WEST VIRGINIA CODE CHAPTER 47B ARTICLE 3

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§47B-3-1. Partner agent of partnership.

Subject to the effect of a statement of partnership authority under section three, article three of this chapter:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

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§47B-3-2. Transfer of partnership property.

(a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under section three, article three of this chapter, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section one, article three of this chapter, and:

(1) As to a subsequent transferee who gave value for property transferred under subdivisions (1) and (2), subsection (a) of this section, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) As to a transferee who gave value for property transferred under subdivision (3), subsection (a) of this section, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b) of this section, from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

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§47B-3-3. Statement of partnership authority.

(a) A partnership may file a statement of partnership authority, which:

(1) Must include:

(A) The name of the partnership;

(B) The mailing address of its principal office and of its office in this state, if there is one;

(C) The names and mailing addresses of all of the partners appointed and maintained by the partnership, if any, for the purpose of subsection (b) of this section; and

(D) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed pursuant to subsection (c), section five, article one of this chapter and states the name of the partnership but does not contain all of the other information required by subsection (a) of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e) of this section.

(d) Except as otherwise provided in subsection (g) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on

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authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in subsections (d) and (e) of this section and section four, article seven of this chapter and section five, article eight of this chapter, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the Secretary of State.

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§47B-3-4. Statement of denial.

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to subsection (b), section three, article three of this chapter may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in subsections (d) and (e), section three, article three of this chapter.

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§47B-3-5. Partnership liable for partner's actionable conduct.

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

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§47B-3-6. Partner's liability.

(a)Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership, including a registered limited liability partnership, is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) Subject to the provisions of subsection (d) of this section, a partner in a registered limited liability partnership is not personally liable directly or indirectly (including by way of indemnification, contribution or otherwise) for debts, obligations and liabilities of or chargeable to the partnership, whether in tort, contract or otherwise, arising from omissions, negligence, wrongful acts, misconduct or malpractice committed while the partnership is a registered limited liability partnership and in the course of partnership business by another partner or by an employee, agent or representative of the partnership.

(d) Subsection (c) of this section does not affect the liability of a partner in a registered limited liability partnership for the partner's own omissions, negligence, wrongful acts, misconduct or malpractice, or that of any person under the partner's direct supervision and control.

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§47B-3-7. Actions by and against partnership and partners.

(a)A partnership may sue and be sued in the name of the partnership.

(b)An action may be brought against the partnership and any or all of the partners who are personally liable for obligations of the partnership under section six of this article in the same action or in separate actions.

(c)A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d)A judgment creditor of a partner may not levy execution against the assets of a partner who is personally liable for obligations of the partnership under section six of this article to satisfy a judgment based on a claim against the partnership unless:

(1)A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied, in whole or in part;

(2)The partnership is a debtor in bankruptcy;

(3)The partner has agreed that the creditor need not exhaust partnership assets;

(4)A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5)Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e)This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section eight of this article.

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§47B-3-8. Liability of purported partner.

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made:

(1) If that person, relying on the representation, enters into a transaction with the actual or purported partnership; and

(2) The purported partner would have been personally liable for obligations of the partnership under section six of this article if the purported partner had actually been a partner.

(b) Subject to subsection (a) of this section, if the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(c) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable as if such person had actually been a partner.

(d) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(e) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(f) Except as provided in subsections (a), (b) and (c) of this section, persons who are not partners as to each other are not liable as partners to other persons.

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