

PREVIEW

1. A Partnership agreement sets forth in writing the rights and obligations of the co-owners of a partnership.

2. The Texas Uniform Partnership Act [RS Art 6132(b) § 6, 6A] defines a partnership as an association of two or more persons to carry on as co-owners of a business for profit. Pursuant to various sections of this statute, every partner is jointly and severally liable for the obligations of the partnership as well as for the wrongful acts of partners in the course of partnership business. There is, of course, no centralized management and no entrance of new partners without the consent of all the partners. Dissolution occurs in a general partnership at the end of a fixed term, or, in the absence of an agreement to the contrary, upon the death, bankruptcy, withdrawal or expulsion of a partner.

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Checklist Matters to be considered when drafting a general partnership agreement

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1. Full name and address of each partner,
2. Marital status of each partner,
3. Partnership's name,
4. Purpose or business of partnership,
5. Partnership's duration,
 - a. Date the partnership will commence.
 - b. Statement of whether partnership is to continue for specified period or until dissolved by agreement or other act of the partners.
6. Place of business, including principal place of business, and, if appropriate, other places of operation,
7. Capital contributions,
 - a. Amount required for the partnership to commence business,
 - b. Amount and type of capital to be contributed by each partner,
 - c. Description of any property other than money that is to be contributed by each partner,
 - d. Manner in which property other than money is to be valued,
 - e. Time when contributions are to be made,
 - f. Arrangement for partners to loan cash or property to the partnership.
8. Right to make withdrawals from capital,
9. Partner's right in a specific partnership asset or property, including the right to transfer his or her interest to a third person,
10. Acquisition and valuation of assets, including good will,
11. Transfer of license and insurance policies, etc.,
12. Assumption of debt and liabilities when an existing business is taken over by the partnership,

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11. Manner of taking title to partnership assets,
 12. Ownership of intellectual property including inventions and patents,
 13. Manner in which profits and losses are to be divided or shared,
 14. Indemnity and contribution between partners,
 15. Minimum amount of time that each partner must devote to the partnership, including reasonable restrictions against engaging in outside business activities,
 16. Description of duties and services to be rendered by each partner,
 17. Requirement for bonding the partners,
 18. Salaries, drawing accounts, and partner's expenses, including provisions as to vacations and leaves of absence,
 19. How management is to be shared, whether by a managing partner, managing committee or majority or other vote of partners,
 20. Elements of management and control, including responsibility for and authority to sign checks, make purchases, pay expenses, execute conveyances and leases, obtain insurance, and hire and discharge employees,
 21. Maintenance of funds, including designation of depository and establishment of reserve funds,
 22. Accounting, including inventory, establishment of the fiscal year, designation of accounting basis, keeping and inspection of books, and periodical audits,
 23. Restrictions on the powers of the individual partners, including the assumption of suretyship or similar obligations, including but not limited to lending and borrowing money, making purchases, conducting transactions with third persons, and compounding and discharging debts,
 24. Settlement of disputes by arbitration, majority vote of partners, or other method,
 25. Method of giving notice to partners,
 26. Admission of new partners, including whether consent of the other partners must be obtained,
 27. Procedure for withdrawal or retirement of partners

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28. Provision for continued use of the partnership name on death or retirement of a partner or on sale of the business,

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29. Restrictions on activities of a partner after withdrawal or retirement, including use of tradenames and trade secrets and engagement in competitive activities,

30. Manner of liquidating a retired partner's partnership interest,

31. Manner in which partnership clients are to be distributed on withdrawal or retirement of a partner,

32. Notice that must be given by a partner of his or her intention to withdraw from the partnership,

33. Grounds for and method of removal or expulsion of a partner, as well as the termination of his or her interest and continuation or dissolution of the firm,

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34. Effect of death of a partner and whether there should be a continuation or dissolution of the firm, or an incorporation,

35. Effect of illness, incompetency, insanity, or other disability of a partner, including insurance to be acquired for such occurrence and how premiums to be paid,

36. Purchase or other disposition and valuation of a partner's interest, including good will, on his or her withdrawal, retirement, removal, expulsion, or death,

37. Voluntary dissolution, including method for dissolution and provision for distribution of assets,

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38. Liquidation proceedings on dissolution,

39. Amendment of the partnership agreement, and

40. Signatures and, if desired, notarization.

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NOTICE:

THIS AGREEMENT, IS SUBJECT TO ARBITRATION IN ACCORDANCE WITH TEXAS LAW.

This Partnership Agreement is made and entered into on _____, by and between [name], and [name], whose addresses and interests in the partnership are listed in Exhibit "A" attached to this Agreement and made a part of this Agreement (collectively, "Partners").

1. PARTNERSHIP ORGANIZATION

1.1 The partnership is created with [number] partners, all of whom have signed this agreement and have listed their addresses on the final page of this agreement.

a. These parties agree to remain partners until the termination or dissolution of this partnership agreement except for those authorized changes in partners provided for in Section 5, Change of Partners.

1.2 The name of the partnership will be _____, and a fictitious name statement will be filed as required by the laws of the State of Texas.

1.3 The principal place of doing business for the partnership will be located at [address].

a. The principal place of business may be changed at any time by a favorable vote of the partners representing a majority of the outstanding partnership interests.

1.4 The specific purpose of the partnership will be to engage in the commercial enterprise of _____.

a. The general purpose of the partnership will be to establish, purchase, lease as lessee, or otherwise acquire, to own, operate, and maintain, and to sell, mortgage, deed in trust, lease as lessor, and otherwise dispose of any and all business sites.

b. Additionally, the general purposes shall include buying, selling, trading, manufacturing, dealing in, and dealing with goods, wares, and merchandise of every kind and nature, and carrying on business as wholesalers, retailers, importers, and exporters; acquiring all merchandise, supplies, materials, and other articles as may be necessary or incidental to the execution of the business.

1.5 The term of the partnership will be for _____ years, commencing on _____ and terminating on _____, unless sooner terminated by operation of law or under a provision of this agreement, or unless extended by subsequent agreement of the partners.

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2. BUSINESS CAPITAL

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2.1 The partners agree to contribute cash and/or property to their partnership capital account, as described in Exhibit "_____", which is attached to this agreement, on or before [date].

2.2 The failure of any partner to make the contribution required by the above date will result in such a partner being expelled as a partner.

2.3 Each partner will also contribute _____ Dollars (\$_____) to the partnership capital reserve account on or before [date].

2.4 Each partner may be assessed an additional proportionate amount to supplement his or her capital account. This additional contribution will be required if the total of all of partners' capital accounts falls below _____ Dollars (\$_____) and remains below that level for a period of _____ month.

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2.5 Any additional contributions will be deposited in the contributing partner's capital account.

2.6 A capital account will be maintained by the partnership for each partner and will include the original capital contributions by the partner and any additional capital that the partner is required to contribute to the partnership. This account will be used to determine any required repayment of capital.

2.7 A capital reserve account will be established in [name of bank], located at [address] in the name of the partnership.

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2.8 The account will be established from contributions made by the partners. This account will be maintained and utilized by the partnership only for purposes of partnership capital improvement programs. All interest earned on this account will remain in this account for use for capital improvements.

2.9 At the conclusion of each fiscal year, the partnership will repay from the gross profits, if any, prior to any calculation of the distribution of net profits, _____ percent (_____%) of the original capital contributions made by the partners.

2.10 This repayment will continue until the partnership has completely repaid the partners for their original contributions.

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3. EARNINGS OF PARTNERS

3.1 None of the partners will receive any salary from the partnership for services rendered to the partnership. All compensation to the partners will be based on a division of partnership profits among the partners.

3.2 The net profits or losses earned by the partnership during the fiscal year will be divided among the partners as provided in Exhibit "_____", which is attached to this agreement.

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3.3 The profits or losses will be calculated within _____ days after the close of the fiscal year and the payment of the profits due to each partner will then be credited to that partner's drawing account.

3.4 The losses will be apportioned among the partners and the net annual partnership loss will be repaid from the individual capital accounts of each partner within _____ days after notice of the apportionment.

3.5 The partnership will establish a drawing account for each partner in the [designate bank], located at [address].

3.6 The drawing accounts will be originally established from capital contributed to the partnership by the partners, but will be supplemented by earnings of the partnership after the original deposits. The drawing accounts of each partner will be established based on the monthly limits specified in Exhibit " _____," attached to this agreement.

3.7 Each partner will be entitled to draw out a monthly total equal to or less than his or her monthly limit. The limits established for each partner is based on that partner's proportionate share in the profits and losses of the partnership.

3.8 Each monthly deposit made by the partnership to a partner's drawing account will be charged against that partner's pro rata share of the profits at the conclusion of the partnership's fiscal year.

3.9 Each partner will be entitled to retire from the partnership on attaining the age of _____, and will be required to retire from the partnership on attaining the age of _____.

3.10 On retirement, that partner will receive _____ percent (_____%) of his or her monthly draw for the remainder of his or her life. If the partner has not completed the required number of years of partnership status, on attaining the ages indicated, the partner will be entitled or required to retire but at only _____ percent (_____%) of his or her monthly draw.

3.11 The partnership will pay an incentive bonus to the partners out of the gross annual partnership receipts. The bonus will be based on the increase in the annual gross receipts over the gross receipts of the preceding year, adjusted to account for inflation.

3.12 Partners will proportionately divide a bonus of _____ percent (_____%) if the adjusted gross income increase is _____ Dollars (\$_____) or less, a bonus of _____ percent (_____%) if the increase is between _____ Dollars (\$_____) and _____ Dollars (\$_____), and a bonus of _____% (_____%) if the increase exceeds _____ Dollars (\$_____).

3.13 Each partner will be entitled to take a _____-week annual vacation each year during the years that he or she has been a partner at least one and less than _____ years, and _____ weeks of annual vacation each year after the completion of _____ year as a partner.

3.14 A partner will be entitled to his or her full draw during this vacation period.

3.15 Each partner will be entitled to _____ days sick leave each year at no loss of contribution to his or her drawing account. Any sick leave taken in excess of the _____ days will result in a [one–twentieth] reduction in contribution to the partner's drawing account for each additional day of the partner's absence.

3.16 Each partner will be entitled to _____ days family leave or the minimum amount allowed by law, each year at no loss of contribution to his or her drawing account.

3.17 Holidays. Each partner will be entitled to take a paid holiday from partnership activities for each of the following days: [list designated holidays].

3.18 The partnership will purchase a group life and health insurance policy under which each partner will be insured. The life insurance will provide for a death benefit of [number] times the partner's annual draw, and will provide both double indemnity for accidental death and one-half face value of insurance for dismemberment.

3.19 The health policy will provide insurance for medical, surgical, dental and drug needs of partners, and the insurer will pay _____ percent (_____%) on the cost, with the partner to pay the balance.

3.20 The partnership will establish a reserve account at [name of bank], located at [address],.

a. This account will be created and maintained by a deposit of _____ percent (_____%) of the gross business profits being made to the account annually.

3.21 The partnership will pay annual bonuses and retirement benefits to the partners from this account.

4. CONDUCT OF BUSINESS

4.1 Each partner will be responsible to contribute his or her full time and skill to the operation of the partnership business, and to be actively engaged in those areas of the partnership for which he or she is principally responsible. The management of the partnership business affairs will be established at the regular meetings of the partners.

4.2 Partners will hold regular partnership meetings on the [first] Tuesday of the month or as the case may be] at [address] for the purpose of planning, implementing, reviewing, or modifying established business management procedures and policies.

4.3 Any partner may call a special meeting of all partners for any purpose on giving _____ days' prior written notice of the meeting. The notice must provide information as to the time, place, and agenda for the meeting.

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4.4 There shall be a total of _____ votes for all partners, with each partner having a number of votes in proportion to his or her interest in the partnership.

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4.5 A simple majority of total eligible partnership votes will be required to pass any measure pertaining to the partnership's affairs except those pertaining to merger, reorganization, dissolution, capital improvement programs that exceed _____ Dollars (\$_____).

4.6 A majority of _____% (_____%) of the total eligible partnership votes will be required on the matters of merger, reorganization, dissolution, or capital improvements over the specified amount.

4.7 In addition to the contribution of time and skill required of each partner in the operation of the partnership, the partners are assigned additional functions, as follows: [define the individual partnership functions]

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4.8 Partners may also transact any business, negotiate, contract, or represent the partnership in any manner for the benefit of the partnership, except as specifically prohibited by Paragraph 21.

4.9 No partner will enter into any contract which obligates the partnership for _____ Dollars (\$_____) or more without the prior approval of a majority in interest of partners.

4.10 No partner will act as a guarantor, surety, or indemnitor on any obligation that could result in a liability for the partnership without the prior written consent of _____ percent (_____%) of the voting shares of the partnership.

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3. CHANGE OF PARTNERS

5.1 Any partner may withdraw from the partnership on giving each of the remaining partners at least _____ days' prior written notice of his or her intentions to withdraw. The withdrawal will become effective on the termination of the _____ day notice.

5.2 When a partner withdraws, his or her share will be determined by evaluating the worth of the partnership, and the withdrawing partner will be paid the following:

a a cash payment within _____ days for the value of his or her unrepaid capital contributions, plus _____ percent (_____%) interest on such contributions,

b a cash payment in _____ equal installments, one each _____ month, commencing _____ days after the close of the current fiscal year for his or her interest in the current year's profits, and

c an annual cash payment _____ days after the close of each fiscal year for the partner's share of receipts from the business obtained prior to his or her withdrawal but completed after withdrawal.

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d. Any annual fiscal losses of the partnership or draws by the withdrawing partner prior to the withdrawal will be deducted from these funds.

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5.3 The retirement of a partner is provided for in this Agreement. The remaining partners will purchase the share of a retiring partner and either distribute these shares to the remaining partners or sell the share to a new, incoming partner, at the discretion of a majority of the remaining partners.

5.4 A partner may be expelled from the partnership on _____ days' prior written notice resulting from an affirmative vote representing _____ percent (_____%) on the balance of the partnership interest for any of the following:

a. conduct adversely affecting the public reputation of the partnership

b. personal insolvency or bankruptcy, or

c. a breach of the terms or conditions of this agreement.

d. Any partner expelled for one of the above reasons will immediately lose all interest in any present or future partnership profits or income, and will only be entitled to receive as compensation the reimbursement of his or her unrepaid capital contributions plus _____ percent (_____%) interest on such contributions.

5.5 During any period that a partner may be temporarily incapacitated due to illness or injury, the partnership will be entitled to engage whatever personnel assistance it deems necessary to assist in the operation of the partnership business.

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a. The incapacitated partner will be entitled to receive a full share of all partnership disbursements for any period of incapacity not exceeding _____ days, and _____ percent (_____%) of the share for any period of temporary incapacity exceeding _____ days.

5.6 A partner who is permanently disabled due to accident, sickness, or injury will immediately cease to be entitled to any share of the partnership business, profits, or losses, except as provided below, and will withdraw as a partner.

a. A permanently disabled partner will be entitled to receive _____ percent (_____%) of his or her normal share of the business profits until his or her death, at which time such partner's estate will not be entitled to any additional proceeds from the partnership.

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5.7 The death of a partner will immediately terminate all right, title, and interest that such partner has in the partnership, its business, profits, or losses.

a. The deceased partner's share of the partnership will be established based on his or her date of death, and such partner's estate will be reimbursed by a cash payment representing:

b. the total of the decedent's capital contribution to the partnership,

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- c. his or her share of the net profits or losses for the current fiscal year to the date of death,
- d. his or her share of the current business at the date of death, and
- e. deducting therefrom any draw that the decedent had taken during the current fiscal year and any indebtedness of the decedent to the partnership.

5.8 New partners may be added to the partnership in one of two ways:

- a. A new partner may enter the partnership by invitation from the existing partners,

or

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- b. by purchase of a deceased, retiring, withdrawing, or disabled partner's interest.
- c. An invitation to a new partner may be extended on a vote of existing partners representing _____ percent (_____%) of the outstanding interests in the partnership.
- d. After extending the invitation, the candidate will be interviewed at a meeting of all partners, after which each partner may offer his or her comments. A final vote will then be conducted for admittance of the candidate. An affirmative vote of _____ percent (_____%) of the voting interest will be required.
- e. Where a partnership interest is to be sold to a third party by a partner leaving the business, a partnership meeting will be conducted to determine the acceptability of the proposed purchaser prior to consummation of the sale.
- f. A _____ percent (_____%) vote for approval will be required.
- g. If the prospective purchaser is not found acceptable to the remaining partners, the partnership will purchase the interest at the price offered plus _____ percent (_____%), and resell the interest to a candidate acceptable to the remaining partners.
- h. A new partner must acknowledge his or her understanding of this agreement and an intention to comply with its provisions by his or her endorsement on the signature page of the agreement.

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6. FINANCIAL ORGANIZATION

6.1 The partnership's fiscal year will commence on [date], and terminate on [date], each year.

6.2 All accounting, auditing, and financial statements will be prepared to support the partnership fiscal year, and the annual report will be completed within _____ days after the close of such fiscal year.

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6.3 The partnership will employ a certified public accounting firm to maintain all books of account. The accounting firm will institute the accounting system that it selects and will prepare all the necessary ledgers, accounts, financial statements, and balance sheets.

6.4 All books of account will be maintained at the offices of the partnership, and will be open for an inspection by any partner at any reasonable time.

6.5 The partnership will have its books of account and accounting records maintained on a [designate basis] accounting basis by the accounting firm.

6.6 This basis will not be changed unless the change is approved by a vote of at least _____ percent (_____%) of the partnership interest.

6.7 At the completion of each fiscal year, the books of account and fiscal records of the partnership will be audited by a firm to be selected by the partners.

6.8 The selection will not be delegated to the firm that does the normal accounting for the partnership, and the audit must be completed independently from the activities of the accounting firm.

6.9 The audit will be completed within _____ days after the close of the partnership's fiscal year.

6.10 All gains or losses realized by the partnership from the appreciation or depreciation of the capital contributions, as established under guidelines published by the Internal Revenue Service, will be allocated on a pro rata basis at the close of each fiscal year to the partners' capital accounts.

6.11 The partnership will establish a general business bank account in [name of bank], located at [address].

6.12 All partnership receipts will be deposited in this account and all partnership and partners' business expenses will be paid from this account.

7. TERMINATION AND DISSOLUTION

7.1 Upon either termination or dissolution of the partnership, a valuation of the partnership will be made. The valuation will be made based on an appraisal of the business, including real and personal property, receivables, and inventory, and deducting therefrom the total of the unpaid capital contributions and other outstanding business obligations.

7.2 The appraisal will be conducted by an independent appraiser, selected by partners representing a majority of the partnership interests.

7.3 If the appraisal figures are not acceptable, the matter will be subjected to arbitration as provided in Paragraph 42.

7.4 There will be no purchase of any partnership interest by any partner or by any third party on termination or dissolution of the partnership either by operation of law or by a decision of the necessary majority of partners.

7.5 Any partner or third party desiring to reorganize the partnership must purchase the entire partnership on termination or dissolution. The assets of the partnership will be distributed to the partners on a pro rata basis if the total partnership is not purchased.

7.6 The partnership will terminate on the expiration of the term of this agreement or by operation of law.

7.7 A notice of termination will be issued _____ days prior to the scheduled termination date, and _____ days will be allotted for winding up the present partnership business activity.

7.8 The partnership will be dissolved on a vote of partners representing _____ percent (_____%) of the total interest of the partnership.

7.9 A _____ day written notice of intent to dissolve the partnership will be furnished to all partners and to all debtors, creditors, and customers.

7.10 A committee consisting of _____ partners, to be elected at a special meeting of the partners by a vote of partners representing _____ percent (_____%) of the total interest, will conduct the activities necessary to wind up the business of the partnership. This activity will be completed within _____ days.

7.11 The individual members of the committee will be entitled to receive _____ Dollars (\$ _____) each for their services in winding up the affairs of the partnership.

8. NOTICES, ARBITRATION, AND LEGALITY OF AGREEMENT

8.1 All notices to the partners either required by this agreement or given at the election of a partner will be in writing, and may be delivered to the partners personally or may be deposited in the United States mail, postage pre-paid, addressed to the partners at their mailing addresses provided on the signature page of this agreement.

8.2 It is agreed that disputes arising under this agreement, or under any instrument made to carry out the terms of this agreement, shall be submitted to arbitration in accordance with Texas law.

[Name], of [address] and [name], of [address] will serve as arbitrators.

8.3 These two individuals will select a third party to serve with them on all matters submitted for arbitration. The decisions of the majority of arbitrators will be binding.

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8.4 A partner will not assign any rights in the partnership to any other partner or to a third party without the prior written consent of the other partners representing _____ percent (_____%) of the partnership interest.

8.5 If the interest of any partner is assigned to a third party, that party will not be a new or acting partner, but will only be entitled to a proportionate share of the partnership profits or losses.

8.6 Each of the separate provisions of this agreement shall be read and interpreted separately. A question regarding the illegality or constitutionality of any one paragraph or part of a paragraph will not affect any other paragraph.

8.7 If any part of this agreement is determined to be illegal, unlawful, or unconstitutional, then the specific paragraph or part so determined will be severed from this agreement and the balance of this agreement will remain in full force and effect.

8.8 Texas law shall govern the interpretation and operation of this agreement. The parties agree that this partnership is created in Texas and bound by Texas Law.

8.9 Venue for all matters to be judicially determined will be in _____ County, Texas.

Signed on _____.

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Partner

Partner

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