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# **2017 Texas Statutes**

## **BUSINESS ORGANIZATIONS CODE**

### **TITLE 4 - PARTNERSHIPS**

#### **CHAPTER 152 - GENERAL PARTNERSHIPS**

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CHAPTER 152. GENERAL PARTNERSHIPS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 152.001. DEFINITIONS. In this chapter:

(1) "Event of withdrawal" or "withdrawal" means an event specified by Section 152.501(b).

(2) "Event requiring a winding up" means an event specified by Section 11.051 or 11.057.

(3) "Foreign limited liability partnership" means a partnership that:

(A) is foreign; and

(B) has the status of a limited liability partnership pursuant to the laws of the jurisdiction of formation.

(4) "Other partnership provisions" means the provisions of Chapters 151 and 154 and Title 1 to the extent applicable to partnerships.

(5) "Transfer" includes:

- (A) an assignment;
- (B) a conveyance;
- (C) a lease;
- (D) a mortgage;
- (E) a deed;
- (F) an encumbrance; and
- (G) the creation of a security interest.

(6) "Withdrawn partner" means a partner with respect to whom an event of withdrawal has occurred.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 152.002. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE AND VARIABLE PROVISIONS. (a) Except as provided by Subsection (b), a partnership agreement governs the relations of the partners and between the partners and the partnership. To the extent that the partnership agreement does not otherwise provide, this chapter and the other partnership provisions govern the relationship of the partners and between the partners and the partnership.

(b) A partnership agreement or the partners may not:

- (1) unreasonably restrict a partner's right of access to books and records under Section 152.212;
- (2) eliminate the duty of loyalty under Section 152.205, except that the partners by agreement may identify specific types of activities or categories of activities that do not violate the duty of loyalty if the types or categories are not manifestly unreasonable;
- (3) eliminate the duty of care under Section 152.206, except that the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(4) eliminate the obligation of good faith under Section 152.204(b), except that the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(5) vary the power to withdraw as a partner under Section 152.501(b)(1), (7), or (8), except for the requirement that notice be in writing;

(6) vary the right to expel a partner by a court in an event specified by Section 152.501(b)(5);

(7) restrict rights of a third party under this chapter or the other partnership provisions, except for a limitation on an individual partner's liability in a limited liability partnership as provided by this chapter;

(8) select a governing law not permitted under Sections 1.103 and 1.002(43) (C); or

(9) except as provided in Subsections (c) and (d), waive or modify the following provisions of Title 1:

(A) Chapter 1, if the provision is used to interpret a provision or to define a word or phrase contained in a section listed in this subsection;

(B) Chapter 2, other than Sections 2.104(c)(2), 2.104(c)(3), and 2.113;

(C) Chapter 3, other than Subchapters C and E of that chapter; or

(D) Chapters 4, 5, 10, 11, and 12, other than Sections 11.057(a), (b), (c) (1), (c)(3), (d), and (f).

(c) A provision listed in Subsection (b)(9) may be waived or modified in a partnership agreement if the provision that is waived or modified authorizes the partnership to waive or modify the provision in the partnership's governing documents.

(d) A provision listed in Subsection (b)(9) may be waived or modified in a partnership agreement if the provision that is modified specifies:

(1) the person or group of persons entitled to approve a modification; or

(2) the vote or other method by which a modification is required to be approved.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 104, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 23 (S.B. 859), Sec. 3, eff. September 1, 2015.

Sec. 152.003. SUPPLEMENTAL PRINCIPLES OF LAW. The principles of law and equity and the other partnership provisions supplement this chapter unless otherwise provided by this chapter or the other partnership provisions.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 152.004. RULE OF STATUTORY CONSTRUCTION NOT APPLICABLE. The rule that a statute in derogation of the common law is to be strictly construed does not apply to this chapter or the other partnership provisions.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 152.005. APPLICABLE INTEREST RATE. If an obligation to pay interest arises under this chapter and the rate is not specified, the interest rate is the rate specified by Section 302.002, Finance Code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

#### SUBCHAPTER B. NATURE AND CREATION OF PARTNERSHIP

Sec. 152.051. PARTNERSHIP DEFINED. (a) In this section, "association" does not have the meaning of the term "association" under Section 1.002.

(b) Except as provided by Subsection (c) and Section 152.053(a), an association of two or more persons to carry on a business for profit as owners creates a partnership, regardless of whether:

(1) the persons intend to create a partnership; or

(2) the association is called a "partnership," "joint venture," or other name.

(c) An association or organization is not a partnership if it was created under a statute other than:

(1) this title and the provisions of Title 1 applicable to partnerships and limited partnerships;

(2) a predecessor to a statute referred to in Subdivision (1); or

(3) a comparable statute of another jurisdiction.

(d) The provisions of this chapter govern limited partnerships only to the extent provided by Sections 153.003 and 153.152 and Subchapter H, Chapter 153.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 152.052. RULES FOR DETERMINING IF PARTNERSHIP IS CREATED. (a) Factors indicating that persons have created a partnership include the persons':

(1) receipt or right to receive a share of profits of the business;

(2) expression of an intent to be partners in the business;

(3) participation or right to participate in control of the business;

(4) agreement to share or sharing:

(A) losses of the business; or

(B) liability for claims by third parties against the business; and

(5) agreement to contribute or contributing money or property to the business.

(b) One of the following circumstances, by itself, does not indicate that a person is a partner in the business:

(1) the receipt or right to receive a share of profits as payment:

(A) of a debt, including repayment by installments;

(B) of wages or other compensation to an employee or independent contractor;

(C) of rent;

(D) to a former partner, surviving spouse or representative of a deceased or disabled partner, or transferee of a partnership interest;

(E) of interest or other charge on a loan, regardless of whether the amount varies with the profits of the business, including a direct or indirect present or future ownership interest in collateral or rights to income, proceeds, or increase in value derived from collateral; or

(F) of consideration for the sale of a business or other property, including payment by installments;

(2) co-ownership of property, regardless of whether the co-ownership:

(A) is a joint tenancy, tenancy in common, tenancy by the entirety, joint property, community property, or part ownership; or

(B) is combined with sharing of profits from the property;

(3) the right to share or sharing gross returns or revenues, regardless of whether the persons sharing the gross returns or revenues have a common or joint interest in the property from which the returns or revenues are derived; or

(4) ownership of mineral property under a joint operating agreement.

(c) An agreement by the owners of a business to share losses is not necessary to create a partnership.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 152.053. QUALIFICATIONS TO BE PARTNER; NONPARTNER'S LIABILITY TO THIRD PERSON. (a) A person may be a partner unless the person lacks capacity apart from this chapter.

(b) Except as provided by Section 152.307, a person who is not a partner in a partnership under Section 152.051 is not a partner as to a third person and is not liable to a third person under this chapter.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 152.054. FALSE REPRESENTATION OF PARTNERSHIP OR PARTNER. (a) A false representation or other conduct falsely indicating that a person is a partner with another person does not of itself create a partnership.

(b) A representation or other conduct indicating that a person is a partner in an existing partnership, if that is not the case, does not of itself make that person a partner in the partnership.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 152.055. AUTHORITY OF CERTAIN PROFESSIONALS TO CREATE PARTNERSHIP. (a) Persons licensed as doctors of medicine and persons licensed as doctors of osteopathy by the Texas Medical Board, persons licensed as podiatrists by the Texas State Board of Podiatric Medical Examiners, and persons licensed as chiropractors by the Texas Board of Chiropractic Examiners may create a partnership that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners.

(b) When doctors of medicine, osteopathy, podiatry, and chiropractic create a partnership that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner.

(c) The Texas Medical Board, the Texas State Board of Podiatric Medical Examiners, and the Texas Board of Chiropractic Examiners continue to exercise regulatory authority over their respective licenses.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 388 (S.B. 679), Sec. 2, eff. June 1, 2017.

Sec. 152.0551. PARTNERSHIPS FORMED BY PHYSICIANS AND PHYSICIAN ASSISTANTS. (a) Physicians licensed under Subtitle B, Title 3, Occupations Code, and physician assistants licensed under Chapter 204, Occupations Code, may create a partnership to perform a professional service that falls within the scope of practice of those practitioners.

(b) A physician assistant may not be a general partner or participate in the management of the partnership.

(c) A physician assistant may not contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the partnership.

(d) The authority of each practitioner is limited by the scope of practice of the respective practitioner. An organizer of the entity must be a physician and ensure that a physician or physicians control and manage the entity.

(e) Nothing in this section may be construed to allow the practice of medicine by someone not licensed as a physician under Subtitle B, Title 3, Occupations Code, or to allow a person not licensed as a physician to direct the activities of a physician in the practice of medicine.

(f) A physician assistant or combination of physician assistants may have only a minority ownership interest in an entity created under this section. The ownership interest of an individual physician assistant may not equal or exceed the ownership interest of any individual physician owner. A physician assistant or combination of physician assistants may not interfere with the practice of medicine by a physician owner or the supervision of physician assistants by a physician owner.

(g) The Texas Medical Board and the Texas Physician Assistant Board continue to exercise regulatory authority over their respective license holders according to applicable law. To the extent of a conflict between Subtitle B, Title 3, Occupations Code, and Chapter 204, Occupations Code, or any rules adopted under those statutes, Subtitle B, Title 3, or a rule adopted under that subtitle controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 782 (H.B. 2098), Sec. 2, eff. June 17, 2011.

**Sec. 152.056. PARTNERSHIP AS ENTITY. A partnership is an entity distinct from its partners.**

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

#### SUBCHAPTER C. PARTNERSHIP PROPERTY

**Sec. 152.101. NATURE OF PARTNERSHIP PROPERTY.** Partnership property is not property of the partners. A partner or a partner's spouse does not have an interest in partnership property.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.