WEST VIRGINIA CODE CHAPTER 47B ARTICLE 1

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§47B-1-1. Definitions.

In this chapter:

(1) "Business" includes every trade, occupation and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(i) In order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) A comparable order under federal, state or foreign law governing insolvency.

(3) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

(4) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(5) "Electronic transmission" or "electronically transmitted", means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(6) "Foreign limited liability partnership" means a partnership or association formed under or pursuant to an agreement governed by the laws of any state or jurisdiction other than this state that is denominated as a registered limited liability partnership or limited liability partnership under the laws of such other jurisdiction.

(7) "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under section two, article two of this chapter, predecessor law, or comparable law of another jurisdiction and includes, for all purposes of the laws of this state, a registered limited liability partnership.

(8) "Partnership agreement" means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(9) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(10) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

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(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, professional limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(12) "Property" means all property, real, personal or mixed, tangible or intangible, or any interest therein.

(13) "Registered limited liability partnership" means a partnership formed pursuant to an agreement governed by the laws of this state, registered under section one, article ten of this chapter.

(14)"Sign" or "signature" includes, but is not limited to, any manual, facsimile, conformed or electronic signature.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Statement" means a statement of partnership authority under section three, article three of this chapter, a statement of denial under section four of said article, a statement of dissociation under section four, article seven of this chapter, a statement of dissolution under section five, article eight of this chapter, a statement of merger under section seven, article nine of this chapter, a statement of registration and a statement of withdrawal under section one, article ten of this chapter, or an amendment or cancellation of any of the foregoing.

(17) "Transfer" includes an assignment, conveyance, lease, mortgage, deed and encumbrance.

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§47B-1-2. Knowledge and notice.

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) Knows of it;

(2) Has received a notification of it; or

(3) Has reason to know it exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(d) A person receives a notification when the notification:

(1) Comes to the person's attention; or

(2) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in subsection (f) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

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§47B-1-3. Effect of partnership agreement; nonwaivable provisions.

(a) Except as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) Vary the rights and duties under section five, article one of this chapter except to eliminate the duty to provide copies of statements to all of the partners;

(2) Unreasonably restrict the right of access to books and records under subsection (b), section three, article four of this chapter;

(3) Eliminate the duty of loyalty under subsection (b), section four, article four, or subdivision (3), subsection (b), section three, article six of this chapter, but:

(i) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(ii) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) Unreasonably reduce the duty of care under subsection (c), section four, article four or subdivision (3), subsection (b), section three, article six of this chapter;

(5) Eliminate the obligation of good faith and fair dealing under subsection (d), section four, article four of this chapter, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) Vary the power to dissociate as a partner under subsection (a), section two, article six of this chapter, except to require the notice under subdivision (1), section one, article six of this chapter to be in writing;

(7) Vary the right of a court to expel a partner in the events specified in subdivision (5), section one, article six of this chapter;

(8) Vary the requirement to wind up the partnership business in cases specified in subdivisions (4), (5) or (6), section one, article eight of this chapter; or

(9) Restrict rights of third parties under this chapter.

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§47B-1-4. Supplemental principles of law.

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section thirty-one, article six, chapter fifty-six of this code.

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§47B-1-5. Execution, filing and recording of statements.

(a) A statement may be filed in the office of the Secretary of State. A certified copy of a statement that is filed in an office in another state may be filed in the office of the Secretary of State. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

(b) A certified copy of a statement that has been filed in the office of the Secretary of State and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement filed in the office of the Secretary of State does not have the effect provided for recorded statements in this chapter.

(c) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(d) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(f) The Secretary of State may collect a fee for filing or providing a certified copy of a statement. The clerk of the county commission of any county may collect a fee for recording a statement.

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§47B-1-6. Law governing internal relations.

Except as provided otherwise in section four, article ten of this chapter, the law of the jurisdiction in which a partnership has its chief executive office, governs the relations among the partners and between the partners and the partnership.

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§47B-1-7. Partnership subject to amendment or repeal of chapter.

A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

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