

UNIFORM PARTNERSHIP ACT

Act 72 of 1917

AN ACT to define partnerships; the relation of partners to persons dealing with the partnership; the relation of partners to one another; to provide for the dissolution and winding up of partnerships; to prescribe powers and duties of certain state agencies and officials; and to make uniform the law relating to partnerships.

History: 1917, Act 72, Eff. Aug. 10, 1917;—Am. 1994, Act 323, Imd. Eff. Oct. 12, 1994.

The People of the State of Michigan enact:

PART I.

PRELIMINARY PROVISIONS.

449.1 Uniform partnership act; short title.

Sec. 1. (Name of act). This act may be cited as uniform partnership act.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9841;—CL 1948, 449.1.

Compiler's note: The catchlines in parentheses following the act section numbers of this act were incorporated as part of the act when enacted.

449.2 Uniform partnership act; definitions.

Sec. 2. (Definition of terms). In this act, "court" includes every court and judge having jurisdiction in the case; "business" includes every trade, occupation, or profession; "person" includes individuals, partnerships, corporations, and other associations; "bankrupt" includes bankrupt under the federal bankruptcy act or insolvent under any state insolvent act; "conveyance" includes every assignment, lease, mortgage, or incumbrance; "real property" includes land and any interest or estate in land.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9842;—CL 1948, 449.2.

449.3 Uniform partnership act; interpretation of knowledge and notice.

Sec. 3. (Interpretation of knowledge and notice).

(1) A person has knowledge of a fact within the meaning of this act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith;

(2) A person has notice of a fact within the meaning of this act when the person who claims the benefit of the notice:

(a) States the fact to such person, or

(b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9843;—CL 1948, 449.3.

449.4 Rules of construction.

Sec. 4. (Rules of construction).

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act;

(2) The law of estoppel shall apply under this act;

(3) The law of agency shall apply under this act;

(4) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it;

(5) This act shall not be construed so as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action or proceedings begun or right accrued before this act takes effect.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9844;—CL 1948, 449.4.

449.5 Rules for cases not provided for in act.

Sec. 5. (Rules for cases not provided for in this act). In any case not provided for in this act the rules of law and equity, including the law merchant, shall govern.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9845;—CL 1948, 449.5.

PART II.

NATURE OF A PARTNERSHIP.

449.6 Partnership; definition; effect of act as to prior and limited partnerships.

Sec. 6. (Partnership defined).

(1) A partnership is an association of 2 or more persons, which may consist of husband and wife, to

carry on as co-owners a business for profit; any partnership heretofore established consisting of husband and wife only, formed since January 10, 1942 shall constitute a valid partnership.

(2) But any association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this act, unless such association would have been a partnership in this state prior to the adoption of this act; but this act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9846;—Am. 1941, Act 272, Eff. Jan. 10, 1942;—CL 1948, 449.6;—Am. 1957, Act 59, Eff. Sept. 27, 1957.

449.7 Rules for determining existence of partnership.

Sec. 7. (Rules for determining the existence of a partnership). In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by section 16 persons who are not partners as to each other are not partners as to third persons;

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property;

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived;

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise,

(b) As wages of an employe or rent to a landlord,

(c) As an annuity to a widow or representative of a deceased partner,

(d) As interest on a loan, though the amount of payment vary with the profits of the business,

(e) As the consideration for the sale of the good-will of a business or other property by installments or otherwise.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9847;—CL 1948, 449.7.

449.8 Partnership property; definition.

Sec. 8. (Partnership property).

(1) All property originally brought into the partnership stock or subsequently acquired, by purchase or otherwise, on account of the partnership is partnership property;

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property;

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name;

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9848;—CL 1948, 449.8.

PART III.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP.

449.9 Partner as agent of partnership relative to partnership business.

Sec. 9. (Partner agent of partnership as to partnership business).

(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority;

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners;

(3) Unless authorized by the other partners or unless they have abandoned the business, 1 or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

(b) Dispose of the good-will of the business,

(c) Do any other act which would make it impossible to carry on the ordinary business of the

partnership,

(d) Confess a judgment,

(e) Submit a partnership claim or liability to arbitration or reference;

(4) No act of a partner in contravention of a restriction on his authority shall bind the partnership to persons having knowledge of the restriction.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9849;—CL 1948, 449.9.

449.10 Real property of partnership; conveyance of title.

Sec. 10. (Conveyance of real property of the partnership).

(1) Where title to real property is in the partnership name, any partner may convey a title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph 1 of section 9, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority;

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph 1 of section 9;

(3) Where title to real property is in the name of 1 or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph 1 of section 9, unless the purchaser or his assignee, is a holder for value, without knowledge;

(4) Where the title to real property is in the name of 1 or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph 1 of section 9;

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9850;—CL 1948, 449.10.

449.11 Partnership; effect of admission of partner.

Sec. 11. (Partnership bound by admission of partner). An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this act is evidence against the partnership.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9851;—CL 1948, 449.11.

449.12 Partnership; effect of knowledge of or notice to partner.

Sec. 12. (Partnership charged with knowledge of or notice to partner). Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9852;—CL 1948, 449.12.

449.13 Partnership; liability for wrongful acts of partner.

Sec. 13. (Partnership bound by partner's wrongful act). Where, by any wrongful act or omission of any partner acting in the ordinary course of the business or the partnership, or with the authority of his copartners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9853;—CL 1948, 449.13.

449.14 Partnership; effect of partner's breach of trust.

Sec. 14. (Partnership bound by partner's breach of trust). The partnership is bound to make good the loss:

(a) Where 1 partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9854;—CL 1948, 449.14.

449.15 Partners; joint and severable liability.

Sec. 15. (Nature of partner's liability). Except as otherwise provided by section 46, all partners are liable for both of the following:

- (a) Jointly and severally for everything chargeable to the partnership under sections 13 and 14.
- (b) Jointly for all other debts and obligations of the partnership. However, a partner may enter into a separate obligation to perform a partnership contract.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9855;—CL 1948, 449.15;—Am. 1994, Act 323, Imd. Eff. Oct. 12, 1994.

449.16 Partnership by estoppel; liability.

Sec. 16. (Partner by estoppel).

(1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with 1 or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person, so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made;

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership,

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately;

(2) When a person has been thus represented to be a partner in an existing partnership, or with 1 or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9856;—CL 1948, 449.16.

449.17 Incoming partner; liability.

Sec. 17. (Liability of incoming partner). A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9857;—CL 1948, 449.17.

PART IV.

RELATIONS OF PARTNERS TO ONE ANOTHER.

449.18 Rules for determining rights and duties of partners.

Sec. 18. (Rules determining rights and duties of partners). The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by all of the following rules:

(a) Each partner shall be repaid his or her contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied. Except as provided in section 46, each partner shall contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his or her share in the profits.

(b) The partnership shall indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him or her in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he or she agreed to contribute, shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by him or her from the date when repayment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) A partner is not entitled to remuneration for acting in the partnership business, except that a

surviving partner is entitled to reasonable compensation for his or her services in winding up the partnership affairs.

(g) A person cannot become a member of a partnership without the consent of all partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners. However, an act in contravention of any agreement between the partners may not be done rightfully without the consent of all the partners.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9858;—CL 1948, 449.18;—Am. 1994, Act 323, Imd. Eff. Oct. 12, 1994.

449.19 Partnership books; location, accessibility.

Sec. 19. (Partnership books). The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9859;—CL 1948, 449.19.

449.20 Partner; duty to render information.

Sec. 20. (Duty of partners to render information). Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9860;—CL 1948, 449.20.

449.21 Partner; accountability as fiduciary.

Sec. 21. (Partner accountable as a fiduciary).

(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property;

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9861;—CL 1948, 449.21.

449.22 Partner; right to formal account.

Sec. 22. (Right to an account). Any partner shall have the right to a formal account as to partnership

affairs:

(a) If he is wrongfully excluded from the partnership business or possession of its property by his copartners,

(b) If the right exists under the terms of any agreement,

(c) As provided by section 21,

(d) Whenever other circumstances render it just and reasonable.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9862;—CL 1948, 449.22.

449.23 Partnership; continuation beyond fixed term.

Sec. 23. (Continuation of partnership beyond fixed term).

(1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9863;—CL 1948, 449.23.

PART V.

PROPERTY RIGHTS OF A PARTNER.

449.24 Partner; extent of property rights.

Sec. 24. (Extent of property rights of a partner). The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9864;—CL 1948, 449.24.

449.25 Partner; rights in specific partnership property.

Sec. 25. (Nature of a partner's right in specific partnership property).

(1) A partner is a co-owner with his partners of specific partnership property holding as a tenant in partnership;

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this act and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners,

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of the rights of all the partners in the same property,

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws,

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose,

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9865;—CL 1948, 449.25.

449.26 Partner; interest in partnership as personal property.

Sec. 26. (Nature of partner's interest in the partnership).

A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9866;—CL 1948, 449.26.

449.27 Partner's interest; assignment, effect.

Sec. 27. (Assignment of partner's interest).

(1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the

profits to which the assigning partner would otherwise be entitled;

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9867;—CL 1948, 449.27.

449.28 Partner's interest; subject to charging order.

Sec. 28. (Partner's interest subject to charging order).

(1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require;

(2) The interest charged may be redeemed at any time before foreclosure or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any 1 or more of the partners, or

(b) With partnership property, by any 1 or more of the partners with the consent of all the partners whose interests are not so charged or sold;

(3) Nothing in this act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9868;—CL 1948, 449.28.

PART VI.

DISSOLUTION AND WINDING UP.

449.29 Dissolution of partnership; definition.

Sec. 29. (Dissolution defined). The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9869;—CL 1948, 449.29.

449.30 Dissolution; partnership not terminated.

Sec. 30. (Partnership not terminated by dissolution). On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9870;—CL 1948, 449.30.

449.31 Dissolution; causes.

Sec. 31. (Causes of dissolution). Dissolution is caused:

(1) Without violation of the agreement between the partners:

(a) By the termination of the definite term or particular undertaking specified in the agreement,

(b) By the express will of any partner when no definite term or particular undertaking is specified,

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

(d) By the expulsion of any partner from the business bona fide in accordance with such power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under section 32.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9871;—CL 1948, 449.31.

449.32 Dissolution; decree of court.

Sec. 32. (Dissolution by decree of court).

(1) On application by or for a partner the court shall decree a dissolution whenever:

(a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

(b) A partner becomes in any other way incapable of performing his part of the partnership contract,

(c) A partner has been guilty of such conduct as tends to effect prejudicially the carrying on of the business,

(d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) The business of the partnership can only be carried on at a loss,

(f) Other circumstances render a dissolution equitable;

(2) On the application of the purchaser of a partner's interest under sections 28 or 29:

(a) After the termination of the specified term or particular undertaking,

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9872;—CL 1948, 449.32.

449.33 Dissolution; effect as to authority of partner.

Sec. 33. (General effect of dissolution on authority of partner). Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership:

(1) With respect to the partners:

(a) When the dissolution is not by the act, bankruptcy or death of a partner, or

(b) When the dissolution is by such act, bankruptcy or death of a partner, in cases where section 34 so requires;

(2) With respect to persons not partners, as declared in section 35.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9873;—CL 1948, 449.33.

449.34 Dissolution; liability of partner.

Sec. 34. (Right of partner to contribution from copartners after dissolution). Except as otherwise provided by section 46, if dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his or her copartners for his or her share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless this dissolution is caused by 1 of the following:

(a) The dissolution being by act of any partner and the partner acting for the partnership had knowledge of the dissolution.

(b) The dissolution being by the death or bankruptcy of a partner and the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9874;—CL 1948, 449.34;—Am. 1994, Act 323, Imd. Eff. Oct. 12, 1994.

449.35 Dissolution; power of partner to bind partnership.

Sec. 35. (Power of partner to bind partnership to third persons after dissolution).

(1) After dissolution a partner can bind the partnership except as provided in paragraph 3:

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution,

(b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution, or

(II) Though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place, or in each place if more than 1, at which the partnership business was regularly carried on;

(2) The liability of a partner under paragraph (1b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(a) Unknown as a partner to the person with whom the contract is made, and

(b) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it;

(3) The partnership is in no case bound by any act of a partner after dissolution:

(a) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs, or

(b) Where the partner has become bankrupt, or

(c) Where the partner has no authority to wind up partnership affairs, except by a transaction with one

who:

(I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority, or

(II) Had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in paragraph (1bII);

(4) Nothing in this section shall affect the liability under section 16 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9875;—CL 1948, 449.35.

Compiler's note: For provisions of section 16, referred to in subsection (4), see § 449.16.

Section 35 of this act in the final draft as prepared by the National Conference of Commissioners on Uniform State Laws is as follows:

“(1) If the partnership is not dissolved because it has become unlawful to carry on the business, a partner cannot, after dissolution, bind the partnership to third persons by any act which is not necessary to wind up the partnership affairs or to complete transactions then unfinished unless,

“(a) Such third person, having had relations with the partnership by which a credit was extended upon the faith of the partnership, has had no knowledge or notice of the dissolution; or

“(b) Such third person, not having had business relations with the partnership by which a credit was extended to the partnership, has no knowledge or notice of the dissolution, and the fact of dissolution, has not been advertised in a newspaper of general circulation of the place (or of each place if more than one) at which the partnership business was regularly carried on

“(2) The partnership is in no case bound by the acts of a partner who has become bankrupt; but this provision does not affect the liability of any person who, as declared by section 16, after bankruptcy, has represented himself, or consented to another's representing him to be a partner of the bankrupt.”

449.36 Dissolution; effect as to partner's existing liability.

Sec. 36. (Effect of dissolution on partner's existing liability).

(1) The dissolution of the partnership does not discharge the existing liability of any partner.

(2) A partner is discharged from existing liability upon dissolution of the partnership by an agreement to that effect between the partner, the partnership creditor, and the person or partnership continuing the business. An agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) If a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from liability to any creditor of the partnership

who, knowing of the agreement, consents to a material alteration in the nature or time of payment of the obligations.

(4) Except as provided in section 46, the individual property of a deceased partner shall be liable for those obligations of the partnership incurred while he or she was a partner but subject to the prior payment of his or her separate debts.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9876;—CL 1948, 449.36;—Am. 1994, Act 323, Imd. Eff. Oct. 12, 1994.

449.37 Dissolution; rights of partner to wind up partnership affairs.

Sec. 37. (Right to wind up). Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs: Provided, however, That any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the court.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9877;—CL 1948, 449.37.

449.38 Dissolution; rights of partner to application of partnership property.

Sec. 38. (Rights of partners to application of partnership property).

(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 36(2), he shall receive in cash only the net amount due him from the partnership;

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

(I) All the rights specified in paragraph 1 of this section, and

(II) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement,

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the

business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2a) of this section, and in like manner indemnify him against all present or future partnership liabilities,

(c) A partner who has caused the dissolution wrongfully shall have:

(I) If the business is not continued under the provisions of paragraph (2b) all the rights of a partner under paragraph 1, subject to clause (2a) of this section,

(II) If the business is continued under paragraph (2b) of this section the right as against his copartners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good will of the business shall not be considered.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9878;—CL 1948, 449.38.

449.39 Dissolution; rights of partner when partnership dissolved for fraud or misrepresentation.

Sec. 39. (Rights where partnership is dissolved for fraud or misrepresentation). Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of 1 of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

(a) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him, and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities, and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9879;—CL 1948, 449.39.

449.40 Dissolution; rules for distribution of assets and liabilities.

Sec. 40. (Rules for distribution). In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(a) The assets of the partnership are as follows:

(i) The partnership property.

(ii) The contributions of the partners specified in subdivision (d).

(b) The liabilities of the partnership shall rank in order of payment, as follows:

(i) Those owing to creditors other than partners.

(ii) Those owing to partners other than for capital and profits.

(iii) Those owing to partners in respect of capital.

(iv) Those owing to partners in respect of profits.

(c) The assets shall be applied in the order of their declaration in subdivision (a) to the satisfaction of the liabilities.

(d) Except as provided in section 46, the partners shall contribute, as provided by section 18(a), the amount necessary to satisfy the liabilities. If any of the partners are insolvent, not subject to process, or otherwise refuse to contribute, the other partners shall contribute their share of the liabilities in the relative proportions in which they share the profits.

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in subdivision (d).

(f) Any partner or his or her legal representative shall have the right to enforce the contributions specified in subdivision (d) to the extent of the amount which he or she has paid in excess of his or her share of the liability.

(g) The individual property of a deceased partner shall be liable for the contributions specified in subdivision (d).

(h) When partnership property and the individual properties of the partners are in the possession of a court for distribution, except for lienholders and secured creditors, partnership creditors shall have priority on partnership property and separate creditors on individual property.

(i) If a partner has become bankrupt or his or her estate is insolvent, the claims against his or her

separate property shall rank in the following order:

- (i) Those owing to separate creditors.
- (ii) Those owing to partnership creditors.
- (iii) Those owing to partners by way of contribution.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9880;—CL 1948, 449.40;—Am. 1994, Act 323, Imd. Eff. Oct. 12, 1994.

Compiler's note: For provisions of section 18, referred to in subdivision (d), see § 449.18.

449.41 Dissolution; liability of persons continuing business.

Sec. 41. (Liability of persons continuing the business in certain cases).

(1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns, or the representative of the deceased partner assigns, his rights in partnership property to 2 or more of the partners, or to 1 or more of the partners and 1 or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business;

(2) When all but 1 partner retire and assign, or the representative of a deceased partner assigns, their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business;

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs 1 and 2 of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made;

(4) When all the partners or their representatives assign their rights in partnership property to 1 or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business;

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 38(2b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership

continuing the business;

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business;

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section to the creditors of the dissolved partnership shall be satisfied out of partnership property only;

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property;

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud;

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9881;—CL 1948, 449.41.

449.42 Dissolution; rights of retiring or deceased partner when business continued.

Sec. 42. (Rights of retiring or estate of deceased partner when the business is continued). When any partner retires or dies, and the business is continued under any of the conditions set forth in section 41(1, 2, 3, 5, 6), or section 38(2b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership: Provided, That the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this

section, as provided by section 41(8) of this act.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9882;—CL 1948, 449.42.

449.43 Dissolution; accrual of rights.

Sec. 43. (Accrual of actions). The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

History: 1917, Act 72, Eff. Aug. 10, 1917;—CL 1929, 9883;—CL 1948, 449.43.

449.44 Limited liability partnership; registration procedures.

Sec. 44. (1) A partnership may organize as a limited liability partnership by filing with the department on a form provided by the department a registration that states the following:

- (a) The name of the partnership.
- (b) The address of the partnership's principal office.
- (c) If the partnership is a foreign limited liability partnership, the address of the registered office and the name of the registered agent authorized to receive service of process in this state.
- (d) A brief statement of the business of the partnership.
- (e) A statement that the partnership will operate as a limited liability partnership.
- (f) The partnership's federal employer identification number or, if a number has not been assigned to the partnership, the social security number of the person or persons signing the registration.
- (g) Any other information that the department may require.

(2) A majority in interest of the partners or individuals authorized to execute a registration by a majority in interest of the partners shall sign the registration form described in subsection (1). The registration shall be accompanied by a registration fee of \$100.00.

(3) The registration is effective immediately upon filing with the department and the payment of the registration fee and shall remain in effect for 1 year from the effective date under this section.

(4) A registration may be renewed for 1 year by filing with the department a renewal registration on a form provided by the department and the payment of a renewal fee of \$100.00.

(5) The status of a partnership as a registered limited liability partnership shall not be affected by

errors or subsequent changes in the information provided pursuant to this section.

(6) As used in this section and sections 47 and 48, “department” means the department of commerce.

History: Add. 1994, Act 323, Imd. Eff. Oct. 12, 1994.

449.45 Registered limited liability partnership; name.

Sec. 45. The name of a registered limited liability partnership shall contain the words “limited liability partnership” or the abbreviation “L.L.P.” or “LLP” as the last words or letters of the partnership’s name.

History: Add. 1994, Act 323, Imd. Eff. Oct. 12, 1994.

449.46 Registered limited liability partnership; liability of partner.

Sec. 46. (1) Except for a tax obligation of the partnership, a partner of a registered limited liability partnership is not liable directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of or chargeable to the partnership, whether in tort, contract, or otherwise, arising from negligence, wrongful acts, omissions, misconduct, or malpractice committed while the partnership is a registered limited liability partnership and in the course of the partnership business by another partner or an employee, agent, or representative of the partnership.

(2) This section shall not affect the liability of a partner in a registered limited liability partnership for the partner’s own negligence, wrongful acts, omissions, misconduct, or malpractice or that of any person under the partner’s direct supervision and control.

(3) Except as provided in subsection (2), a partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership, the object of which is to recover damages or enforce the obligations arising out of the negligence, wrongful acts, omissions, misconduct, or malpractice as described in subsection (1).

History: Add. 1994, Act 323, Imd. Eff. Oct. 12, 1994.

449.47 Foreign limited liability partnership.

Sec. 47. (1) A registered limited liability partnership formed under the laws of another state, territory, district, or possession of the United States or another country shall not conduct business in this state until the partnership has registered with the department and paid a registration fee of \$100.00.

(2) The registration form shall contain the same information as required by section 44(1) and the

address of its registered office and the name and address of its registered agent for service of process.

(3) The registration is effective immediately upon filing with the department and payment of the registration fee and shall remain in effect for 1 year from the effective date under this section.

(4) A registration may be renewed for 1 year by filing with the department a renewal registration and the payment of a renewal fee of \$100.00.

(5) Except as otherwise provided by this act, a foreign limited liability partnership shall be governed by the laws under which it was formed.

(6) The name of a partnership doing business in this state under this section shall contain the words "limited liability partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name.

History: Add. 1994, Act 323, Imd. Eff. Oct. 12, 1994.

449.48 Registration or renewal for limited liability partnership; filing.

Sec. 48. (1) The registration or renewal of a registration for a limited liability partnership shall be filed by delivering the registration to the department together with the fees and any other documents required by section 44 or 47. The department may establish procedures for accepting the registration by means of facsimile transmission.

(2) If the registration substantially conforms to the requirements of section 44 or 47, the department shall indorse upon it the word "filed" with the date of filing, and shall file and index the registration or a photostatic, micrographic, photographic, optical disc media, or other reproduced copy of registration. If requested at the time of filing, the department shall include in the indorsement the hour of filing.

(3) The records and files of the department relating to registered limited liability partnerships shall be open to reasonable inspection by the public. The records or files may be maintained either in their original form or in a photostatic, micrographic, photographic, optical disc media, or other reproduced form.

(4) The department may make copies of all documents filed under section 44 or 47 by a photostatic, micrographic, photographic, optical disc media, or other process, and may destroy the originals of the documents copied. A photostatic, micrographic, photographic, optical disc media, or other reproduced copy certified by the department, which may be sent by facsimile transmission, shall be considered an original for all purposes and is admissible in evidence in the manner as an original.

(5) A fee received under section 44 or 47 shall be deposited in the state treasury to the credit of the

department to be used by the department in carrying out the duties required by this section. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred by the department, the money remaining shall be credited to the general fund of the state.

(6) A minimum charge of \$1.00 for each certificate and 50 cents per folio shall be paid to the department for certifying a part of a file or record pertaining to a registered limited liability partnership. The department may furnish copies of documents, reports, and papers required or permitted by law to be filed with the department, and shall charge for those copies pursuant to a schedule of fees that the department adopts with the approval of the state administrative board. The department shall retain the revenue collected under this subsection to be used by the department to defray the costs for its copying and certifying services.

(7) If a domestic or foreign registered limited liability partnership pays fees or penalties by check and the check is dishonored, the fee shall be considered unpaid and the filing of all related documents is rescinded.

(8) The department may accept a credit card, in lieu of cash or check, as payment of a fee under this act. The department shall determine which credit cards may be accepted for payment.

(9) The department may charge a nonrefundable fee of up to \$50.00 for a document submitted or certificate sent by facsimile transmission. The department shall retain the revenue collected under this subsection to be used by the department in carrying out its duties under this section.

(10) If the department rejects the filing of a registration or renewal registration, the department shall refund any fees paid except for \$25.00, which the department shall retain to defray its costs incurred under this section.

History: Add. 1994, Act 323, Imd. Eff. Oct. 12, 1994.