

Partnership/LLC/Corporation Agreement Checklist

1. General Information

- a. Names and addresses of partners
- b. Name of entity
 - i. Has it been registered as a fictitious name?
- c. Address of entity
 - i. Registered agent
 - ii. Primary business location
 - iii. Other business locations
- d. Type of business
 - i. Service, manufacturing, etc.
- e. Names and addresses of non-owner managers or executives
- f. Names and addresses of accountant(s)

2. Formation Issues

- a. Is the entity continuing an existing business or starting a new business?
 - i. Will there be a merger or acquisition of assets and/or liabilities?
- b. What assets are being transferred at formation?
 - i. Money, property, real property, intellectual property, etc.
 - ii. Liabilities
 - iii. Contracts and obligations
 - iv. List all
 - 1. Bank accounts
 - 2. Property holdings
 - 3. Rights against third parties
 - a. Contracts, rights of suit, etc.
- c. Special allocations of profits and losses
 - i. See IRC § 704 regarding partners' distributive share of income/losses
- d. Operating Capital
 - i. Contributed capital vs. loans
 - 1. From third parties
 - 2. From owners
 - ii. Terms of capital
 - 1. Preferential payment to owners
 - a. Using preferential payments will void a Subchapter S election
 - 2. Terms of loans
- e. Benefits plans for owners and employees

- i. ACA-required plans
- ii. ERISA plans
 - 1. Health care
 - 2. Retirements
- iii. Profit sharing and phantom equity

3. Ownership Agreement Terms

- a. Purpose of entity
 - i. Specific or specific plus any allowed by law
- b. Does the entity need a tax matters partner/member?
- c. When may owners see the books and records of the entity?
 - i. Can they see more than just books and records?
 - ii. What request process and timeline is necessary?
- d. Restrictions on transfer
 - i. May an owner transfer his/her interest freely?
 - 1. Buy-sell agreement
 - 2. 'Veto' power by other owners
 - 3. Come-along agreements
 - 4. Clawback clauses
 - 5. Rights on termination of ownership interest
 - a. Can partner be forced to transfer interest
 - ii. Terms of transaction – if there is a buy/sell or similar arrangement
 - 1. Who pays for interest – owners or entity?
 - 2. Sale price
 - a. Third party offer match
 - b. Pricing set annually by owners
 - c. Fair Market Value set by owners or third party appraiser
 - d. Length of time for payment
 - i. Interest rate payable if payment is over time
 - ii. Note, confession of judgement, clawback, etc.
 - e. Suspension or alteration of payments to accommodate operating cash flow of entity
- e. Control of enterprise
 - i. Managing owner(s)
 - 1. Powers of manager(s)
 - ii. Voting

1. Quorum
 2. Events requiring votes
 3. Proxy
 - iii. Vetoes of owners on:
 1. Sale or transfer of assets
 2. Hiring or employees
 3. Transactions
 - a. over a specified amount
 - b. of a certain nature
 - iv. Prohibited actions by manager/officers
 - v. May owners withdraw and when/how
 1. Do any have specific and necessary skills/relationships that must remain with entity?
 - vi. How and when to call meetings
 1. Annual meetings
 2. Special meetings
 - vii. If actions of managers/officers not approved, but time passes for veto or vote, are they automatically ratified?
- f. Compensation
- i. Distribution of profits and losses
 - ii. Payment for services of owners
 1. Are separate employment agreements necessary?
 - iii. Payment for administrative services (management, etc.)
 - iv. If a pass-through entity, does entity have obligation to distribute at least the amount each owner must pay in K-1 taxes each year?
- g. Indemnification
- i. Do managers/officer/directors need indemnity for business to function?
 - ii. Do owners need to avoid indemnity to reduce risk/maintain accountability?
 - iii. Which way does it flow – managers/officers to owners or reverse or both?
- h. Special licensing
- i. Does the business perform professional licensed services requiring it to register as a PC or PLLC?
- i. Term of the entity
- i. Is it perpetual?
 - ii. Does it survive an owner leaving/dying/bankruptcy/insolvency?

1. Do remaining owners have option to let it dissolve or continue?
 - iii. If not perpetual – when does it end (date, condition, event, etc.)?
 - j. Restrictive covenants
 - i. Noncompete/nonsolicit/confidentiality
 1. Easier to enforce if related to sale of business than if related to straight employment
 - ii. Effective during term of entity?
 - iii. Effective after owner leaves?
 1. Do owners ‘take’ business/employees/clients with them?
 - iv. Geographic and temporal scope
 - v. Penalties for breach of restrictive covenants
 - k. Dispute resolution
 - i. Mediation
 - ii. Arbitration
 - iii. Jurisdiction
 - iv. Choice of law
 - v. Injunctive relief (i.e. for restrictive covenants)
 1. Is a bond required?
 - vi. Attorneys’ fees and costs for enforcement
 - l. Winding up
 - i. How is accounting performed and any payments and distributions made?
 - ii. Who makes them?
 1. Are they paid to wind up?