

**362.2-110 Effect of partnership agreement -- Nonwaivable provisions.**

- (1) Except as otherwise provided in subsection (2) of this section, the partnership agreement governs relations among the partners and between the partners and the partnership. 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 a limited partnership's power under KRS 362.2-105 to sue, be sued, and defend in its own name;
  - (b) Vary the law applicable to a limited partnership under KRS 362.2-106;
  - (c) Vary the requirements of KRS 362.2-204;
  - (d) Vary the information required under KRS 362.2-111 or unreasonably restrict the right to information under KRS 362.2-304 and 362.2-407, but the partnership agreement may provide a different location for the maintenance of the books and records, and impose reasonable limitations on the availability and use of information obtained under those sections, and may define appropriate remedies, including liquidated damages, for a breach of any reasonable limitation on use;
  - (e) Eliminate the duty of loyalty under KRS 362.2-408, but the partnership agreement may:
    1. Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and
    2. Specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
  - (f) Unreasonably reduce the duty of care under KRS 362.2-408(3);
  - (g) Eliminate the obligation of good faith and fair dealing under KRS 362.2-305(2) and 362.2-408(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;
  - (h) Vary the power of a person to dissociate as a general partner under KRS 362.2-604(1), except to require that the notice under KRS 362.2-603(1) be in a record;
  - (i) Vary the right of a court to decree dissolution in the circumstances specified in KRS 362.2-802;
  - (j) Vary the requirement to wind up the partnership's business as specified in KRS 362.2-803;
  - (k) Unreasonably restrict the right to bring an action under KRS 362.2-1001 to 362.2-1005; or
  - (l) Restrict the right of a partner under KRS 362.2-1110(1) to consent to a merger or conversion or the right of a general partner under KRS 362.2-1110(2) to consent to an amendment to the certificate of limited partnership which

deletes a statement that the limited partnership is a limited liability limited partnership.

- (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:
  - (a) Reducing or eliminating the defaulting partner's proportionate interest in the partnership;
  - (b) Subordinating the partner's interest to that of nondefaulting partners;
  - (c) A forced sale of that interest;
  - (d) Forfeiture of his or her interest;
  - (e) The lending by other partners of the amount necessary to meet the defaulting partner's commitment;
  - (f) 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
  - (g) 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 certificate of limited partnership or 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. 60, effective July 15, 2010. -- Created 2006 Ky. Acts ch. 149, sec. 89, effective July 12, 2006.