

Partnership: Dissociation, Buyout, Dissolution

FL Statutes §620.8601 Events causing partner's dissociation.—A partner is dissociated from a partnership upon the occurrence of any of the following events:

- (1) The partnership having notice of the partner's express will to immediately withdraw as a partner or withdraw on a later date specified by the partner;
- (2) An event agreed to in the partnership agreement causing the partner's dissociation;
- (3) The partner's expulsion pursuant to the partnership agreement;
- (4) The partner's expulsion by a unanimous vote of the other partners if:
 - (a) It is unlawful to carry on the partnership business with such partner;
 - (b) There has been a transfer of all or substantially all of such partner's transferable interest in the partnership other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;
 - (c) Within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of the corporate partner's charter or the corporate partner's right to conduct business; or
 - (d) A partnership that is a partner has been dissolved and its business is being wound up;
- (5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:
 - (a) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;
 - (b) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under s. 620.8404; or
 - (c) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
- (6) The partner's:
 - (a) Becoming a debtor in bankruptcy;
 - (b) Executing an assignment for the benefit of creditors;
 - (c) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of such partner or of all or substantially all of such partner's property; or
 - (d) Failing, within 90 days after appointment, to have vacated or have stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;
- (7) In the case of a partner who is an individual:
 - (a) The partner's death;
 - (b) The appointment of a guardian or general conservator for the partner; or
 - (c) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;
- (8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by

reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

FL Statutes § 620.8602 Partner's power to dissociate; wrongful dissociation.—

(1) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to s. 620.8601(1).

(2) A partner's dissociation is wrongful only if:

(a) It is in breach of an express provision of the partnership agreement; or

(b) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

1. The partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under s. 620.8601(6)-(10) or wrongful dissociation under this subsection;

2. The partner is expelled by judicial determination under s. 620.8601(5);

3. The partner is dissociated by becoming a debtor in bankruptcy; or

4. In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because the partner willfully dissolved or terminated.

(3) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

FL Statutes § 620.8603 Effect of partner's dissociation.—

(1) If a partner's dissociation results in a dissolution and winding up of the partnership business, ss. 620.8801-620.8807 apply; otherwise, ss. 620.8701-620.8705 apply.

(2) Upon a partner's dissociation:

(a) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in s. 620.8803;

(b) The partner's duty of loyalty under s. 620.8404(2)(c) terminates; and

(c) The partner's duty of loyalty under s. 620.8404(2)(a) and (b) and duty of care under s. 620.8404(3) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to s. 620.8803.

FL Statutes § 620.8701 Purchase of dissociated partner's interest.—

(1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under s. 620.8801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2).

(2) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under s. 620.8807(2) if, on the date of dissociation, the

assets of the partnership were sold at a price equal to the greater of the liquidation value of the assets or the value of the assets based upon a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of such date. Interest must be paid from the date of dissociation to the date of payment.

(3) Damages for wrongful dissociation under s. 620.8602(2), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(4) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under s. 620.8702.

(5) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (3).

(6) If a deferred payment is authorized under subsection (8), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (3), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by subsection (5) or subsection (6) must be accompanied by the following:

(a) A statement of partnership assets and liabilities as of the date of dissociation;

(b) The latest available partnership balance sheet and income statement, if any;

(c) An explanation of how the estimated amount of the payment was calculated; and

(d) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (3), or other terms of the obligation to purchase.

(8) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and shall bear interest.

(9) A dissociated partner may maintain an action against the partnership, pursuant to s. 620.8405(2)(b)2., to determine the buyout price of that partner's interest, any offsets under subsection (3), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within 1 year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (3), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (8), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable

attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (7).

FL Statutes § 620.8702 Dissociated partner's power to bind and liability to partnership.—

(1) For 1 year after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under ss.

620.8911-620.8923, is bound by an act of the dissociated partner which would have bound the partnership under s. 620.8301 before dissociation only if, at the time of entering into the transaction, the other party:

- (a) Reasonably believed that the dissociated partner was then a partner;
- (b) Did not have notice of the partner's dissociation; and
- (c) Is not deemed to have had knowledge under s. 620.8303(4) or notice under s. 620.8704(4).

(2) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (1).

FL Statutes § 620.8703 Dissociated partner's liability to other persons.—

(1) A partner's dissociation does not, by itself, discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (2).

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to any other party to a transaction entered into by the partnership, or a surviving partnership under ss. 620.8911-620.8923, within 1 year after the partner's dissociation only if the partner is liable for the obligation under s. 620.8306 and, at the time of entering into the transaction, the other party:

- (a) Reasonably believed that the dissociated partner was then a partner;
- (b) Did not have notice of the partner's dissociation; and
- (c) Is not deemed to have had knowledge under s. 620.8303(4) or notice under s. 620.8704(4).

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

620.8704 Statement of dissociation.—

(1) A dissociated partner or the partnership may file a statement of dissociation stating:

- (a) The name of the partnership as identified in the records of the Department of State.
- (b) That the partner is dissociated from the partnership.

(2) A statement of dissociation may be filed without regard to the provisions of s. 620.8105(4) if it states that no partnership registration statement has been filed with the Department of State.

(3) A statement of dissociation is a limitation on the authority of a dissociated partner for

purposes of s. 620.8303(4) and (5).

(4) For purposes of ss. 620.8702(1)(c) and 620.8703(2)(c), a person who is not a partner is deemed to have notice of the dissociation 90 days after a statement of dissociation is filed.

History.—s. 13, ch. 95-242; s. 14, ch. 99-285.

FL Statutes § 620.8705 Continued use of partnership name.—

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not, by itself, make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

620.8801 Events causing dissolution and winding up of partnership business.—A

partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under s. 620.8601(2)-(10), of such partner's express will to withdraw as a partner, or withdraw on a later date specified by the partner;

(2) In a partnership for a definite term or particular undertaking:

(a) Within 90 days after a partner's dissociation by death or otherwise under s. 620.8601(6)-(10) or wrongful dissociation under s. 620.8602(2), the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to s. 620.8602(2)(b)1. constitutes the expression of that partner's will to wind up the partnership business;

(b) The express will of all of the partners to wind up the partnership's business; or

(c) The expiration of the term or the completion of the undertaking;

(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(4) An event which makes it unlawful for all or substantially all of the business of the partnership to be continued, provided, a cure of the illegality, within 90 days after notice to the partnership of the event, is effective retroactively to the date of the event for purposes of this section;

(5) On application by a partner, a judicial determination that:

(a) The economic purpose of the partnership is likely to be unreasonably frustrated;

(b) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with such partner; or

(c) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(a) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(b) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.