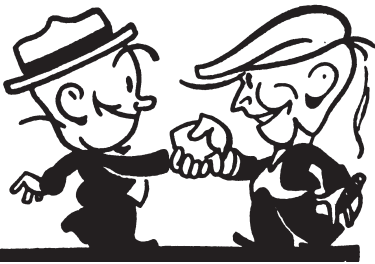


# PARTNERSHIP LAW CHART

- I. *What is a partnership and how is it formed?*
- II. *What are the rights and liabilities of partners?*
- III. *What occurs upon dissociation of a partner or dissolution of a partnership?*

## I. What is a partnership and how is it formed?



### A. Defined

A partnership is a legal entity of an association of two or more people who own a business for profit. Partners may establish their own partnership agreement, but the

Revised Uniform Partnership agreement provides rules that govern in the absence of an agreement. A partnership may own property and be sued either in a joint or individual capacity.

- Partnership capital is the amount contributed by each partner to the partnership.
- Partnership property is the property owned by the partnership. Property is presumed to be partnership property if it was purchased with partnership funds and the partnership's name appears in the title to the property.

### B. How Formed

A partnership may be formed by an express or implied agreement (no writing is required) if the parties intend to act as co-owners of a business. Courts may look to how the property is held, sharing of profits and how parties describe their relationship or hold themselves out to others in determining if a partnership was intended.

- New partner requires unanimous consent of all partners.
- Partnership must be formed for a legal purpose.
- A non-partner who holds herself out to be a partner will be held liable to third parties who rely on her representation; a partner who holds another person out as his or her partner is liable to third parties on an agency theory.

### C. Characteristics

Each partner may transfer his/her interest in the partnership, including any profits and/or property owned by the partnership. Each partner is also liable for losses of the partnership. However, a partner cannot sell her status as a partner to another without the unanimous agreement of all partners.

- Transfer of a partner's interest only entitles assignee to receive distributions from the partnership. Assignee does not thereby become a partner.
- A creditor may seek a judgment against a partner's interest.

## II. What are the rights and liabilities of partners?

### A. Rights of Partners

Each partner has the right to:

- participate in business decisions, which are decided by majority vote unless matter is outside the partnership's ordinary course of business (unanimous vote required)
- receive indemnification for costs reasonable incurred
- inspect partnership's books
- sue another partner for breach of the partnership agreement or breach of the duty of loyalty or duty of care toward the partnership
- right to withdraw from the partnership by providing written notice
- seek dissolution of the partnership
- settlement of partnership account upon dissolution

### B. Partner's Fiduciary Duty

**Duty of Loyalty:** Each partner owes the other a duty of loyalty. This includes the duty not to compete, to account for all profits and property of the partnership and to not in a manner adverse to the interest of the partnership.

**Duty of Care:** A partner owes a duty of care to the partnership, and must not commit intentional or negligent acts which cause harm to the partnership.

### C. Liabilities of Partners:

**1) Liability for Acts of Another Partner:** Each general partner is bound by the act of another partner if it is in the ordinary course of the partnership or business of the kind performed by the partnership unless:

- the partner had no authority to act on behalf of the partnership and
- the person dealing w/ the partner knew or received notification that the partner was without authority.

\* A partner may act with actual or apparent authority. Actual authority exists where the partner's authority is

based on the partnership agreement or a vote by the partners. Apparent authority is the authority a third party would believe a partner would have in the ordinary course of a partnership.

**2) Liability to Third Parties:** Each partner is jointly and severally liable for all contracts entered into by the partnerships and torts committed by any partner or employee of the partnership. A new partner is not liable for obligations prior to his or her becoming a partner, while an outgoing partner remains liable for acts after he leaves the partnership unless the obligation is resolved or there is a release signed.

**3) Liability for Crimes:** Unlike corporations, partnerships are not liable for crimes. A partner is not liable for the crimes committed by another partner unless he was a principal or accessory to the crime.

**4) Limited Liability Partnerships (LLP):** A partner in an LLP is not personally liable for the partnership's debts or obligations, or another partner's torts or wrongdoing. The partnership must file a statement of qualifications and use the words "LLP" in its name.



**5) Limited Partnership:** A limited partnership has both general and limited partners. A limited partner is only liable for the capital he or she invested in the partnership, and shares in profits according to his or her contribution. Requirements:

- The limited partnership must comply with statutory requirements, which usually include the filing of a certificate of limited partnership, having an agent to receive service of process and keeping its partnership records in the state.
- Limited partner has the right to vote on specific matters, inspect records and bring a derivative action if the general partners do not do so or request would be futile.
- Limited partner's name is not included in partnership name and the partnership must identify itself as a limited partnership.
- Limited partner must give 6 months notice to other partners of withdrawal from partnership.

**NOTE:** A limited partner may incur liability for partnership obligations by participating in the control of the business, where the person dealing w/ the limited partner reasonably believes limited partner is a general partner. A person who mistakenly believe he is a limited partner can avoid partner liability if he files a certificate of limited partnership upon learning of the mistake.

### III. What occurs upon dissociation of a partner or dissolution of a partnership?

**A. Dissociation of Partner: A partner may become dissociated with the partnership by:**

- withdrawing
- expulsion by vote of other partners or court order
- partner's bankruptcy
- death or incapacity
- appointment of a receiver
- termination of business entity that is a partner

A partner who is dissociated is entitled to be bought out for his interest in the business, and is entitled to indemnification of any partnership debts or liabilities.

**Liability for Dissociated Partner:** A partnership can be bound by the acts of a dissociated partner within 2 years of dissociation if 1) the act would have bound the partnership prior to the partner's dissociation; 2) the other parties reasonably believed the dissociated partner was a partner and had no notice of the dissociation.

**Liability to Other Parties:** Dissociated partner may still be held liable for partnership debts two years after dissociating if the transacting party reasonably believed the dissociated partner was still a partner and had no notice of the dissociation.

**NOTE:** Dissociated partner can avoid liability by filing a notice of dissociation with the state, and all parties are deemed to have notice w/i 90 days of filing.

**B. Dissolution of Partnership: A partnership may be dissolved by:**



- withdrawal, if partnership may be dissolved at will
- expiration of the term
- written consent of all the parties
- w/i 90 days of partner's death, at least 1/2 of the partners vote for dissolution
- occurrence of an event that makes partnership illegal or terminates partnership

- court order
- partnership continues until partnership is "wound up"

**Right of Partner to Request Dissolution:** Partner may seek court order declaring that purpose of partnership is frustrated or it is not reasonable practicable to continue partnership or that the business set forth in the partnership agreement can no longer be carried out.

Liability of Partners After Dissolution: A partner can still be held liable for acts committed after dissolution if the person dealing w/ the partner did not have notice of the dissolution. Partners wishing to avoid liability can file a statement of dissolution with the state, and all parties are deemed to have notice w/i 90 days of filing.

Distribution of Assets: Partnership assets are distributed to creditors first, then to general, limited and former partners to satisfy any debts owed, and to general and limited partners to repay initial contributions, and then to all partners, who share in any remaining profits or property.