

CHAPTER 45-23

LIMITED LIABILITY LIMITED PARTNERSHIP

45-23-01. Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. "Address" means:
 - a. In case of a registered office or principal executive office, the mailing address of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address, including the zip code.
2. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of business of the limited liability limited partnership; or
 - (2) To a partner or agent of the limited liability limited partnership authorized by the limited liability limited partnership to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the limited liability limited partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. "Domestic organization" means an organization created under the laws of this state.
4. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
5. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
 - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. That may be directly reproduced in paper form by the recipient through an automated process.
6. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
7. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record which is signed or adopted by a person with the intent to sign the record.
8. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
 - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 45-23-08, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
 - b. That the secretary of state did then:
 - (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
 - (2) Record the record in the office of the secretary of state.
9. "Foreign limited liability limited partnership" means a partnership that is formed by two or more persons under the laws of a jurisdiction other than this state, and:
 - a. Which is required by those laws to have one or more general partners and one or more limited partners;
 - b. Whose general partners and limited partners have limited liability for the obligations of the foreign limited liability limited partnership under provisions similar to this chapter;
 - c. For a purpose or purposes for which a limited liability limited partnership may be formed under this chapter; and
 - d. Is in good standing in the jurisdiction of origin.
10. "Foreign limited partnership" means a partnership that is formed by two or more persons under laws other than the laws of this state:
 - a. Which is required by those laws to have one or more general partners and one or more limited partners;

- b. Whose general partners have personal liability for the obligations of the foreign limited partnership under provisions similar to chapter 45-10.2;
 - c. For a purpose for which a limited partnership may be organized under chapter 45-10.2; and
 - d. Is in good standing in its jurisdiction of origin.
- 11. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which the organization may be created under the laws of this state.
- 12. "General partner" means:
 - a. With respect to a limited liability limited partnership, a person:
 - (1) That becomes a general partner under section 45-10.2-37 and has not become dissociated as a general partner under section 45-10.2-57; or
 - (2) That was a general partner in a limited partnership when the limited partnership became subject to chapter 45-10.2 under section 45-10.2-03 and has not become dissociated as a general partner under section 45-10.2-57; and
 - b. With respect to a foreign limited liability limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited liability limited partnership.
- 13. "Governing statute" means:
 - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
 - (1) If a corporation, then chapter 10-19.1;
 - (2) If a limited liability company, then chapter 10-32.1;
 - (3) If a limited partnership, then chapter 45-10.2;
 - (4) If a general partnership, then chapters 45-13 through 45-21;
 - (5) If a limited liability partnership, then chapter 45-22; and
 - (6) If a limited liability limited partnership, then this chapter; and
 - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
- 14. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited partnership status of a foreign limited liability limited partnership was established.
- 15. "Limited liability limited partnership", except in the phrase "foreign limited liability limited partnership", means a partnership formed by two or more persons having one or more general partners and one or more limited partners which is formed under or elects to become subject to this chapter.
- 16. "Limited partner" means:
 - a. With respect to a limited liability limited partnership, a person that:
 - (1) Becomes a limited partner under section 45-10.2-31 and has not become dissociated as a limited partner under section 45-10.2-55; or
 - (2) Was a limited partner in a limited partnership when the limited partnership became subject to chapter 45-10.2 under section 45-10.2-03 and has not become dissociated as a limited partner under section 45-10.2-55; and
 - b. With respect to a foreign limited liability limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited liability limited partnership.
- 17. "Limited partnership", except in the phrase "foreign limited partnership" and "foreign limited liability limited partnership", means a partnership having one or more general partners and one or more limited partners which is formed under or elects to become subject to chapter 45-10.2.
- 18. "Notice":
 - a. Is given to a limited liability limited partnership:
 - (1) When in writing and mailed or delivered to a general partner at the registered office or principal executive office of the limited liability limited partnership; or

- (2) When given by a form of electronic communication consented to by a general partner of the limited liability limited partnership to which the notice is given if by:
 - (a) Facsimile communication, when directed to a telephone number at which a general partner of the limited liability limited partnership has consented to receive notice;
 - (b) Electronic mail, when directed to an electronic mail address at which a general partner of the limited liability limited partnership has consented to receive notice;
 - (c) Posting on an electronic network on which a general partner of the limited liability limited partnership has consented to receive notice, together with separate notice to the limited liability limited partnership of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice; or
 - (d) Any other form of electronic communication by which a general partner of the limited liability limited partnership has consented to receive notice, when directed to the limited liability limited partnership;
- b. Is given to a partner of the limited liability limited partnership:
 - (1) When in writing and mailed or delivered to the partner at the registered office or principal executive office of the limited liability limited partnership; or
 - (2) When given by a form of electronic communication consented to by the partner to which the notice is given if by:
 - (a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
 - (b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
 - (c) 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:
 - [1] The posting; or
 - [2] The giving of the separate notice; or
 - (d) Any other form of electronic communication by which the partner has consented to receive notice when directed to the partner;
- c. Is given in all other cases:
 - (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
 - (2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last-known address of the person;
 - (3) When handed to the person;
 - (4) When left at the office of the person with a clerk or other person in charge of the office or:
 - (a) If there is no one in charge, when left in a conspicuous place in the office; or
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion residing there;
 - (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
 - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
 - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice;

- (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice; or
 - (d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or
 - (6) When the method is fair and reasonable when all circumstances are considered;
 - d. Is given when deposited in the United States mail with sufficient postage affixed;
 - e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender; and
 - f. Is deemed received when given.
- 19. "Organization":
 - a. Means, whether domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person subject to a governing statute; but
 - b. Excludes:
 - (1) Any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction; or
 - (2) Any nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.
- 20. "Principal executive office" means:
 - a. An office from which the limited liability limited partnership conducts business; or
 - b. If the limited liability limited partnership has no office from which the limited liability limited partnership conducts business, then the registered office of the limited liability limited partnership.
- 21. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 22. "Registered office" means the place in this state designated as the registered office of the limited liability limited partnership or foreign limited liability limited partnership.
- 23. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
- 24. "Signed" means:
 - a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the record, is placed on a record with the present intention to authenticate that record; and
 - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
 - (1) The record is signed by a person authorized to sign by this chapter, or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
 - (2) The signature and the record are communicated by a method or medium acceptable by the secretary of state.

45-23-01.1. Legal recognition of electronic records and electronic signatures.

For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;

2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

45-23-02. Applicability of chapter 45-10.2.

1. In any case not provided for in this chapter, chapter 45-10.2 governs.
2. If applying chapter 45-10.2 to a limited liability limited partnership and unless the context otherwise requires:
 - a. All references in chapter 45-10.2 to "limited partnership" refer to "limited liability limited partnership"; and
 - b. All references in chapter 45-10.2 to "foreign limited partnership" refer to "foreign limited liability limited partnership".
3. If any provision of this chapter conflicts with chapter 45-10.2, that provision of this chapter takes precedence.

45-23-03. Limited liability limited partnership name.

1. The name of each limited liability limited partnership as set forth in the limited liability limited partnership's certificate of limited liability limited partnership:
 - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
 - b. Must contain without abbreviation the words "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP", either of which abbreviation may be used interchangeably for any purpose authorized by this chapter including real estate matters, contracts, and filings with the secretary of state.
 - c. May contain the name of a partner.
 - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", or an abbreviation of these words.
 - e. May not contain a word or phrase indicating or implying the limited liability limited partnership:
 - (1) Is organized for a purpose other than:
 - (a) A lawful purpose for which a limited liability limited partnership may be organized under this chapter; or
 - (b) For a purpose stated in its certificate of limited liability limited partnership; or
 - (2) May not be organized under this chapter.
 - f. Must be distinguishable in the records of the secretary of state from:
 - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the certificate a record in compliance with subsection 3, of:
 - (a) Another limited liability limited partnership;
 - (b) A limited partnership;
 - (c) A corporation;
 - (d) A limited liability company; or
 - (e) A limited liability partnership;
 - (2) A name the right to which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11;
 - (4) A trade name registered in the manner provided in chapter 47-25; or
 - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a limited liability limited partnership name is distinguishable in the secretary of state's records from another name for

- purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
3. If the secretary of state determines a limited liability limited partnership name is indistinguishable in the secretary of state's records from another name for purposes of this chapter, the limited liability limited partnership name may not be used unless there is filed with the certificate:
 - a. The written consent of the holder of the registered trade name or the holder of the rights to the name to which the proposed name has been determined to be indistinguishable; or
 - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
 4. This section does not:
 - a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
 - (4) Any other rights to the exclusive use of any name or symbol.
 - b. This section does not derogate the common law or the principles of equity.
 5. A limited liability limited partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including its name, may include in the limited liability limited partnership's name, subject to the requirements of subsection 1, the name of any of the other organizations, if the other organization whose name is sought to be used:
 - a. Is incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11;
 - e. Holds a trade name registered in the manner provided in chapter 47-25; or
 - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
 6. The use of a name of a limited liability limited partnership in violation of this section does not affect or vitiate a limited liability limited partnership's existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability limited partnership from doing business under a name assumed in violation of this section, although a certificate of limited liability limited partnership may have been filed with the secretary of state.
 7. A limited liability limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 45-10.2-108 or 45-10.2-108.1 may reacquire the right to use that name by refiling a certificate of limited liability limited partnership pursuant to section 45-23-04, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3. A limited liability limited partnership that cannot reacquire the use of its limited liability limited partnership name shall adopt a new limited liability limited partnership name that complies with the provisions of this section:
 - a. By refiling the certificate of limited liability limited partnership pursuant to section 45-23-04;
 - b. By amending pursuant to section 45-10.2-24; or
 - c. By reinstating pursuant to section 45-10.2-108, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3.

8. Subject to section 45-23-07, this section applies to a foreign limited liability limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
9. A limited liability limited partnership that files its certificate of limited liability limited partnership with an effective date later than the date of filing as provided in subsection 1 of section 45-23-05 shall maintain the right to the name until the effective date.

45-23-04. Limited liability limited partnership formation and conversion of a limited partnership to a limited liability limited partnership or conversion of a limited liability limited partnership to a limited partnership.

1. If a limited partnership does not exist, then a limited liability limited partnership may be formed by filing with the secretary of state, together with the fees provided in section 45-23-08, a certificate of limited liability limited partnership:
 - a. That complies with the name requirements in section 45-23-03;
 - b. That contains a statement that limited liability limited partnership status is elected; and
 - c. That otherwise conforms to the requirements of section 45-10.2-23.
2. An existing limited partnership:
 - a. May elect to convert to a limited liability limited partnership:
 - (1) By obtaining the consent of each general partner to convert the limited partnership to a limited liability limited partnership unless:
 - (a) The certificate of limited partnership or the partnership agreement of the limited partnership provides for the conversion with the consent of less than all general partners; and
 - (b) Each general partner that does not consent to the amendment of conversion has consented to that provision of the partnership agreement.

A partner does not give the consent required by subparagraph a by consenting to a provision in the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all partners;
 - (2) By complying with the name requirements of section 45-23-03; and
 - (3) By filing with the secretary of state, together with the fees provided in sections 45-10.2-109 and 45-23-08, a record that is designated as both an amended certificate of limited partnership and a certificate of limited liability limited partnership which:
 - (a) Amends the limited partnership name to comply with the name requirements of section 45-23-03;
 - (b) Contains a statement that limited liability limited partnership status is elected; and
 - (c) Otherwise conforms to the requirements of section 45-10.2-23.
 - b. Which converts to a limited liability limited partnership is for all purposes the same entity that existed before the conversion.
3. An existing limited liability limited partnership:
 - a. May elect to convert to a limited partnership:
 - (1) By obtaining the consent of each general partner to convert the limited liability limited partnership to a limited partnership unless:
 - (a) The certificate of limited liability limited partnership or the partnership agreement of the limited liability limited partnership provides for the conversion with the consent of less than all general partners; and
 - (b) Each general partner that does not consent to the amendment of conversion has consented to that provision of the partnership agreement.

A partner does not give the consent required by subparagraph a by consenting to a provision in the partnership agreement which permits the

- partnership agreement to be amended with the consent of fewer than all partners;
- (2) By complying with the name requirements of section 45-10.2-11; and
 - (3) By filing with the secretary of state, together with the fees provided in sections 45-10.2-109 and 45-23-08, a record that is designated as both an amended certificate of limited liability limited partnership and a certificate of limited partnership which:
 - (a) Amends the limited liability limited partnership name to comply with the name requirements of section 45-10.2-11; and
 - (b) Otherwise conforms to the requirements of section 45-10.2-23.
- b. Which converts to a limited partnership is for all purposes the same entity that existed before the conversion.

45-23-05. Effective date of formation or election under this chapter.

With respect to the date on which a limited liability limited partnership is formed or on which a limited partnership elects to be governed by this chapter:

1. If a limited partnership does not exist, then a limited liability limited partnership is formed on the later of the filing of the certificate of limited liability limited partnership or the date specified in the certificate of limited liability limited partnership which is within ninety days after the filing of the certificate of limited liability limited partnership.
2. An existing limited partnership electing to convert to a limited liability limited partnership is governed by this chapter on the later of the filing of the record designated as both an amendment to the certificate of limited partnership and a certificate of limited liability limited partnership or the date specified in that record which is within ninety days after the filing of the record.

45-23-06. General partner liability.

An obligation of a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited liability limited partnership.

1. A general partner is not personally liable, directly or indirectly by way of contribution or otherwise, for an obligation of the limited liability limited partnership solely by reason of being or acting as a general partner.
2. This section applies notwithstanding anything inconsistent in the partnership agreement.

45-23-07. Foreign limited liability limited partnership.

With respect to a foreign limited liability limited partnership, in any case not provided for in this chapter, chapter 45-10.2 and section 45-23-02 shall govern.

45-23-08. Secretary of state - Fees for filing records.

The secretary of state shall charge and collect for:

1. Filing a certificate of limited liability limited partnership, one hundred ten dollars.
2. Filing a certificate of limited liability limited partnership amendment, forty dollars.
3. Filing a statement of conversion of a limited liability limited partnership, fifty dollars and:
 - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
 - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
4. Filing abandonment of conversion, fifty dollars.
5. Filing limited liability limited partnership articles of merger, fifty dollars.

6. Filing abandonment of merger or exchange, fifty dollars.
7. Filing a limited liability limited partnership statement of correction, forty dollars.
8. Filing a certificate of limited liability limited partnership dissolution, twenty-five dollars.
9. Filing a certificate of limited liability limited partnership cancellation, twenty-five dollars.
10. Filing a reservation of limited liability limited partnership name, ten dollars.
11. Filing a notice of transfer of reserved limited liability limited partnership name, ten dollars.
12. Filing a cancellation of a reserved limited liability limited partnership name, ten dollars.
13. Filing a consent to use a name, ten dollars.
14. Filing a statement of change of address of registered office or change of registered agent, or both, or a statement of change of address of registered office by registered agent, the fee provided in section 10-01.1-03.
15. Filing a registration of foreign limited liability limited partnership, one hundred ten dollars.
16. Filing a certified statement of amendment of foreign limited liability limited partnership, twenty-five dollars.
17. Filing a certified statement of dissolution of foreign limited liability limited partnership, twenty-five dollars.
18. Filing a certified statement of merger of foreign limited liability limited partnership, fifty dollars.
19. Filing a certified statement of conversion of foreign limited liability limited partnership, fifty dollars and:
 - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
 - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
20. Filing a certified statement of cancellation of foreign limited liability limited partnership, twenty-five dollars.
21. Filing a statement of withdrawal of foreign limited liability limited partnership, twenty-five dollars.
22. Filing an annual report of limited liability limited partnership, twenty-five dollars.
 - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
 - (1) After the date provided in subsection 3 of section 45-10.2-108, twenty dollars; and
 - (2) After the dissolution of the limited liability limited partnership or the revocation of the registration of a foreign limited liability limited partnership, the reinstatement fee of one hundred dollars.
 - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-10.2-108 or the annual report lacks sufficient payment as required by this subsection.
23. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
24. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.
25. Furnishing a certificate of existence or authorization:
 - a. Fifteen dollars; and
 - b. Five dollars for a search of records.
26. Furnishing a certified copy of any record or paper relating to a limited partnership or foreign limited partnership:
 - a. The fee provided in section 54-09-04 for copying a record;

- b. Fifteen dollars for the certificate and affixing the seal thereto; and
- c. Five dollars for a search of records.

45-23-09. Secretary of state - Confidential records.

Any social security number or federal tax identification number disclosed or contained in any record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any record is released to the public.