partner consents to a distribution made in violation of Section 48-2e-504 and in consenting to the distribution fails to comply with Section 48-2e-409, the general partner is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 48-2e-504.

- (2) A person that receives a distribution knowing that the distribution violated Section 48-2e-504 is personally liable to the limited partnership but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 48-2e-504.
- (3) A general partner against which an action is commenced because the general partner is liable under Subsection (1) may:
 - (a) implead any other person that is liable under Subsection (1) and seek to enforce a right of contribution from the person; and
 - (b) implead any person that received a distribution in violation of Subsection (2) and seek to enforce a right of contribution from the person in the amount the person received in violation of Subsection (2).
- (4) An action under this section is barred unless commenced not later than two years after the distribution.

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