

CHAPTER 45-16
RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

45-16-01. (401) Partner's rights and duties.

1. Each partner is deemed to have an account that is:
 - a. Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and
 - b. Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.
2. Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.
3. A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.
4. A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.
5. A payment or advance made by a partner which gives rise to a partnership obligation under subsection 3 or 4 constitutes a loan to the partnership which accrues interest from the date of the payment or advance.
6. Each partner has equal rights in the management and conduct of the partnership business.
7. A partner may use or possess partnership property only on behalf of the partnership.
8. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.
9. A person may become a partner only with the consent of all of the partners.
10. A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.
11. This section does not affect the obligations of a partnership to other persons under section 45-15-01.

45-16-02. (402) Distributions in kind.

A partner has no right to receive, and may not be required to accept, a distribution in kind.

45-16-03. (403) Partner's rights and duties with respect to information.

1. A partnership shall keep its books and records, if any, at its chief executive office.
2. A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.
3. Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:
 - a. Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or chapters 45-13 through 45-21; and
 - b. On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

45-16-04. (404) General standards of partner's conduct.

1. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections 2 and 3.
2. A partner's duty of loyalty to the partnership and the other partners is limited to the following:
 - a. To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;
 - b. To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and
 - c. To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.
3. A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
4. A partner shall discharge the duties to the partnership and the other partners under chapters 45-13 through 45-21 or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.
5. A partner does not violate a duty or obligation under chapters 45-13 through 45-21 or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.
6. A partner may lend money to and transact other business with the partnership, and as to each loan or transaction, the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.
7. This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

45-16-05. (405) 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 partnership business, to:
 - a. Enforce the partner's rights under the partnership agreement;
 - b. Enforce the partner's rights under chapters 45-13 through 45-21, including:
 - (1) The partner's rights under section 45-16-01, 45-16-03, or 45-16-04;
 - (2) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 45-19-01 or enforce any other right under chapter 45-18 or 45-19; or
 - (3) The partner's right to compel a dissolution and winding up of the partnership business under section 45-20-01 or enforce any other right under chapter 45-20; 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.

45-16-06. (406) 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.

45-16-07. Action without a meeting.

An action required or permitted to be taken at a meeting of the partners may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the partners entitled to vote on the action.

1. If the partnership agreement so provides, any action may be taken by written action signed by the partners who own voting power equal to the voting power that would be required to take the same action at a meeting of the partners at which all partners were present.
 - a. When written action is permitted to be taken by less than all partners, all partners must be notified immediately of its text and effective date.
 - b. Failure to provide the notice does not invalidate the written action.
 - c. A partner who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.
2. The written action is effective when it has been signed, or consented to by authenticated electronic communication, by the required partners, unless a different effective time is provided in the written action.
3. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the partner signing the certificate must so indicate if the action was taken under this section.

45-16-08. Remote communications for partner meetings.

1. This section shall be construed and applied to:
 - a. Facilitate remote communication consistent with other applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
2. To the extent authorized in the partnership agreement:
 - a. A meeting of the partners may be held solely by any combination of means of remote communication through which the participants may participate in the meeting:
 - (1) If the notice of the meeting is given to every partner entitled to vote; and
 - (2) If the partnership interests held by the partners participating in the meeting would be sufficient to constitute a quorum at a meeting.
 - b. A partner not physically present at a meeting of partners may by means of remote communication participate in a meeting of partners held at a designated place.
3. In any meeting of partners held solely by means of remote communication under subdivision a of subsection 2, or in any meeting partners held at a designated place in which one or more partners participate by means of remote communication under subdivision b of subsection 2:
 - a. The partnership shall implement reasonable measures:
 - (1) To verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a partner; and
 - (2) To provide each partner participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:
 - (a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;
 - (b) If allowed by the procedures governing the meeting, have the partner's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and
 - (c) If otherwise entitled, vote on matters submitted to the partners.
 - b. Participation in a meeting by this means constitutes presence at the meeting.
4. With respect to notice to partners:

- a. Any notice to partners given by the partnership under any provision of this chapter or the partnership agreement by a form of electronic communication consented to by the partner to whom the notice is given is effective when given. The notice is deemed given:
 - (1) If by facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
 - (2) If by electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
 - (3) If by posting on an electronic network, on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:
 - (a) The posting; or
 - (b) The giving of the separate notice; or
 - (4) If by any other form of electronic communication by which the partners have consented to receive notice, when directed to the partner.
- b. An affidavit of the managing partner, other authorized partner, or authorized agent of the partnership, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.
- c. Consent by a partner to notice given by electronic communication may be given in writing or by authenticated electronic communication. The partnership is entitled to rely on any consent so given until revoked by the partner. However, no revocation affects the validity of any notice given before receipt by the partnership of revocation of the consent.
- 5. Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the partner submitting the ballot, vote, authorization, or consent so long as the revocation is received by the other partners of the partnership at or before the meeting or before an action without a meeting is effective according to section 10-16-07.
- 6. Waiver of notice by a partner at a meeting by means of authenticated electronic communication may be given in the manner provided in the partnership agreement. Participation in a meeting by means of remote communication described in subdivisions a and b of subsection 2 is a waiver of notice of that meeting, except when the partner objects:
 - a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or conveyed; or
 - b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.