

/\* Here is the full text of the Uniform Partnership Act, together with our commentary regarding the same. Unless it is absolutely required for tax advantage, avoid partnership at all costs. The powers of a rouge partner to bind all of the other partners are too scary for words. \*/

## UNIFORM PARTNERSHIP ACT

### PART I

Section 1. Name of Act. This act may be cited as the Uniform Partnership Act.

Section 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.

"Bankrupt" includes bankruptcy under the Federal Bankruptcy Act or insolvent under any state insolvent act.

"Conveyance" includes every assignment, lease, mortgage or encumbrance.

"Real property" includes land and any interest or estate in land.

Section 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.

Section 4. Rules of construction. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application under 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.

Section 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.

## PART II

### Nature of a partnership

Section 6. Partnership defined. (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this state, or 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.

Section 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 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 employee 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 varies with the profits of the business;

(e) As the consideration for the sale of a good-will of a

business or other property by installments or otherwise.

Section 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 contrary intent 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.

### PART III

#### RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

Section 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, one or more but less than all of 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 a partnership,

(d) Confess a judgment,

(e) Submit a partnership claim or liability in arbitration or reference.

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

of the restriction.

Section 10. Conveyance of Real Property of the Partnership. (1) where title to real property is in the partnership name, any partner may convey 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 partnership name, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided that the act is one within the authority of the partner under the provision of paragraph (1) of section 9.

(3) Where title to real property is in the name of one 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 partner's act does not bud 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 one or more or all of 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 that 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 name of all the partners a conveyance executed by all the partners passes all their rights in such property.

Section 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.

Section 12. Partnership Charged with Knowledge of or Notice to Partner. Notice to any partner of any matter related to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present in his mind, and the knowledge of any other partner who reasonably could and should have communicated it to then 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 consent of that partner.

Section 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 of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner of 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.

Section 14. Partnership Bound by Partner's Breach of Trust. The partnership is bound to make good the loss:

(a) Where one 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.

Section 15. Nature of Partner's Liability. All partners are liable:

(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, but any partner may enter into a separate obligation to perform a partnership contract.

Section 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 one 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 one 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 was a partner in fact, with respect to

persons who rely upon the representation. Where all 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.

Section 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.

#### PART IV RELATION OF PARTNERS TO ONE ANOTHER

Section 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 the following rules:

- (a) Each partner shall be repaid his 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; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share of the profits.
- (b) The partnership must indemnify every partner in respect to payments made and personal liabilities reasonably incurred by him 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 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 only from the date when repayment should be made.
- (e) All partners have equal rights in the management and conduct of the partnership business.
- (f) No partner is entitled to remuneration for acting the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.
- (g) No person can become a member of the partnership without the consent of all the partners.
- (h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the

partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all of the partners.

Section 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.

Section 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.

Section 21. Partner Accountable as a Fiduciary. (1) Every partner must account to the partnership for any benefit, and shall 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 used 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.

Section 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 co-partners,
- (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.

Section 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 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.

## PART V PROPERTY RIGHTS OF A PARTNER

Section 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.

Section 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 provision 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 rights of all partners in the same property.

(c) A partner's right to specific partnership property is not subject to attachment or execution, except on a claim against the partnership.

(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.

Section 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.

Section 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 assignees 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 the partners.



Section 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 order of court, may charge the interest of the debtor partner with repayment 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 the case of a sale being directed by the court may be purchased without thereby causing a dissolution:

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

(b) With partnership property, by any one 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.

/\* This text continues in section 2. \*/.