

PARTNERSHIPS

CHAPTER 326

S. B. No. 40

(Gefreh, Brooks, Erickstad, Holand)
(From LRC study)

PARTNERSHIP AND LIMITED PARTNERSHIP ACT

AN ACT

Relating to partnerships, adopting the Uniform Partnership Act and the Uniform Limited Partnership Act as a part of Title 45 of the Code, and repealing chapters 45-01, 45-02, 45-03, and 45-04 of the North Dakota Revised Code of 1943, as amended.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Chapter 45-05

Partnerships Generally

45-0501. Definition of Terms.) In this Act:

1. "Court" includes every court and judge having jurisdiction in the case;
2. "Business" includes every trade, occupation, or profession;
3. "Person" includes individuals, partnerships, corporations, and other associations;
4. "Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvency act;
5. "Conveyance" includes every assignment, lease, mortgage, or encumbrance;
6. "Real property" includes land and any interest or estate in land.

45-0502. Interpretation of Knowledge and Notice.) 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.

A person has "notice" of a fact within the meaning of this Act 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 his place of business or residence.

45-0503. Rules of Construction.) (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to 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.

45-0504. 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.

45-0505. 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 any 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 or special partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith.

45-0506. Rules for Determining the Existence of a Partnership.) In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by section 45-0608 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 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 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 vary with the profits of the business,
- (e) As the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

45-0507. 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 the contrary intention 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.

Chapter 45-06

Relations of Partners to Others

45-0601. 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 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 goodwill of the business,

- (c) Do any other act which would make it impossible to carry on the ordinary business of the partnership,
 - (d) Confess a judgment,
 - (e) Submit a partnership claim or liability to arbitration or reference,
 - (f) To dispose of the whole of the partnership property at once unless it consists entirely of merchandise.
- (4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

45-0602. 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 subsection (1) of section 45-0601, 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 name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of subsection (1) of section 45-0601.

(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 partners' act does not bind the partnership under the provisions of subsection (1) of section 45-0601, 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 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 the act is one within the authority of the partner under the provisions of subsection (1) of section 45-0601.

(5) 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.

45-0603. 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.

45-0604. Partnership Charged With Knowledge of or Notice to Partner.) 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 his 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.

45-0605. 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 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.

45-0606. 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.

45-0607. Nature of Partner's Liability.) All partners are liable

(a) Jointly and severally for everything chargeable to the partnership under sections 45-0605 and 45-0606;

(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.

45-0608. 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 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.

45-0609. 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.

Chapter 45-07

Relations of Partners to One Another

45-0701. 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 toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.
- (b) The partnership must indemnify every partner in respect of 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 in 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 a 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 the partners.

45-0702. Partnership Books.) The partnership books shall be kept, subject to any agreement between 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.

45-0703. 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.

45-0704. Partner Accountable as a Fiduciary.)

(1) Every partner must account to the partnership for any benefit, and 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 use 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.

45-0705. 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 45-0704,
- (d) Whenever other circumstances render it just and reasonable.

45-0706. 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 par-

ticular 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.

(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.

Chapter 45-08

Property Rights of a Partner

45-0801. 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.

45-0802. Nature of a Partner's Right in Specific Partnership Property.)

(1) A partner is 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 provisions 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 the partners in the same property.
- (c) A partner's right in specific partnership property is not subject to attachment 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.
- (d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the decedent 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 to kin.

45-0803. 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.

45-0804. 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 assignee 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 all the partners.

45-0805. 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 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 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 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.

Chapter 45-09

Dissolution and Winding Up

45-0901. Dissolution Defined.) 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.

45-0902. Partnership Not Terminated by Dissolution. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

45-0903. 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 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 45-0904.

45-0904. Dissolution by Decree of Court.)

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

- (a) A partner has been declared mentally incompetent in any judicial proceeding or is shown to be of unsound mind,
- (b) A partner becomes in any other way incapable of performing his part of the partnership contract,
- (c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

- (d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,
 - (e) The business of the partnership can only be carried on at a loss,
 - (f) Other circumstances render a dissolution equitable.
- (2) On the application of the purchaser of a partner's interest under section 45-0804 and 45-0805:
- (a) After the termination of the specified term or particular undertaking,
 - (b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

45-0905. General Effect of Dissolution on Authority 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 45-0906 so requires.
- (2) With respect to persons not partners, as declared in section 45-0907.

45-0906. Right of Partner to Contribution From Co-partners After Dissolution.) Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his co-partners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless

- (a) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or
- (b) 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.

45-0907. Power of Partner to Bind Partnership to Third Persons After Dissolution.) (1) After dissolution a partner can bind the partnership except as provided in subsection (3):

- (a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;
 - (b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction
 - (I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or
 - (II) Though he 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.
- (2) The liability of a partner under paragraph (1b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution
- (a) Unknown as a partner to the person with whom the contract is made; and
 - (b) 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 his connection with it.
- (3) The partnership is in no case bound by any act of a partner after dissolution:
- (a) 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
 - (b) Where the partner has become bankrupt; or
 - (c) Where the partner has no authority to wind up partnership affairs; except by a transaction with one who
 - (I) Had an extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or
 - (II) Had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in paragraph (1bII).
- (4) Nothing in this section shall affect the liability under section 45-0608 of any person who after dissolution represents

himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

45-0908. Effect of Dissolution on Partner's Existing Liability.)

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

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, 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.

(3) 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.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

45-0909. 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, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court.

45-0910. Rights of Partners to Application of Partnership Property.) (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his co-partners 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. But 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 subsection (2) of section 45-0908, he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

- (a) Each partner who has not caused dissolution wrongfully shall have,
 - (I) All the rights specified in subsection (1) of this section, and
 - (II) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.
- (b) 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 his interest in the partnership at the dissolution, less any damages recoverable under clause (2aII) of this section, and in like manner indemnify him against all present or future partnership liabilities.
- (c) A partner who has caused the dissolution wrongfully shall have:
 - (I) If the business is not continued under the provisions of paragraph (2b) all the rights of a partner under subsection (1), subject to clause (2aII), of this section,
 - (II) If the business is continued under paragraph (2b) of this section the right as against his co-partners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his co-partners by the dissolution, ascertained and paid to him in cash, or the payment secured 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 goodwill of the business shall not be considered.

45-0911. Rights Where Partnership is Dissolved for Fraud or Misrepresentation.) Where a partnership contract is rescinded on the ground of the fraud, menace, duress, undue influence or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,

- (a) 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 him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

- (b) 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 him in respect of the partnership liabilities; and
- (c) To be indemnified by the person guilty of the fraud, menace, duress, or undue influence or making the representation against all debts and liabilities of the partnership.

45-0912. Rules for Distribution.) 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 necessary for the payment of all the liabilities specified in subsection (2) of this section.
- (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 of capital,
 - (d) Those owing to partners in respect of profits.
- (3) The assets shall be applied in the order of their declaration in subsection (1) of this section to the satisfaction of the liabilities.
- (4) The partners shall contribute, as provided by subsection (a) of section 45-0701 the amount necessary to satisfy the liabilities; but 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 or any person appointed by the court shall have the right to enforce the contributions specified in subsection (4) of this section.
- (6) Any partner or his legal representative shall have the right to enforce the contributions specified in subsection (4) of this section, to the extent of the amount which he has paid in excess of his share of the liability.
- (7) The individual property of a deceased partner shall be liable for the contributions specified in subsection (4) of this section.

(8) When partnership property and the individual properties of the partners are in 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 his estate is insolvent the claims against his separate property shall rank in the following order:

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

45-0913. Liability of Persons Continuing the Business in Certain Cases.) (1) 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) his 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 the business.

(2) 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.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in subsections (1) and (2) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his 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.

(4) 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.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of subsection (2b) of section 45-0910, 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.

(6) 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.

(7) 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.

(8) 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 his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) 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.

45-0914. Rights of Retiring or Estate of Deceased Partner When the Business is Continued.) When any partner retires or dies, and the business is continued under any of the conditions set forth in subsections (1), (2), (3), (5), or (6) of section 45-0913, or subsection (2b) of section 45-0910, without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his 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 subsection (8) of section 45-0913.

45-0915. Accrual of Actions.) The right to an account of his interest shall accrue to any partner, or his 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.

Chapter 45-10

Uniform Limited Partnership Act

45-1001. Limited Partnership Defined.) A limited partnership is a partnership formed by two or more persons under the provisions of section 45-1002, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

45-1002. Formation.) (1) Two or more persons desiring to form a limited partnership shall

(a) Sign and swear to a certificate, which shall state

- I. The name of the partnership,
- II. The character of the business,
- III. The location of the principal place of business,
- IV. The name and place of residence of each member; general and limited partners being respectively designated,
- V. The term for which the partnership is to exist,
- VI. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner,
- VII. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made,
- VIII. The time, if agreed upon, when the contribution of each limited partner is to be returned,
- IX. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution,
- X. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution,
- XI. The right, if given, of the partners to admit additional limited partners,
- XII. The right, if given, of one or more of the limited partners to priority over other limited

partners, as to contributions or as to compensation by way of income, and the nature of such priority,

XIII. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner, and

XIV. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(b) File the certificate in the office of the clerk of the district court wherein the principal place of business of the partnership is located, and file a certified copy thereof in the office of the secretary of state.

(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of subsection (1).

45-1003. Business Which May Be Carried On.) A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking or insurance.

45-1004. Character of Limited Partner's Contribution.) The contributions of a limited partner may be cash or other property, but not services.

45-1005. A Name Not to Contain Surname of Limited Partner Exceptions.)

(1) The surname of a limited partner shall not appear in the partnership name, unless

- (a) It is also the surname of a general partner, or
- (b) Prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to the provisions of subsection (1) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

45-1006. Liability for False Statements in Certificate.) If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false,

- (a) At the time he signed the certificate, or
- (b) Subsequently, but within a sufficient time before the statement was relied upon to enable him to

cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in subsection (3) of section 45-1025.

45-1007. Limited Partner Not Liable to Creditors.) A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

45-1008. Admission of Additional Limited Partners.) After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of section 45-1025.

45-1009. Rights, Powers and Liabilities of a General Partner.)

(1) A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to

- (a) Do any act in contravention of the certificate,
- (b) Do any act which would make it impossible to carry on the ordinary business of the partnership,
- (c) Confess a judgment against the partnership,
- (d) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose,
- (e) Admit a person as a general partner,
- (f) Admit a person as a limited partner, unless the right so to do is given in the certificate,
- (g) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate.

45-1010. Rights of a Limited Partner.) (1) A limited partner shall have the same rights as a general partner to

- (a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them,
- (b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and
- (c) Have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in sections 45-1015 and 45-1016.

45-1011. Status of Person Erroneously Believing Himself a Limited Partner.) A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income

45-1012. One Person Both General and Limited Partner.)

(1) A person may be a general partner and a limited partner in the same partnership at the same time.

(2) A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

45-1013. Loans and Other Business Transactions With Limited Partner.)

(1) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim

(a) Receive or hold as collateral security any partnership property, or

(b) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners,

(2) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of subsection (1) is a fraud on the creditors of the partnership.

45-1014. Relation of Limited Partners Inter Se.) Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other

matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

45-1015. Compensation of Limited Partner.) A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

45-1016. Withdrawal or Reduction of Limited Partner's Contribution.) (1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until

- (a) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them,
- (b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of subsection (2), and
- (c) The certificate is canceled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of subsection (1) a limited partner may rightfully demand the return of his contribution

- (a) On the dissolution of a partnership, or
- (b) When the date specified in the certificate for its return has arrived, or
- (c) After he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when

- (a) He rightfully but unsuccessfully demands the return of his contribution, or
- (b) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by subdivision (1a) and the limited partner would otherwise be entitled to the return of his contribution.

45-1017. Liability of Limited Partner to Partnership.) (1)

A limited partner is liable to the partnership

- (a) For the difference between his contribution as actually made and that stated in the certificate as having been made, and
 - (b) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.
- (2) A limited partner holds as trustee for the partnership
- (a) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and
 - (b) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

45-1018. Nature of Limited Partner's Interest in Partnership.) A limited partner's interest in the partnership is personal property.

45-1019. Assignment of Limited Partner's Interest.) (1) A limited partner's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(3) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with section 45-1025.

(6) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under sections 45-1006 and 45-1017.

45-1020. Effect of Retirement, Death or Mental Incompetency of a General Partner.) The retirement, death or mental incompetence of a general partner dissolves the partnership, unless the business is continued by the remaining general partners

- (a) Under a right so to do stated in the certificate, or
- (b) With the consent of all members,

45-1021. Death of Limited Partner.) (1) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

45-1022. Rights of Creditors of Limited Partner.) (1) On due application to a court of competent jurisdiction by any creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by subsection (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in this Act shall be held to deprive a limited partner of his statutory exemption.

45-1023. Distribution of Assets.) (1) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

- (a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners,

- (b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions,
 - (c) Those to limited partners in respect to the capital of their contributions,
 - (d) Those to general partners other than for capital and profits,
 - (e) Those to general partners in respect to profits,
 - (f) Those to general partners in respect to capital.
- (2) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

45-1024. When Certificate Shall Be Canceled or Amended.)

- (1) The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such.
- (2) A certificate shall be amended when
- (a) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner,
 - (b) A person is substituted as a limited partner,
 - (c) An additional limited partner is admitted,
 - (d) A person is admitted as a general partner,
 - (e) A general partner retires, dies or becomes mentally incompetent, and the business is continued under section 45-1020.
 - (f) There is a change in the character of the business of the partnership,
 - (g) There is a false or erroneous statement in the certificate,
 - (h) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution,
 - (i) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or
 - (j) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

45-1025. Requirements for Amendment and for Cancellation of Certificate.) (1) The writing to amend a certificate shall

- (a) Conform to the requirements of subsection (1a) of section 45-1002 as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

(b) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all members.

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in subsections (1) and (2) as a person who must execute the writing refuses to do so, may petition the district court wherein the certificate is filed to direct a cancellation or amendment thereof.

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the clerk of the district court in the office where the certificate is filed to file the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed in said office a certified copy of its order setting forth the amendment.

(5) A certificate is amended or canceled when there is filed in the office of the clerk of the district court wherein the certificate has been previously filed and when there is filed in the office of the secretary of state:

(a) A writing in accordance with the provisions of subsection (1), or (2) or

(b) A certified copy of the order of court in accordance with the provisions of subsection (4).

(6) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this Act.

45-1026. Parties to Actions.) A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

Chapter 45-11

Fictitious Partnership Name

45-1101. Use of Fictitious Partnership Name; Certificate; Filing; Publication.) Except as otherwise provided in section 45-1103, every partnership transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the district court of the county in which its principal place of business is situated a certificate stating the names in full of all the members of such partner-

ship and their places of residence, and must publish the same once in a newspaper published in the county, if there is one, and if there is none in such county, then in a newspaper published in an adjoining county.

45-1102. How Certificate Executed.) A certificate filed with the clerk of the district court as provided in section 45-1101 must be signed by the partners and acknowledged before some officer authorized to take acknowledgments of conveyances or real property.

45-1103. Foreign Partnership Permitted to Use Fictitious Name.) A commercial partnership established and transacting business in a place without the United States may use in this state the partnership name used by it there, without filing the certificate or making the publication prescribed in section 45-1101, although it is fictitious or does not show the names of the persons interested as partners in such business.

45-1104. Penalty for Unlawful Use of Fictitious Name.) Persons doing business as partners contrary to the provisions of section 45-1101 shall not maintain an action on, or an account of, any contracts made or transactions had in their partnership name in any court of this state until they have filed the certificate and made the publication required by section 45-1101. If such partners shall comply with such provisions at any time, they thereupon shall have the right to maintain an action on all such partnership contracts and transactions entered into prior to, as well as after, such compliance.

45-1105. New Certificate Required When Members Changed.) Whenever there is a change in the members of a partnership transacting business in this state under a fictitious name, or in a designation which does not show the names of the persons interested as partners in the business, except in a case mentioned in section 45-1103, a new certificate must be filed with the clerk of the district court and a new publication made as required by this chapter upon the formation of such partnership.

45-1106. Duty of Clerk Regarding Certificates of Partnership.) Every clerk of the district court must keep a register of the names of firms and persons mentioned in the certificates filed with him pursuant to this chapter, entering in alphabetical order the name of every such partnership and of each partner therein.

45-1107. Certified Copy Used as Evidence.) A copy of the entry of the clerk of the district court relating to a partnership certificate, made as directed in section 45-1101, when certified by him, and an affidavit of publication made as prescribed

in the title Judicial Proof, is presumptive evidence of the facts stated therein.

45-1108. Unlawful Use of Fictitious Partnership Name.)

Every person transacting business in the name of a person as a partner who is not interested in his firm, or transacting business under a firm name in which the designation "and company" or "& Co." is used without representing an actual partner, except in the cases in which the continued use of a co-partnership name is authorized by law, is guilty of a misdemeanor.

Chapter 45-12

Application of Law

45-1201. Provisions for Existing Limited Partnerships.) (1)

A limited or special partnership formed under any statute of this state prior to July 1, 1959, may become a limited partnership under this Act by complying with the provisions of section 45-1002; provided the certificate sets forth

- (a) The amount of the original contribution of each limited partner, and the time when the contribution was made, and
- (b) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(2) A limited or special partnership formed under any statute of this state prior to the adoption of this Act, until or unless it becomes a limited partnership under this Act, shall continue to be governed by the provisions of chapter 45-03 of the Code, except that such partnership shall not be renewed unless so provided in the original agreement.

45-1202. Provisions for Other Existing Partnerships.) A

general partnership formed under any statute of this state prior to July 1, 1959, including the general partners of a special or limited partnership formed prior to July 1, 1959, are governed by the provisions of this Act, from and after July 1, 1959.

45-1203. Repeal.) Except as affecting existing limited or

special partnerships to the extent set forth in section 45-1201, chapters 45-01, 45-02, 45-03, and 45-04 are hereby repealed.

45-1204. Construction and Citation.) Chapters 45-05 through

45-09 of this Act may be cited as the "Uniform Partnership Act", and chapter 45-10 of this Act may be cited as the "Uniform Limited Partnership Act". The provisions of the Act shall be interpreted and construed as additional chapters and sections of Title 45 of the North Dakota Revised Code of 1943.

Approved March 4, 1959.