

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))
