

Pros and Cons of Partnerships

By Liliana Parker

A partnership is similar to a sole proprietorship with the major difference that it requires at least two members. There is no limitation to the number of partners, and a partnership can be set up for a specific length of time, for a specific project or until one of the partners dies or leaves.

A partnership legally can be formed as either a corporation or a limited liability partnership, but if you prefer to not take this route until the business is better established, the best thing to do is to write a partnership agreement.

Partnerships are a common route taken between friends, relatives or spouses. Since it has been demonstrated that partners inevitably face problems over the years, it is highly recommended to have a partnership agreement to avoid legal decisions that might adversely affect one or more partners.

If you don't have this agreement, a partnership will be ruled by the Uniform Partnership Act. This treats all the partners equally, which means that if one of the parties gives more money, that particular partner won't be compensated according to his or her contribution or it will be more difficult for one of the partners to receive a monetary compensation for his or her work.

This document doesn't need to be public, but you must file a certificate of partnership either at a local or a state level.

Partnerships usually use the names of the partners, but you can use another name which will be considered as an assumed or fictitious name. You must register the chosen name with the county office.

The paperwork for a partnership for income tax purposes is basically the same as the sole proprietorship but marginally more complex. If one partner signs a contract without the consent of the other partners, the partnership is responsible for it. If a legal situation arises, all the members are liable.

A partnership doesn't protect its partners against personal liability for all business debts and court judgments related to the business, but these can be protected against most risks by carrying adequate liability insurance or registering your partnership with the North Carolina Secretary of State as a Limited Liability Partnership.

Each partner should be knowledgeable about the affairs of the partnership and should have in mind loyalty and fairness in everything related to it. For example, it would be an obvious conflict of interest if one of the partners leaves the partnership to start a similar business that would represent a potential

competitor.

In a partnership there are partners who are considered passive investors, which is often the case in the real estate world. In this case, any loss from the partnership is treated as a passive loss for that partner, which means that for federal income taxes the loss can be deducted only from other passive income, not from ordinary income.

When you write the agreement, keep in mind the following aspects: name; terms; purpose of the business; cash, service and property contributions; profits, losses, draws and salaries; management responsibilities; partners' outside business activities; contingencies for departure or death of a partner; value of the shares; valuation and payments to a departing partner; continuity of the partnership, noncompetition of a departing partner; control of partnership name, resolving partnership disputes; and changes to the agreement.

If you would like to read the Spanish version of this article, visit www.wcof.org. Liliana Parker is a business consultant with the Women's Center of Fayetteville and owner of Amiga Communications, Marketing & Consulting. You can contact her at: lparker@wcof.org or (910) 323-3377.