

FIDUCIARY DUTIES UNDER FLORIDA RUPA

620.8103 Effect of partnership agreement; nonwaivable provisions.--

(1) Except as otherwise provided in subsection (2), relations among partners and between partners and a partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this act governs relations among partners and between partners and a partnership.

(2) The partnership agreement may not:

(a) Vary the rights and duties under s. 620.8105 except to eliminate the duty to provide copies of statements to all of the partners;

(b) Vary the law applicable to a limited liability partnership under s. 620.8106(2);

(c) Unreasonably restrict the right of access to books and records under s. 620.8403(2) or to information under s. 620.8403(3);

(d) Eliminate the duty of loyalty under s. 620.8404(2) or s. 620.8603(2)(c), 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;

(e) Unreasonably reduce the duty of care under s. 620.8404(3) or s. 620.8603(2)(c);

(f) Eliminate the obligation of good faith and fair dealing under s. 620.8404(4), 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;

(g) Vary the power to dissociate as a partner under s. 620.8602(1), except to require the notice under s. 620.8601(1) to be in writing;

(h) Vary the right of a court to expel a partner under the events specified in s. 620.8601(5);

(i) Vary the requirement to wind up the partnership business in cases specified in s. 620.8801(4), (5), or (6); or

(j) Restrict rights of third parties under this act.

620.8404 General standards of partner's conduct.--

(1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care, as set forth in subsections (2) and (3).

(2) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(a) To account to the partnership and hold as trustee for the partnership any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the

appropriation of a partnership opportunity;

(b) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(c) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(3) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A partner shall discharge the duties to the partnership and the other partners under this act or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A partner does not violate a duty or obligation under this act or under a partnership agreement merely because the partner's conduct furthers the partner's own interest.

(6) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction, the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(7) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.