

CHAPTER 323

UNIFORM PARTNERSHIP ACT

323.01	Citation.	323.28	Dissolution.
323.02	Definitions.	323.29	Partnership not terminated by dissolution.
323.03	<i>Interpretations.</i>		
323.04	Rules of construction.	323.30	Causes of dissolution.
323.05	Rules for cases not provided for.	323.31	Dissolution by decree of court.
323.06	Determination of whether partnership exists.	323.32	Dissolution terminates agency of partner.
323.07	Partnership property.	323.33	Right of partner to contribution from copartners after dissolution.
323.08	Partners are agents of partnership.	323.34	Partner's agency after dissolution.
323.09	Conveyance of real property of the partnership.	323.35	Discharge of existing liabilities on dissolution.
323.10	Partnership bound by admission of partner.	323.36	Right to wind up.
323.11	Notice to or knowledge of partner charges partnership.	323.37	Allocation of partnership property on dissolution.
323.12	Partnership liable for partner's wrongful act.	323.38	Adjustment of rights on dissolution for fraud.
323.13	Partnership liable for partner's breach of trust.	323.39	Distribution on dissolution.
323.14	Nature of partner's liability.	323.40	Liability of persons continuing the business in certain cases.
323.15	Partner by estoppel.	323.41	Rights of retiring or estate of deceased partner when the business is continued.
323.16	Liability of incoming partner.	323.42	Right to accounting accrues on dissolution.
323.17	Rights and duties of partners.	323.43	Repeal: exceptions.
323.18	Partnership books.	323.44	Limited liability partnerships.
323.19	Partners must render information.	323.45	Name of limited liability partnerships.
323.20	Partner accountable as a fiduciary.	323.46	Applicability to foreign and interstate commerce.
323.21	Right to an account.	323.47	Service of process on limited liability partnerships.
323.22	After fixed term partnership continues as partnership at will.	323.48	Governing law.
323.23	Property rights of a partner.	323.49	Foreign limited liability partnerships.
323.24	Nature of a partner's right in specific partnership property.		
323.25	Partner's interest in the partnership.		
323.26	Assignment of partner's interest.		
323.27	Partner's interest chargeable as such.		

323.01 CITATION.

This chapter may be cited as the uniform partnership act.

History: (7384) 1921 c 487 s 1

323.02 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. **Court.** "Court" includes every court and judge having jurisdiction in the case.

Subd. 3. **Business.** "Business" includes every trade, occupation, or profession.

Subd. 4. **Person.** "Person" includes individuals, partnerships, corporations, and other associations.

Subd. 5. **Bankrupt.** "Bankrupt" includes bankrupt under the federal bankruptcy act or insolvent under any state insolvent act.

Subd. 6. **Conveyance.** "Conveyance" includes every assignment, lease, mortgage, or encumbrance.

Subd. 7. **Real property.** "Real property" includes land and any interest or estate in land.

Subd. 7a. **Limited liability partnership.** "Limited liability partnership" means a general partnership governed by this chapter with a registration in effect under section 323.44.

Subd. 8. **Partnership.** A partnership is an association of two or more persons to carry on as coowners a business for profit and includes a limited liability partnership. Any association formed under any other statutes of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this chapter, unless such association

would have been a partnership in this state prior to the adoption of this chapter; but this chapter shall apply to limited partnerships, except in so far as the statutes relating to such partnerships are inconsistent herewith.

Subd. 9. **Foreign limited liability partnership.** "Foreign limited liability partnership" means a general partnership organized under laws other than the laws of this state with status as a limited liability partnership in its home jurisdiction.

History: (7385, 7389) 1921 c 487 s 2,6; 1994 c 539 s 9,10; 1995 c 128 art 3 s 11; 1995 c 263 s 1

323.03 INTERPRETATIONS.

Subdivision 1. **Terms.** Unless the language or context clearly indicates that a different interpretation is intended, the following terms, for the purposes of this chapter, shall be given the interpretations subjoined to them.

Subd. 2. **Knowledge of a fact.** A person has "knowledge" of a fact not only with actual knowledge thereof, but also with knowledge of such other facts as in the circumstances show bad faith.

Subd. 3. **Notice of a fact.** A person has "notice" of a fact when the person who claims the benefit of the notice

(1) States the fact to such person, or

(2) 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 the person's place of business or residence.

History: (7386) 1921 c 487 s 3; 1986 c 444

323.04 RULES OF CONSTRUCTION.

The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter. The law of estoppel shall apply under this chapter. The law of agency shall apply under this chapter. This chapter shall not be construed so as to impair the obligations of any contract existing when the chapter became effective, nor to affect any action or proceeding begun or right accrued before this chapter became effective.

History: (7387) 1921 c 487 s 4

323.05 RULES FOR CASES NOT PROVIDED FOR.

In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern.

History: (7388) 1921 c 487 s 5

323.06 DETERMINATION OF WHETHER PARTNERSHIP EXISTS.

In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by section 323.15, 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 coowners 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 the 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 of partnership 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 surviving spouse or representative of a deceased partner,

(d) As interest on a loan, though the amount of payment vary with the profits of the business, or

(e) As the consideration for the sale of a good will of a business or other property by installments or otherwise; and

(5) The following are not evidence that a partnership does not exist:

- (a) failure or omission to file an original or renewal registration under section 323.44;
- (b) the expiration of a partnership's status as a limited liability partnership; or
- (c) the filing of a withdrawal statement under section 323.44.

History: (7390) 1921 c 487 s 7; 1986 c 444; 1994 c 539 s 11

323.07 PARTNERSHIP PROPERTY.

All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

Unless the contrary intention appears, property acquired with partnership funds is partnership property.

Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

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.

History: (7391) 1921 c 487 s 8

323.08 PARTNERS ARE AGENTS OF PARTNERSHIP.

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 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 that partner is dealing has knowledge of the fact that that partner has no such authority.

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.

Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

- (1) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;
- (2) Dispose of the good will of the business;
- (3) Do any other act which would make it impossible to carry on the ordinary business of a partnership;
- (4) Confess a judgment;
- (5) Submit a partnership claim or liability to arbitration or reference.

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

History: (7392) 1921 c 487 s 9; 1986 c 444

323.09 CONVEYANCE OF REAL PROPERTY OF THE PARTNERSHIP.

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 section 323.08, or unless the 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 authority.

Where title to real property is in the name of the partnership, a conveyance executed by a partner, in that partner's own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of section 323.08.

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 names the title

stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of section 323.08, unless the purchaser, or the purchaser's assignee, is a holder for value, without knowledge.

Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in that partner's own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of section 323.08.

Where the title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property.

History: (7393) 1921 c 487 s 10; 1986 c 444

323.10 PARTNERSHIP BOUND BY ADMISSION OF PARTNER.

An admission or representation made by any partner concerning partnership affairs within the scope of that partner's authority, as conferred by this chapter, is evidence against the partnership.

History: (7394) 1921 c 487 s 11; 1986 c 444

323.11 NOTICE TO OR KNOWLEDGE OF PARTNER CHARGES PARTNERSHIP.

Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to that partner's mind, and the knowledge of any other partner who reasonably could and should have communicated it to the 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 the consent of that partner.

History: (7395) 1921 c 487 s 12; 1986 c 444

323.12 PARTNERSHIP LIABLE FOR 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 copartners, loss or injury is caused to any person, not being a partner in 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.

History: (7396) 1921 c 487 s 13; 1986 c 444

323.13 PARTNERSHIP LIABLE FOR PARTNER'S BREACH OF TRUST.

The partnership is bound to make good the loss:

(1) Where one partner acting within the scope of apparent authority receives money or property of a third person and misapplies it; and

(2) 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.

History: (7397) 1921 c 487 s 14; 1986 c 444

323.14 NATURE OF PARTNER'S LIABILITY.

Subdivision 1. **General rule.** Except as otherwise provided in this section, all partners are liable:

(1) Jointly and severally for everything chargeable to the partnership under sections 323.12 and 323.13;

(2) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

Subd. 2. **Limited liability partnership shield.** A partner of a limited liability partnership is not, merely on account of this status, personally liable for anything chargeable to the partnership under sections 323.12 and 323.13, or for any other debts or obligations of the

limited liability partnership, if the charge, debt, or obligation arose or accrued while the partnership had a registration in effect under section 323.44. This subdivision does not limit or impair the right of the partnership or its partners to make claims against any particular partner on the grounds that the particular partner:

(1) has, in its capacity as a partner, breached a duty to the partnership or to the other partners; or

(2) is obligated to contribute so that partners share losses of capital according to section 323.17 and share the liabilities stated in section 323.39, clause (2), paragraphs (c) and (d).

Subd. 3. Piercing the veil. (a) Except as provided in paragraph (b), the case law that states the conditions and circumstances under which the corporate veil of a corporation may be pierced under Minnesota law also applies to limited liability partnerships.

(b) The use of informal procedures or arrangements for managing the limited liability partnership or conducting its business is not a ground for piercing the veil of the limited liability partnership.

Subd. 4. Limited liability after dissolution. (a) Subject to section 323.44, subdivision 7, the limited liability described in subdivisions 2 and 3 continues in full force for the dissolved partnership regardless of any dissolution, winding up, and termination of a limited liability partnership.

(b) If a limited liability partnership dissolves and its business is continued by a successor general partnership under section 323.37, then the limited liability described in subdivisions 2 and 3 also applies to that successor partnership until the expiration of the registration that the dissolved partnership had in effect under section 323.44 at the moment of dissolution. The successor general partnership may at any time file its own registration under section 323.44.

Subd. 5. Liability of partners for illegal distributions. (a) A partner who receives a distribution from a limited liability partnership that would have been in violation of section 302A.551 had the limited liability partnership been a corporation with a board of directors is liable to the limited liability partnership, its receiver, or other person winding up its affairs, but only to the extent that the distribution received by the partner exceeded the amount that properly could have been paid under section 302A.551.

(b) An action may not be commenced under this subdivision more than two years from the date of the distribution.

Subd. 6. When debts and obligations arise and accrue. For the purposes of this section and section 323.16:

(a) All partnership debts and obligations under or relating to a note, contract, or other agreement arise and accrue when the note, contract, or other agreement is entered into.

(b) An amendment, modification, extension, or renewal of a note, contract, or other agreement does not affect the time at which a partnership debt or obligation under or relating to that note, contract, or other agreement arises and accrues, even as to a claim that relates to the subject matter of the amendment, modification, extension, or renewal.

This subdivision does not affect any law, rule, or period pertaining to any statute of limitations or statute of repose.

History: (7398) 1921 c 487 s 15; 1994 c 539 s 12; 1995 c 58 s 7; 1996 c 361 s 52

323.15 PARTNER BY ESTOPPEL.

Subdivision 1. Representations. When a person, by words spoken or written or by conduct, makes, or consents to another's making, a representation to any one that the person is a partner in an existing partnership or with one or more persons not actual partners, the person represented to be a partner is liable to one 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 the person represented to be a partner has made such representation or consented to its being made in the public manner, such a person is liable to the one giving credit, whether the representation has or has not been made or communicated to the one giving credit by or with the knowledge of the person represented to be a partner:

(1) When a partnership liability results, the person represented to be a partner is as liable as though an actual member of the partnership;

(2) When no partnership liability results, the person represented to be a partner is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

Subd. 2. **Agent.** When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, the person represented to be a partner is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though the person represented to be a partner were a partner in fact, with respect to persons who rely upon the representation. Where all the 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.

History: (7399) 1921 c 487 s 16; 1986 c 444

323.16 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 admission as though a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

History: (7400) 1921 c 487 s 17; 1986 c 444

323.17 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:

(1) Except as provided in section 323.14, subdivision 2, each partner shall be repaid 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 each partner's share in the profits;

(2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by that partner in the ordinary and proper conduct of its business, or for the preservation of its business or property;

(3) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which the partner agreed to contribute, shall be paid interest from the date of the payment or advance;

(4) A partner shall receive interest on the capital contributed only from the date when repayment should be made;

(5) All partners have equal rights in the management and conduct of the partnership business;

(6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for services in winding up the partnership affairs;

(7) No person can become a member of a partnership without the consent of all the partners;

(8) 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 the partners.

History: (7401) 1921 c 487 s 18; 1986 c 444; 1994 c 539 s 13

323.18 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.

History: (7402) 1921 c 487 s 19

323.19 PARTNERS MUST RENDER INFORMATION.

Partners shall render, on demand, true and full information of all things affecting the partnerships to any partner or the legal representative of any deceased partner or partner under legal disability.

History: (7403) 1921 c 487 s 20

323.20 PARTNER ACCOUNTABLE AS A FIDUCIARY.

Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by that partner without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by that partner of its property.

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.

History: (7404) 1921 c 487 s 21; 1986 c 444

323.21 RIGHT TO AN ACCOUNT.

Any partner shall have the right to a formal account as to partnership affairs

(1) If wrongfully excluded from the partnership business or possession of its property by copartners;

(2) If the right exists under the terms of any agreement;

(3) As provided by section 323.20; or

(4) When other circumstances render it just and reasonable.

History: (7405) 1921 c 487 s 22; 1986 c 444

323.22 AFTER FIXED TERM PARTNERSHIP CONTINUES AS PARTNERSHIP AT WILL.

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 a partnership at will.

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.

History: (7406) 1921 c 487 s 23

323.23 PROPERTY RIGHTS OF A PARTNER.

The property rights of a partner are rights in specific partnership property, an interest in the partnership, and the right to participate in the management.

History: (7407) 1921 c 487 s 24; 1986 c 444

323.24 NATURE OF A PARTNER'S RIGHT IN SPECIFIC PARTNERSHIP PROPERTY.

A partner is coowner with the other partners of specific partnership property holding as a tenant in partnership.

The incidents of this tenancy are such that:

(1) a partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with the other partners to possess specific partnership property for partnership purposes; but has no right to possess such property for any other purpose without the consent of the other partners;

(2) a partner's right in specific partnership property is not assignable except in connection with the assignment of the rights of all the partners in the same property;

(3) a partner's right in specific partnership property is not subject to attachment, garnishment or execution, except on a claim against the partnership; when partnership property

is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws, except as specifically authorized under exemption laws;

(4) on the death of a partner that partner's right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when the deceased's right in such property vests in the deceased's 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; and

(5) a partner's right in specific partnership property is not subject to dower, curtesy, the statutory interest of a surviving spouse, or allowances to a surviving spouse, heirs or next of kin.

History: (7408) 1921 c 487 s 25; 1986 c 444; 1988 c 490 s 1

323.25 PARTNER'S INTEREST IN THE PARTNERSHIP.

A partner's interest in the partnership is that partner's share of the profits and surplus, and the same is personal property.

History: (7409) 1921 c 487 s 26; 1986 c 444

323.26 ASSIGNMENT OF PARTNER'S INTEREST.

A conveyance by a partner of that partner's 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 assignee to receive in accordance with the assigning contract the profits to which the assigning partner would otherwise be entitled.

In case of a dissolution of the partnership, the assignee is entitled to receive the assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

History: (7410) 1921 c 487 s 27; 1986 c 444

323.27 PARTNER'S INTEREST CHARGEABLE AS SUCH.

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 court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of the debtor partner's share of the profits and of any other money due or to fall due to the debtor partner 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.

The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

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

(2) 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.

Nothing in this chapter shall be held to deprive a partner of a right, if any, under the exemption laws, as regards that partner's interest in the partnership.

History: (7411) 1921 c 487 s 28; 1986 c 444

323.28 DISSOLUTION.

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on, as distinguished from the winding up, of the business.

History: (7412) 1921 c 487 s 29

323.29 PARTNERSHIP NOT TERMINATED BY DISSOLUTION.

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

History: (7413) 1921 c 487 s 30

323.30 CAUSES OF DISSOLUTION.

Dissolution is caused:

(1) Without violation of the agreement between the partners,

(a) By the termination of the definite term or particular undertaking specified in the agreement;

(b) By the express will of any partner when no definite term or particular undertaking is specified;

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking;

(d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under section 323.31.

History: (7414) 1921 c 487 s 31

323.31 DISSOLUTION BY DECREE OF COURT.

On application by or for a partner the court shall decree a dissolution whenever:

(1) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind;

(2) A partner becomes in any other way incapable of performing that partner's part of the partnership contract;

(3) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business;

(4) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so acts in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with that partner;

(5) The business of the partnership can only be carried on at a loss;

(6) Other circumstances render a dissolution equitable.

On the application of the purchaser of a partner's interest under section 323.27 or 323.26:

(1) After the termination of the specified term or particular undertaking;

(2) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

History: (7415) 1921 c 487 s 32; 1986 c 444

323.32 DISSOLUTION TERMINATES AGENCY OF PARTNER.

Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership,

(1) With respect to the partners;

- (a) When the dissolution is not by the act, bankruptcy, or death of a partner; or
 - (b) When the dissolution is by such act, bankruptcy, or death of a partner, in cases where section 323.33 so requires;
 - (2) With respect to persons not partners, as declared in section 323.34.
- History:** (7416) 1921 c 487 s 33

323.33 RIGHT OF PARTNER TO CONTRIBUTION FROM COPARTNERS AFTER DISSOLUTION.

Where the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to the copartners for each's share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved, unless:

- (1) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution; or
- (2) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

History: (7417) 1921 c 487 s 34; 1986 c 444

323.34 PARTNER'S AGENCY AFTER DISSOLUTION.

Subdivision 1. **By what acts.** After dissolution a partner can bind the partnership, except as provided in subdivision 3:

- (1) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;
- (2) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction
 - (a) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or
 - (b) Though the other party had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

Subd. 2. **Satisfaction of liability.** The liability of a partner under subdivision 1, clause (2), shall be satisfied out of partnership assets alone when such partner had been prior to dissolution

- (1) Unknown as a partner to the person with whom the contract is made; and
- (2) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to the partner's connection with it.

Subd. 3. **When not bound.** The partnership is in no case bound by any act of a partner after dissolution

- (1) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or
- (2) Where the partner has become bankrupt; or
- (3) Where the partner has no authority to wind up partnership affairs, except by a transaction with one who
 - (a) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the partner's want of authority; or
 - (b) Had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of the partner's want of authority, the fact of the partner's want of authority has not been advertised in the manner provided for advertising the fact of dissolution in subdivision 1, clause (2) (b).

Subd. 4. **When liable.** Nothing in this section shall affect the liability under section 323.15 of any person who, after dissolution, personally represents or consents to another representing the person as a partner in a partnership engaged in carrying on business.

History: (7418) 1921 c 487 s 35; 1986 c 444

323.35 DISCHARGE OF EXISTING LIABILITIES ON DISSOLUTION.

The dissolution of the partnership does not of itself discharge the existing liability of any partner.

A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between that partner, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

The individual property of a deceased partner shall be liable for those obligations of the partnership incurred while the deceased was a partner and for which the deceased was liable under section 323.14, but subject to the prior payment of the deceased's separate debts.

History: (7419) 1921 c 487 s 36; 1986 c 444; 1994 c 539 s 14

323.36 RIGHT TO WIND UP.

Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, that any partner, the partner's legal representative, or the partner's assignee, upon cause shown, may obtain winding up by the court.

History: (7420) 1921 c 487 s 37; 1986 c 444

323.37 ALLOCATION OF PARTNERSHIP PROPERTY ON DISSOLUTION.

Subdivision 1. Rights. When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against the copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. If dissolution is caused by expulsion of a partner, bona fide under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 323.35, the expelled partner shall receive in cash only the net amount due from the partnership.

Subd. 2. When dissolution wrongful. When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(1) Each partner who has not caused dissolution wrongfully shall have:

(a) All the rights specified in subdivision 1; and

(b) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement;

(2) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership, and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully the value of that partner's interest in the partnership at the dissolution, less any damages recoverable under clause (1)(b), and in like manner indemnify that partner against all present or future partnership liabilities;

(3) A partner who has caused the dissolution wrongfully shall have:

(a) If the business is not continued under the provisions of clause (2), all the rights of a partner under subdivision 1, subject to clause (1)(b);

(b) If the business is continued under clause (2), the right as against the copartners and all claiming through them in respect of their interests in the partnership, to have the value of the dissolving partner's interest in the partnership, less any damages caused to the copartners by the dissolution, ascertained and paid to the dissolving partner in cash, or the payment se-

cured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good will of the business shall not be considered.

History: (7421) 1921 c 487 s 38; 1986 c 444

323.38 ADJUSTMENT OF RIGHTS ON DISSOLUTION FOR FRAUD.

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the partners thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

(1) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by the rescinder for the purchase of an interest in the partnership and for any capital or advances contributed by the rescinder; and

(2) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by the rescinder in respect of the partnership liabilities; and

(3) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

History: (7422) 1921 c 487 s 39; 1986 c 444

323.39 DISTRIBUTION ON DISSOLUTION.

In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(1) The assets of the partnership are:

(a) The partnership property;

(b) The contributions of the partners specified in clause (4);

(2) The liabilities of the partnership shall rank in order of payment, as follows:

(a) Those owing to creditors other than partners;

(b) Those owing to partners other than for capital and profits;

(c) Those owing to partners in respect to capital;

(d) Those owing to partners in respect to profits;

(3) The assets shall be applied in the order of their declaration in clause (1) to the satisfaction of the liabilities;

(4) Except as provided in section 323.14, subdivision 2:

(a) The partners shall contribute, as provided by section 323.17, clause (1), the amount necessary to satisfy the liabilities; and

(b) If any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities;

(5) An assignee for the benefit of creditors of any person appointed by the court shall have the right to enforce the contributions specified in clause (4);

(6) Any partner or the partner's legal representative shall have the right to enforce the contributions specified in clause (4), to the extent of the amount paid in excess of that partner's share of the liability;

(7) The individual property of a deceased partner shall be liable for the contributions specified in clause (4);

(8) When partnership property and the individual properties of the partners are in the possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore;

(9) Where a partner has become bankrupt or the partner's estate is insolvent, the claims against the partner's separate property shall rank in the following order:

- (a) Those owing to separate creditors;
- (b) Those owing to partnership creditors; and
- (c) Those owing to partners by way of contribution.

History: (7423) 1921 c 487 s 40; 1986 c 444; 1994 c 539 s 15

323.40 LIABILITY OF PERSONS CONTINUING THE BUSINESS IN CERTAIN CASES.

Subdivision 1. Admission. When any new partner is admitted into an existing partnership, or when any partner retires and assigns, or the representative of the deceased partner assigns, the partner's rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing in the business.

Subd. 2. Retirement or death. When all but one partner retire and assign, or the representative of a deceased partner assigns, their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

Subd. 3. Continuation on retirement or death. When any partner retires or dies and the business of the dissolved partnership is continued, as set forth in subdivisions 1 and 2, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of the partner's right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

Subd. 4. Assignment to third person. When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

Subd. 5. Wrongful dissolution. When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 323.37, subdivision 2, clause (2), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

Subd. 6. Expulsion of partner. When a partner is expelled and the remaining partners continue the business, either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

Subd. 7. Third person a partner, liability. The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

Subd. 8. Rights of creditors. When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for the retired or deceased partner's right in partnership property.

Subd. 9. No modification of creditors' rights. Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

Subd. 10. Use of partnership property. The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner, as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

History: (7424) 1921 c 487 s 41; 1986 c 444

323.41 RIGHTS OF RETIRING OR ESTATE OF DECEASED PARTNER WHEN THE BUSINESS IS CONTINUED.

When a partner retires or dies, and the business is continued under any of the conditions set forth in section 323.40, subdivisions 1, 2, 3, 5, and 6, or 323.37, subdivision 2, clause (2), without any settlement of accounts as between the partner or that partner's estate and the person or partnership continuing the business, unless otherwise agreed, the partner or the partner's legal representative as against such persons or partnership, may have the value of the partner's interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of that interest in the dissolved partnership, with interest, or, the option, in lieu of interest, of the profits attributable to the use of the partner's right in the property of the dissolved partnership; provided, that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by section 323.40, subdivision 8.

History: (7425) 1921 c 487 s 42; 1986 c 444

323.42 RIGHT TO ACCOUNTING ACCRUES ON DISSOLUTION.

The right to an account of that partner's interest shall accrue to any partner, or the partner's legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

History: (7426) 1921 c 487 s 43; 1986 c 444

323.43 REPEAL; EXCEPTIONS.

All acts or parts of acts inconsistent with this chapter are hereby repealed, except sections 548.20 and 548.21 and all parts thereof, which shall remain in full force and effect and apply to joint obligations arising under this chapter.

History: (7428) 1921 c 487 s 45

323.44 LIMITED LIABILITY PARTNERSHIPS.

Subdivision 1. Requirement of filing; automatic expiration; renewal. (a) To have the status of a limited liability partnership, a general partnership must have in effect and filed with the secretary of state a registration that complies with this section. A general partnership's registration establishes the status of a limited liability partnership for one year from the date of filing. At the end of the one-year period, the registration and the partnership's status as a limited liability partnership expire unless a renewal registration is properly filed with the secretary of state under paragraph (b).

(b) The limited liability partnership may file a renewal registration that complies with this section no earlier than 60 days before the expiration of the one-year period under paragraph (a). A proper renewal registration extends the partnership's status as a limited liability partnership for another year, measured from the end of the previous one-year period. At the end of any renewal period, the renewal registration automatically expires. A limited liability partnership registration may be renewed for an unlimited number of one-year periods.

Subd. 2. Contents of registration. A general partnership's registration to obtain or renew the status of a limited liability partnership must contain:

- (1) the name of the partnership;
- (2) a statement that the partnership applies to obtain status as a limited liability partnership or to renew that status;
- (3) an acknowledgment that the status of limited liability partnership will automatically expire, unless the partnership files a proper renewal registration;
- (4) the street address of the partnership's principal place of business;
- (5) if the partnership's principal place of business is not located in this state, the name and street address of a person located in this state that the partnership authorizes to act as the partnership's agent for service of process; and

(6) the signature of a partner.

Subd. 3. **Filing fee.** Each registration, whether original or for renewal, must be accompanied by a fee of \$135.

Subd. 4. **Authority to file.** A domestic general partnership's decision to file a registration is an ordinary matter under section 323.17, clause (8). The decision to withdraw or not renew a registration is treated as an act in contravention of an agreement between the partners under section 323.17, clause (8).

Subd. 5. **Changes in registration information.** If the information contained in a registration becomes inaccurate after the registration is filed, the general partnership must provide accurate information in any subsequently filed renewal registration. The inaccuracy has no effect on the partnership's status as a limited liability partnership.

Subd. 6. **Voluntary withdrawal of status.** A partnership may end its status as a limited liability partnership at any time by filing with the secretary of state a withdrawal statement that names the partnership, states that the partnership is withdrawing its current registration, and acknowledges that the withdrawal ends the partnership's status as a limited liability partnership. The withdrawal statement must be signed by a partner and may state a delayed effective date, if that date is before the expiration date of the partnership's current registration. If the withdrawal statement does not state an effective date, the statement is effective when filed.

Subd. 7. **Filing after dissolution.** (a) A dissolved limited liability partnership may continue its status as a limited liability partnership through termination either by:

- (1) continuing to file annual renewal registrations until termination; or
- (2) filing a final renewal registration that, in addition to providing the information required by subdivision 3:
 - (i) states that the partnership is dissolved and is winding up its affairs;
 - (ii) identifies the cause of the dissolution; and
 - (iii) states that the renewal registration is the final renewal registration and will remain in effect until termination.

A final renewal registration that complies with clause (2) must not contain the statement required by subdivision 2, clause (3).

(b) When the dissolved limited liability partnership has wound up its affairs, it shall file with the secretary of state a termination notice that contains the following information:

- (1) the name of the limited liability partnership;
- (2) that the limited liability partnership has dissolved and wound up its affairs; and
- (3) that the limited liability partnership is terminated.

The notice must be signed by one former general partner who has not wrongfully dissolved the partnership. There is no fee for the termination filing.

Subd. 8. **Legal status.** For purposes of holding title to or conveying an interest in real or personal property and for all other purposes except as otherwise provided in this chapter, a partnership formed under this chapter remains the same entity:

- (1) whether the partnership obtains the status of a limited liability partnership under subdivision 1, paragraph (a);
- (2) whether the status of the partnership as a limited liability partnership terminates by reason of expiration of registration under subdivision 1, paragraph (b), or by reason of voluntary withdrawal of status under subdivision 6;
- (3) during dissolution of the partnership; and
- (4) regardless of whether the words "a limited liability partnership," "a professional limited liability partnership," "a general partnership," or the designation "L.L.P.," "LLP," "P.L.L.P.," or "PLLP" are used in an instrument conveying an interest in real or personal property to or from the partnership or in any other writing.

History: 1994 c 539 s 16; 1995 c 58 s 8; 1995 c 128 art 3 s 12-15

323.45 NAME OF LIMITED LIABILITY PARTNERSHIPS.

Subdivision 1. **Requirements; prohibitions.** The name of a limited liability partnership must meet all of the requirements of section 302A.115, subdivision 1, except that the

acceptable words required by section 302A.115, subdivision 1, paragraph (b), are "Limited Liability Partnership" or the abbreviation "LLP."

Subd. 2. **Determination.** The secretary of state shall determine whether a name is distinguishable from another name for purposes of this section.

Subd. 3. **Contest of registration of name.** A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 5.22.

Subd. 4. **Consent to use of name.** The procedures described in section 302A.115, subdivision 1, paragraph (d), apply to a name registered under this section.

Subd. 5. **Failure to use required name.** If a person purports to enter into a contract or other undertaking on behalf of a general partnership that is a domestic or foreign limited liability partnership and does not disclose to the other party that part of the limited liability partnership's name that complies with subdivision 1, then that person is personally liable on the contract or undertaking, unless that person can show that in making the contract or accepting the undertaking the other party did not rely on the partnership being an ordinary general partnership. Any partner of a domestic or foreign limited liability partnership who consents to a person not making the disclosure described in this subdivision is also personally liable on the contract or undertaking, unless that partner can make the showing described in this subdivision.

History: 1994 c 539 s 17; 1995 c 58 s 9; 1995 c 128 art 3 s 16,17

323.46 APPLICABILITY TO FOREIGN AND INTERSTATE COMMERCE.

Subdivision 1. **Conducting business.** A domestic partnership, including a domestic limited liability partnership, formed and existing under this chapter, may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country.

Subd. 2. **Governing law.** It is the policy of this state that the internal affairs of domestic partnerships, including domestic limited liability partnerships, existing under this chapter, including the liability of partners for debts and obligations of partnerships, are subject to and governed by the laws of this state.

History: 1994 c 539 s 18; 1995 c 128 art 3 s 18

323.47 SERVICE OF PROCESS ON LIMITED LIABILITY PARTNERSHIPS.

Subdivision 1. **Who may be served.** A process, notice, or demand required or permitted by law to be served on a limited liability partnership may be served either on the registered agent of the limited liability partnership, if any, or on any responsible person found at the registered office of the limited liability partnership or on the secretary of state as provided in section 5.25.

Subd. 2. [Repealed, 1995 c 128 art 1 s 20]

Subd. 3. [Repealed, 1995 c 128 art 1 s 20]

Subd. 4. [Repealed, 1995 c 128 art 1 s 20]

History: 1994 c 539 s 19; 1995 c 128 art 1 s 15

323.48 GOVERNING LAW.

Subdivision 1. **State of organization.** Subject to the constitution of this state, the laws of the jurisdiction under which a foreign limited liability partnership is organized govern its organization and internal affairs and the liability of its members. A foreign limited liability partnership may not be denied a registration in this state by reason of a difference between those laws and the laws of this state.

Subd. 2. **Limitations.** A foreign limited liability partnership registered in this state has no greater rights and privileges than a domestic limited liability partnership. The registration does not authorize the foreign limited liability partnership to exercise any of its powers or purposes that a domestic limited liability partnership is forbidden by law to exercise in this state.

History: 1995 c 128 art 3 s 19

323.49 FOREIGN LIMITED LIABILITY PARTNERSHIPS.

Subdivision 1. **Statement of qualification.** Before transacting business in this state, a foreign limited liability partnership must file a statement of qualification as provided in subdivision 3 with the secretary of state. The statement is effective for one year from the date of filing and may be renewed for successive one-year periods as provided in subdivision 2. At the end of the one-year period, the statement automatically expires unless a renewal statement is properly filed. Section 322B.945 applies to determine whether a foreign limited liability partnership is transacting business.

Subd. 2. **Renewal.** The foreign limited liability partnership may file a renewal statement that complies with this section no earlier than 60 days before the expiration of the one-year period under subdivision 1. A proper renewal extends the partnership's status as a foreign limited liability partnership for another one-year period, measured from the end of the previous one-year period. At the end of any renewal period, the renewal statement automatically expires. A foreign limited liability partnership's statement may be renewed for an unlimited number of one-year periods.

Subd. 3. **Contents of statement of qualification.** A foreign limited liability partnership's statement of qualification and any renewal statement must contain:

- (1) the name of the partnership, including the limited liability partnership designation used in the home jurisdiction;
- (2) the address of the partnership's principal place of business;
- (3) the name and street address of a person located in this state that the partnership has authorized to act as the partnership's agent for service of process;
- (4) the jurisdiction of organization; and
- (5) the signature of a partner.

The statement or renewal must be accompanied by a certificate of status from the filing officer in the home jurisdiction and a fee of \$135.

Subd. 4. **Name of foreign limited liability partnership.** The name of the foreign limited liability partnership must meet the requirements of section 323.45.

Subd. 5. **Changes in registration information.** If the information in a statement becomes inaccurate after it is filed, the general partnership must provide accurate information in any subsequently filed renewal statement. The inaccuracy has no effect on the status of the partnership as a foreign limited liability partnership in Minnesota.

Subd. 6. **Voluntary withdrawal of status.** A partnership may, at any time, withdraw its statement of qualification by filing with the secretary of state a withdrawal statement that contains the following:

- (1) the name of the partnership;
- (2) a statement that the partnership is withdrawing its current statement of qualification;
- (3) an acknowledgment that the withdrawal ends the partnership's qualification as a foreign limited liability partnership in Minnesota; and
- (4) the signature of a partner.

The withdrawal statement may state a delayed effective date, if that date is before the expiration date of the partnership's current statement of qualification. If the withdrawal statement does not state an effective date, the statement is effective when filed.

Subd. 7. **Transaction of business without qualification.** (a) A foreign limited liability partnership transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has filed a statement of qualification.

(b) The failure of a foreign limited liability partnership to file a statement of qualification does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any action, suit, or proceeding in any court of this state.

(c) A foreign limited liability partnership, by transacting business in this state without a statement of qualification, appoints the secretary of state as its agent on whom any notice, process, or demand may be served.

(d) A partner of a foreign limited liability partnership is not liable for the debts and obligations of the foreign limited liability partnership solely by reason of the foreign limited

MINNESOTA STATUTES 1996

liability partnership's having transacted business in this state without a valid statement of qualification.

Subd. 8. **Transition.** Any foreign limited liability partnership which received a certificate of authority under chapter 322B prior to the effective date of Laws 1995, chapter 128, shall be deemed to be in compliance with this section until December 29, 1995. After that date, a certificate of authority issued under chapter 322B and received by a foreign limited liability partnership shall have no further effect.

History: *1995 c 128 art 3 s 20*