CHAPTER 45-13
PARTNERSHIPS IN GENERAL

45-13-01. (101) Definitions.

For the purposes of chapters 45-13 through 45-21 unless the context otherwise requires:

1. "Address" means:
   a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location, which may not be only a post-office box; and
   b. In any other case, the mailing address, including the zip code.
2. "Authenticated electronic communication" means:
   a. That the electronic communication is delivered:
      (1) To the principal place of business of the partnership; or
      (2) To a managing partner or agent of the partnership authorized by the partnership to receive the electronic communication; and
   b. That the electronic communication sets forth information from which the partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. "Ballot" means a written ballot or a ballot transmitted by electronic communication.
4. "Business" includes every trade, occupation, and profession.
5. "Debtor in bankruptcy" means a person that is the subject of:
   a. An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or
   b. A comparable order under federal, state, or foreign law governing insolvency.
6. "Distribution" means a transfer of money or other property from a partnership to a partner in the capacity of the partner as a partner or to the transferee of the partner.
7. "Domestic organization" means an organization created under the laws of this state.
8. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
9. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
   a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
   b. That may be directly reproduced in paper form by the recipient through an automated process.
10. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
11. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
12. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
    a. That a record meeting the applicable requirements of this chapter together with the fees provided in section 45-13-05 was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
    b. That the secretary of state did then:
       (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
       (2) Record the record in the office of the secretary of state.
13. "Foreign limited liability partnership" means a partnership that is formed under laws other than the laws of this state and has the status of a limited liability partnership under those laws.
14. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

15. "Limited liability partnership" means a partnership that filed a registration under chapter 45-22 and does not have a similar statement in effect in any other jurisdiction.
16. "Managing partner" means a partner charged with the management of the partnership in this state and if no partners are specifically so designated, then all partners.
17. "Notice":
    a. Is given to a partnership:
        (1) When in writing and mailed or delivered to the principal executive office of the partnership; or
        (2) When given by a form of electronic communication consented to by a managing partner to which the notice is given if by:
            (a) Facsimile communication, when directed to a telephone number at which the managing partner has consented to receive notice.
            (b) Electronic mail, when directed to an electronic mail address at which the managing partner has consented to receive notice.
            (c) Posting on an electronic network on which the managing partner has consented to receive notice, together with separate notice to the managing partner of the specific posting, upon the later of:
                [1] The posting; or
                [2] The giving of the separate notice.
            (d) Any other form of electronic communication by which a managing partner has consented to receive notice, when directed to the partnership.
    b. Is given to a partner of the partnership:
        (1) When in writing and mailed or delivered to the partner at the principal executive office address of the partnership; or
        (2) When given by a form of electronic communication consented to by the partner to which the notice is given if by:
            (a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
            (b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
            (c) Posting on an electronic network on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:
                [1] The posting; or
                [2] The giving of the separate notice; or
            (d) Any other form of electronic communication by which the partner has consented to receive notice, when directed to the partner.
    c. Is given in all other cases:
        (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
        (2) When deposited with a nationally recognized overnight delivery service for overnight delivery, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last-known address of the person;
        (3) When handed to the person;
        (4) When left at the office of the person with a clerk or other person in charge of the office or:
            (a) If there is no one in charge, when left in a conspicuous place in the office; or
            (b) If the office is closed or the person to be notified has no office, when left at the dwelling, house, or other usual place of abode of the person with some person of suitable age and discretion residing there;
        (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

(a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
(b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice;
(c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
[1] The posting; or
[2] The giving of the separate notice; or
(d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or

(6) When the method is fair and reasonable when all circumstances are considered.

d. Is given by mail when deposited in the United States mail with sufficient postage affixed.

e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.

f. Is deemed received when given.

18. "Organization":

a. Means, whether a domestic or foreign, a corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, and any other person subject to a governing statute; but

b. Excludes:

(1) A nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction; or

(2) Any nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.

19. "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under section 45-14-02, predecessor law, or comparable law of another jurisdiction.

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

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

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

23. "Principal executive office" means an office from which the partnership conducts business.

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

25. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

26. "Signed" means:

a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record with the present intention to authenticate that record; and

b. With respect to a record required by this chapter to be filed with the secretary of state, that:

(1) The record is signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
(2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

27. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
28. "Statement" means:
    a. A statement of partnership authority under section 45-15-03;
    b. A statement of denial under section 45-15-04;
    c. A statement of dissociation under section 45-19-04;
    d. A statement of dissolution under section 45-20-05;
    e. A statement of conversion under section 45-21-04;
    f. A statement of merger under section 45-21-07; or
    g. An amendment or cancellation of any of the foregoing.
29. "Surviving organization" means an organization into which one or more other organizations are merged and which:
    a. May pre-exist the merger; or
    b. Are created by the merger.
30. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

45-13-01.1. Legal recognition of electronic records and electronic signatures.

For purposes of this chapter:

1. A record of signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement;
4. If a provision requires a signature, an electronic signature satisfies the requirement; and
5. The provisions of this chapter relating to electronic records and electronic transactions do not limit or supersede chapter 9-16.

45-13-02. (102) Knowledge and notice.

1. A person knows a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:
    a. Knows of the fact;
    b. Has received notice of the fact as provided in subsection 17 of section 45-13-01; or
    c. Has reason to know the fact exists from all of the facts known to the person at the time in question.
3. A person notifies or gives a notification to another by taking the steps provided in subsection 17 of section 45-13-01, whether or not the other person learns of it.
4. A person receives a notification as provided in subsection 17 of section 45-13-01.
5. Except as otherwise provided in subsection 6, and except as otherwise provided in subsection 17 of section 45-13-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.

a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

6. Knowledge, notice, or receipt of a notification of a fact relating to the partnership by a managing partner is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.
7. With respect to notice given by a form of electronic communication:
   a. Consent by a managing partner to notice given by electronic communication may be given in writing or by authenticated electronic communication. The partnership is entitled to rely on any consent so given until revoked by the managing partner. However, no revocation affects the validity of any notice given before receipt by the partnership of revocation of the consent.
   b. An affidavit of a managing partner or an authorized agent of the partnership, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

45-13-02.1. Reservation of legislative right.

The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A partnership formed under or governed by this chapter is subject to this reserved right.

45-13-03. (103) Effect of partnership agreement - Nonwaivable provisions.

1. Except as otherwise provided in subsection 2, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, chapters 45-13 through 45-21 govern relations among the partners and between the partners and the partnership.
2. The partnership agreement may not:
   a. Vary the rights and duties under section 45-13-05 except to eliminate the duty to provide copies of statements to all of the partners;
   b. Unreasonably restrict the right of access to books and records under subsection 2 of section 45-16-03;
   c. Eliminate the duty of loyalty under subsection 2 of section 45-16-04 or subdivision c of subsection 2 of section 45-18-03, but:
      (1) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or
      (2) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
   d. Unreasonably reduce the duty of care under subsection 3 of section 45-16-04 or subdivision c of subsection 2 of section 45-18-03;
   e. Eliminate the obligation of good faith and fair dealing under subsection 4 of section 45-16-04, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
   f. Vary the power to dissociate as a partner under subsection 1 of section 45-18-02, except to require the notice under subsection 1 of section 45-18-01 to be in writing;
   g. Vary the right of a court to expel a partner in the events specified in subsection 5 of section 45-18-01;

h. Vary the requirement to wind up the partnership business in cases specified in subsection 4, 5, or 6 of section 45-20-01;
i. Vary the law applicable to a limited liability partnership under chapter 45-22; or
j. Restrict rights of third parties under chapters 45-13 through 45-21.

45-13-04. (104) Supplemental principles of law.

1. Unless displaced by particular provisions of chapters 45-13 through 45-21, the principles of law and equity supplement chapters 45-13 through 45-21.
2. If an obligation to pay interest arises under chapters 45-13 through 45-21 and the rate is not specified, the rate is that specified in section 47-14-05.

45-13-04.1. Partnership name.

1. A partnership name filed in a statement under section 45-13-05:
   a. Must be in the English language or in any other language expressed in English letters or characters;
   b. May contain the name of any partner;
   c. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words;
   d. May not contain a word or phrase that indicates or implies that the partnership:
      (1) Is organized for a purpose other than a lawful purpose for which a partnership may be organized under this chapter; or
      (2) May not be formed under this chapter; and
   e. May not be the same as, or deceptively similar to:
      (1) The name, whether foreign and authorized to do business in this state or domestic, unless filed with the statement is a record which complies with subsection 3 of:
         (a) Another partnership;
         (b) A limited liability company;
         (c) A corporation;
         (d) A limited partnership;
         (e) A limited liability partnership; or
         (f) A limited liability limited partnership;
      (2) A name, the right of which is, at the time of filing, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
      (3) A fictitious name registered in the manner provided in chapter 45-11; or
      (4) A trade name registered in the manner provided in chapter 47-25.
2. The secretary of state shall determine whether a partnership name is deceptively similar to another name for purposes of this chapter.
3. If the secretary of state determines a partnership name is deceptively similar to another name for purposes of this chapter, then the partnership name may not be used unless there is filed with the statement:
   a. The written consent of the holder of the rights to the name to which the proposed name is determined to be deceptively similar; or
   b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
4. This section does not affect the right of a partnership existing on July 1, 1999, or a foreign partnership authorized to do business in this state on July 1, 1999, to continue the use of the foreign partnership's name.
5. This section and section 45-13-04.2 do not:
   a. Abrogate or limit the law of unfair competition or unfair practices; chapter 47-25; the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or any other rights to the exclusive use of a name or symbol.
   b. Derogate the common law or any principle of equity.

6. A partnership that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations if the other organization whose name is sought to be used:
   a. Is formed under the laws of this state;
   b. Is authorized to transact business or conduct activities in this state;
   c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-32.1-12, 45-10.2-11, 45-13-04.2, or 45-22-05;
   d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
   e. Holds a trade name registered in the manner provided in chapter 47-25.
7. The use of a name by a partnership in violation of this section does not affect or vitiate the partnership existence of the partnership. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the partnership from doing business under a name assumed in violation of this section, although a statement may have been filed with the secretary of state.
8. If the period of existence of the partnership is expired or a statement of a partnership filed under section 45-13-05 is expired, then the partnership may reacquire the right to use that name by refiling a statement pursuant to section 45-13-05, unless the name was adopted for use or reserved by another person, in which case the filing must be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3. A partnership that cannot reacquire the use of its partnership name shall adopt a new partnership name that complies with this section.

45-13-04.2. Reserved name.

1. The exclusive right to the use of a partnership name otherwise permitted by section 45-13-04.1 may be reserved by any person.
2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 45-13-05.
   a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
   b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee.
4. The right to the exclusive use of a partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation.
5. The secretary of state may destroy any reserved name request and any index of reserved names one year after expiration.

45-13-05. (105) Execution, filing, and recording of statements.

1. A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in chapters 45-13 through 45-21 with respect to partnership property located in or transactions that occur in this state.
2. A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in chapters 45-13 through 45-21. A recorded statement that is not a certified copy of a statement filed in the office of the secretary of state does not have the effect provided for recorded statements in chapters 45-13 through 45-21.

3. A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by chapters 45-13 through 45-21. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.
4. A person authorized by chapters 45-13 through 45-21 to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.
5. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.
6. Any statement filed under this section must be renewed every five years from the date of the initial filing. A statement of renewal must be executed by the partnership in the same manner as previously executed. If the secretary of state finds that the statement of renewal conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement of renewal. If the secretary of state finds that the statement of renewal does not so conform, the secretary of state shall return the statement of renewal to the partnership for any necessary corrections. If the statement of renewal is not returned corrected within thirty days after the statement of renewal was returned for correction, the statement is subject to cancellation. If any partnership fails to file the statement of renewal, the secretary of state shall cancel the initial statement and shall mail notice of the cancellation to the last address of the principal executive office as recorded in the office of the secretary of state.
7. A partnership shall notify the secretary of state in writing upon a change in address of the partnership's principal executive office. A statement of renewal filed by the secretary of state which reflects a change of address of the principal executive office of the partnership may serve as a notice under this subsection.
8. a. The secretary of state shall charge and collect a fee for:
    (1) Filing a statement under this section, one hundred dollars.
    (2) Filing an amendment under this section, forty dollars.
    (3) Filing a cancellation under this section, twenty-five dollars.
    (4) Filing a renewal under this section, forty dollars.
    (5) Filing a request to reserve a partnership name, ten dollars.
    (6) Filing a notice of transfer of a reserved partnership name, ten dollars.
    (7) Filing a cancellation of reserved partnership name, ten dollars.
    (8) Filing a statement of conversion or abandonment of conversion, fifty dollars and:
        (a) If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
        (b) If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
    (9) Filing a statement of merger, fifty dollars.
    (10) Any record submitted for approval before the actual time of submission for filing, half of the fee provided in this section for filing the record.

   b. The officer responsible for recording transfers of real property may collect a fee for recording a statement.

45-13-06. (106) Law governing internal relations.

1. Except as otherwise provided in subsection 2, the law of the jurisdiction in which the principal executive office of the partnership is located governs relations among the partners and between the partners and the partnership.
2. The law of this state governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

45-13-07. (107) Partnership subject to amendment or repeal.

A partnership governed by chapters 45-13 through 45-21 is subject to any amendment to or repeal of chapters 45-13 through 45-21.