6-07/220.00 Partnerships

• 6-07/220.10 General Partnerships

A general partnership is a form of business entity in which two or more co-owners engage in business for profit. (CORP 16202(a)) General partnerships are governed by the Uniform Partnership Act of 1994 (CORP 16100). A partnership is an entity distinct from its partners. (CORP 16201)

A general partnership has the following characteristics of a separate legal entity:

It can own property in the name of the partnership. (CORP 16203, 16204, 16302(a)(1))

It can sue and be sued in the partnership name. (CCP 369.5; CORP 16307(a))

One or more partners may buy out other partners rather than automatically dissolve the partnership. (CORP 16701-16705)

A general partnership is simply a form of co-ownership by several persons. The partners jointly own the business assets and, except in a limited liability partnership, are personally liable for all business debts. (CORP 16306(a))

A partnership agreement normally provides for the distribution of profits and losses disproportionately. In the absence of agreement, profits are shared equally after repayment of contributions to the partnership. (CORP 16401(b)) Each general partner risks the partners personal assets for debts and obligations of the partnership business. Each is jointly and severally liable to the partnership creditors. (CORP 16306(a)) Each general partner is deemed an agent of the partnership in dealings with third persons when carrying on partnership business. (CORP 16301(1)) Each partner may be jointly and severally liable for tortious acts committed by a copartner in the ordinary course of partnership business, including misapplication of another's money or property. (CORP 16305, 16306) Although the partners may agree among themselves to share losses or pay debts in differing proportions, third persons are not bound by those agreements. A creditor of the partnership is entitled to recover in full from any one or more of the partners, who would then be entitled to indemnification from the other partner according to the partnership agreement. (CORP 16401(b),(c))

As co-owners, each general partner has an equal right to participate in management and control of the business. Disagreements as to matters in the ordinary course of partnership business are decided by a majority of the partners. Disagreements over extraordinary matters and amendments to the partnership agreement require consent of all partners. (CORP 16103(a), 16401(f),(j))

No partner has the right to receive compensation for services performed for the partnership, unless the partners agree otherwise by written agreement or conduct. (CORP 16401(h)) Unless

otherwise provided by the partnership agreement, no one can become a partner without the consent of all existing partners. (CORP 16401(i))

A partner may assign the partner's share of the profits and losses and right to receive distributions (transferable interest.) (CORP 16502, 16503(a)) And a partner's judgment creditor may obtain an order charging the partner's transferable interest to satisfy the judgment and may also obtain any other appropriate orders, including appointment of a receiver. (CORP 16504) A foreclosing purchaser acquires only the debtor partner's interest in the partnership, i.e., the debtor's share of partnership profits.

The purchaser obtains no right to specific partnership property or to participate in managing partnership business. (CORP 16503, 16504)

A partnership at will is dissolved by the express will to dissolve of at least half of the partners. (CORP 16801(1)) A partnership for a definite term or particular undertaking is dissolved before expiration of the term or completion of the undertaking by the express will of all partners or after 90 days following a partner's death, bankruptcy or wrongful dissociation unless a majority of the partners agree to continue the partnership. (CORP 16601(6)-(10), 16801(2)) Other grounds for dissolution are set forth in CORP 16801(3)-(6) relating to circumstances that make continuation of the partnership unlawful or impracticable. Events of dissociation that do not cause dissolution nevertheless trigger a mandatory buy-out. (CORP 16601, 16602, 16701)

No special formalities are required to form a general partnership, which may be created by an oral agreement.

A joint venture is a general partnership, but is typically a business formed to undertake a particular transaction or project rather than one intended to continue indefinitely. Joint ventures are commonly used in real estate matters when two or more persons or entities may form a joint venture to develop a specific parcel of property. A partnership for a definite term or particular undertaking is distinguished from a partnership at will (all other general partnerships) in that dissolution of a partnership for a definite term or particular undertaking requires the assent of all partners, while a partnership at will may be dissolved if only half of the partners so desire. (CORP 16801(1), (2)(B))

• 6-07/220.20 Limited Partnership

A limited partnership is comprised of one or more general partners who manage the business and who are personally liable for partnership debts, and one or more limited partners who contribute capital and share in the profits, but who normally take no part in running the business and who incur no liability with respect to partnership obligations beyond their capital contribution. The purpose of a limited partnership is to encourage passive investors to invest in the enterprise, allowing them to reap a share of the profits if it succeeds, but without risking more than the capital contributed. (Evans v. Galardi 16 CA 3d 300) Limited Partnerships are governed by the Uniform Limited Partnership Act of 2008 (CORP 15900 – 15912.07) A limited partnership is an entity distinct from its partners. (CORP

15901.04)

Except as otherwise provided by law or agreement, the general partners of a limited partnership are subject to the same liabilities as partners of a general partnership, i.e., joint and several liability for all debts and obligations of the partnership. (CORP 15904.04) Every general partner is an agent of the limited partnership and may thus bind the partnership in matters concerning partnership business. Although general partners are jointly and severally liable to third parties, they are not liable to limited partners for another general partner's misdeeds unless they participated in the wrongdoing or negligently permitted it to occur. (CORP 15904.02)

The limited partner is primarily a passive investor, and normally is not active in the management and control of the business on a day-to-day basis but has the right to information, reports, accountings, to inspect partnership records, and to attend partnership meetings. (CORP 15904.07) A limited partner is normally not liable for partnership debts, the limited partner's liability being limited to the partner's investment in the partnership. However, a limited partner who participates in control of the partnership business may be held personally liable to creditors who actually knew of such participation at the time of extending credit and who, based on the limited partner's conduct, reasonably believed the limited partner to be a general partner. (CORP 15903.03)

A limited partner has the right to assign his or her interest in whole or part to a third person. But such assignment merely transfers the right to receive distributions from the partnership. It does not entitle the assignee to become substituted as a limited partner, unless the partnership agreement expressly so provides or all partners consent. The partnership agreement may also impose restrictions on the transferability of the limited partners' interests. (CORP 15901.02)

A limited partnership comes into existence upon filing of a certificate of limited partnership with the Secretary of State. (CORP 15902.01, 15902.02) The certificate must state the name of the limited partnership, street address of the designated office, name and address for the agent for service of process, name and address of each partner, the mailing address of the limited partnership if different from the designated office.

• 6-07/220.30 Limited Liability Partnership

Accountants, attorneys, and architects may operate as a limited liability partnership (LLP), is a hybrid form of a general partnership and a corporation. The partners can all participate in management (as in a general partnership) and yet share only limited liability (as in a limited partnership). Architects, lawyers and accountants cannot operate as a limited liability company but, so long as they satisfy a statutory security for claims requirement, may register their general partnership as a limited liability partnership. A limited liability partnership is a general partnership of architects, attorneys or accountants that elects to be treated as a limited liability partnership by registering as such with the Secretary of State. (CORP 16951-16962) A limited liability partnership is preferable to a professional corporation because partners are protected from vicarious liability, can operate more informally and flexibly than in

a corporation, and enjoy partnership tax benefits.

Each partner is liable only for his personal misconduct or guarantees. (CORP 16306(c)) However, the limited liability partnership must provide security for malpractice claims. (CORP 16956 (a))

Accounting limited liability partnerships may provide the necessary security as covered by CORP 16956 (a) (1) (A) – (D).

Law firm limited liability partnerships may provide the necessary security as covered by CORP 16956 (a) (2) (A) – (D).

Architect limited liability partnerships may provide the necessary security as covered by CORP 16956 (a) (3) (A) – (D).

A domestic partnership, other than a limited partnership, may convert to a registered limited liability partnership by the vote of the partners possessing a majority of the interests of its partners in the current profits of the partnership or by a different vote as may be required in its partnership agreement. (CORP 16955)

Conversion to a limited liability partnership will not provide partners retroactive relief from vicarious liability for any partnership debts or obligations incurred or arising out of events occurring prior to attaining Limited liability partnership status. (CORP 16306)

A limited liability partnership registers by filing a written statement with the Secretary of State setting forth the name and principal office address of the partnership, the name and address of its agent for service of process in California, a brief statement of the partnership business, and a statement that the partnership is registering as a registered limited liability partnership. (CORP 16953)

A registered limited liability partnership need not comply with the fictitious business name statute, but must include "limited liability partnership" or another acceptable limited liability partnership designation as the last words or letters of its name. (CORP 16952, 16961, BPC 17900)