Partnerships

A partnership is an association of two or more persons to carry on as co-workers a business for profit.

A partnership is an entity. It can sue or be sued, it can hold title to property and it can file for bankruptcy.

Characteristics of partnership include:

- The sharing of profits and losses
- Joint ownership of the property of the partnership
- Equal rights to manage the business

Formation of a partnership

A written agreement is not necessary to form a partnership, however it is advised.

A partnership agreement clearly sets out the understanding of the parties. Key points to include in a partnership agreement include:

- The name of the business
- Principal place of business
- The term of the agreement
- Capital contribution
- Profits and Losses
- Management

Term

The term refers to the length of the partnership

The partnership could be for a specific project, thus ending at the completion of the project.

Or, the partnership could be for a specific length of time.

Failure to state a term means the partnership is “at will.” This means that the partnership continues as long as the partners want it to. It can end at any time by agreement of the partners. In an at will partnership partners can leave at any time for any reason without liability.

Capital Contribution

This is the initial money that each partner contributes to start the business.

People can start a partnership business with unequal capital contributions, yet still be entitled to an equal share of the profits and losses. It is implied that the parties to a partnership share profits and losses equally unless the agreement states otherwise.

Profits and Losses

This describes how profits and losses will be shared among the partners.

As stated in the previous slide it is presumed in a partnership that all the partners are going to share profits and losses equally unless otherwise stated. This is true no matter what role the person plays in the partnership; no matter how much or how little money the person initially contributed to the business, and no matter how much or how little the person works.

Management

This clarifies the management of the partnership.

- Each of the partners has equal rights to run and manage the partnership.
- Partners often meet and vote on important issues.
- If the decision to be made is one that “significantly affects the nature of the partnership,” then the decision would require unanimous partnership agreement.

Partnership acts requiring unanimity

These acts require every partner’s consent.

- Altering the essential nature of the firm’s business
- Admitting new partners
- Assigning partnership property for the benefit of creditors
- Disposing of the partnership’s goodwill
- Confessing a judgment
- Undertaking an act that interferes with the partnership’s business
- Amending the partnership agreement

Duties of partners to the partnership

Partners are agents of the partnership and of each other. As is true of all agents, partners have fiduciary duties.

- The duty of loyalty
- The duty of obedience (to carry out the rightful requests of the majority of the partners)
- The duty to exercise reasonable care and diligence
- The duty to notify the partnership of any facts relevant to the partnership
- The duty to make an accounting to the partnership of any benefits derived from conducting partnership business as well as any expenses incurred on the partnership's behalf.

Rights of the partners

As stated previously, partners have equal rights to run and manage the partnership. They also have the right to the following.

•The right to inspect the books, meaning the accounting ledgers of the business.

•Property rights. This means that property that is acquired by or in the name of the partnership is the property of the partnership and does not belong to an individual partner.

* Partner do NOT have the right to compensation. Partners serve without compensation for their services unless the partnership agreement provides otherwise. Instead, partners are paid by taking a draw from the partnership's profits.

Limits on partners' ability to define their rights and obligations

Partners are generally free to define their obligations to each other and to the partnership agreement, but some acts are forbidden by law. The Uniform Partnership Act prohibits the following.

- Unreasonable restricting the right of partners to access partnership books and records
- Eliminating the duty of loyalty
- Eliminating the duty of care or the obligation of good faith owed by each partner to the partnership
- Restricting the rights of third parties under the act
- Unilaterally binding the partnership to a contract that assigns the partnership property for the benefit of creditors, disposes of the partnership's goodwill, or confesses a judgment.

Partners' Liabilities

One of the main reasons people do not form partnerships is because of the strict rules of liability.

- If a partner commits a tort while going about the partnership business then the partnership is liable.

- If a partner commits a tort and there are not enough partnership assets to pay for the damages, each partner will be liable out of his/her personal assets.

Partners' Liabilities

Partners are NOT liable when:

- Another partner enters into a contract without any type of authority
- Another partner commits a tort while outside the scope of partnership business.
- Generally when a tort committed by a partner is unrelated to partnership business.

Dissociation of a partnership

When a partnership between people ends it is known as dissociation. There are a number of ways in which a partner can be dissociated from the partnership.

- If a partnership is at will a partner can leave at any time for any reason.
- If a partner commits an egregious offense the other partners may expel that partner from the partnership if the partnership agreement provides for this scenario or by unanimous vote or by a judicial determination.
- Once a partner dissociates he or she is no longer liable for the contracts or torts of the partnership. The partnership must give notice of a partner’s dissociation to third parties.

Winding up

After dissociation, a partnership enters a winding up phase.

During this time, the partners may continue to carry out business that is reasonable necessary to complete contracts in progress and to otherwise bring business affairs to an orderly close.

Even after dissociation and winding up, partners retain unlimited personal liability for partnership debts. If the assets of a dissolved partnership are insufficient to cover partnership debts, creditors of the partnership can sue partners individually or jointly.