

362.1-103 Effect of partnership agreement -- Nonwaivable provisions.

- (1) Except as otherwise provided in subsection (2) of this section, 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, this subchapter governs relations among the partners and between the partners and the partnership.
- (2) The partnership agreement shall not:
 - (a) Vary the rights and duties under KRS 362.1-105 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 KRS 362.1-403(2) or unreasonably restrict the right to information KRS 362.1-403(3);
 - (c) Eliminate the duty of loyalty under KRS 362.1-404(2) or 362.1-603(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;
 - (d) Unreasonably reduce the duty of care under KRS 362.1-404(3) or 362.1-603(2)(c);
 - (e) Eliminate the obligation of good faith and fair dealing under KRS 362.1-404, 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 KRS 362.1-602(1), except to require the notice under KRS 362.1-601(1) to be in writing;
 - (g) Vary the right of a partner or the partnership to seek a partner's expulsion by judicial determination or vary the right of a court to expel a partner in the events specified in KRS 362.1-601(5);
 - (h) Vary the requirement to wind up the partnership business in cases specified in KRS 362.1-801(4), (5), or (6); or
 - (i) Vary the law applicable to a limited liability partnership under KRS 362.1-106(2); or
 - (j) Vary the liabilities and remedies under KRS 362.1-405 to a greater extent than variations are in fact made under this section in the substantive rights in the partnership agreement giving rise to the partner claims at issue.
- (3) If a written partnership agreement contains a provision to the effect that any amendment to the partnership agreement must be in writing and adopted in accordance with the provisions of the partnership agreement, that provision shall be enforceable in accordance with its terms, and any agreement among the partners

concerning the partnership which is not in writing and adopted in accordance with the provisions of the partnership agreement shall not be part of the partnership agreement.

- (4) A partnership agreement may provide that the interest of any partner who fails to make any contribution that the partner is obligated to make or who otherwise violates an obligation undertaken in the partnership agreement shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting partner's proportionate interest in the partnership, subordinating the partner's interest to that of nondefaulting partners, a forced sale of that interest, forfeiture of his or her interest, the lending by other partners of the amount necessary to meet the defaulting partner's commitment, a fixing of the value of his or her interest by appraisal or by formula and redemption or sale of the interest in the partnership at such value, or other penalty or consequence.
- (5) A partnership agreement may provide rights to any person, including a person who is not a partner or not otherwise a party to the partnership agreement, to the extent set forth therein.
- (6) No partner or other person shall have a vested property right resulting from any provision of a partnership agreement which may not be modified by its amendment or as otherwise permitted by law.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 133, sec. 51, effective July 15, 2010. -- Created 2006 Ky. Acts ch. 149, sec. 3, effective July 12, 2006.