

Partnerships

Purpose

- ◆ Association of two or more persons (individuals, corporations, partnerships, LLCs, unincorporated associations) as co-owners to carry on a business for profit
- ◆ Joint Ventures are typically general partnerships established by two or more individuals or business entities for a specific purpose
- ◆ Two types of partnerships include general partnership with two or more general partners and limited partnership with one or more general partners and one or more limited partners

Organization: General Partnership

- ◆ Two or more general partners are required
- ◆ Must file a Partnership Certificate in Clerk's office
- ◆ Must file Fictitious Name Certificate in Clerk's office
- ◆ Must comply with state and local business licenses as applicable
- ◆ Usually a written partnership agreement detailing how the business will be operated, how profits and losses are allocated, and how termination and 'winding up' will be handled

Organization: Limited Partnerships

- ◆ One or more general partners plus one or more limited partners who (1) does not want to manage the business and (2) who wants to limit his liability (passive investor)
- ◆ Must file a Partnership Certificate in Clerk's office
- ◆ Must file Fictitious Name Certificate in Clerk's office
- ◆ Must comply with state and local business licenses as applicable
- ◆ Usually a written partnership agreement

Control

- ◆ Absent agreement, Partners have equal vote in management and control
- ◆ Absent agreement, Partners share equally in profits and losses
- ◆ Limited partners cannot actively participate in management

Duration

- ◆ Duration set forth in partnership agreement
- ◆ No statutory limit on duration of a partnership
- ◆ May be dissolved by law (1) when one partner wants out (absent agreement); (2) death of partner; (3) bankruptcy of partner

Liability: General Partnership

- ◆ General partner is liable for the partnership's debts
- ◆ General partnership liable for any wrongful action of partners to extent of partnership assets
- ◆ General partners jointly and severally and personally liable for the wrongful acts of any partner acting in ordinary course of business and for all partnership debts
- ◆ Need good malpractice insurance!

Liability: Limited Partnership

- ◆ Partnership itself and general partners liable same as general partnership
- ◆ Limited partners generally have no liability beyond the amount of their contribution to the partnership

Transfer of Interests

Governed by partnership agreement

Absent agreement, no new partner may be admitted without unanimous consent of remaining partners

Tax Treatment

Controlled by Subchapter K of the Internal Revenue Code

Partnership does not pay taxes, but only files return showing how profits and losses were allocated

Partners pay taxes based on their respective shares of profits and losses

Advantages

Flexible form of entity

Limited partners are similar to shareholders (i.e. limited liability and no management)

General partnerships allow all partners to participate freely in management

Pass through tax advantages

Commonly accepted business entity with lots of case law

Disadvantages

Two or more entities are required to form a partnership

Limited partners cannot actively participate in management of business

All general partners have unlimited exposure for partnership liabilities