

**POINTS TO BE CONSIDERED IN PLANNING A  
PARTNERSHIP AGREEMENT**  
**(Including Limited Liability Corporations or Partnerships with more  
than one principal)**

A) FORMATION

- 1) Name of the Partnership.
- 2) Description of the nature of the Partnership.
- 3) State of incorporation.
- 4) Form of the Partnership entity (LLC, LLP, etc.).
- 5) Duration of the Partnership – number of years or until dissolved.
- 6) Location of the Office.

B) FINANCIAL

- 6) The fiscal year of the Partnership.
- 7) Capital contribution of each partner.
- 8) Will partners make additional capital contributions? Will these contributions be required on a call basis? How will you account for this contribution and the respective interests of each partner? Will this accounting be different if the financial condition of the Partnership has materially changed since the initial contributions?
- 9) The level at which the Capital Accounts of the partners must be maintained and an agreement regarding amount of retained earnings, if any, to be used for operational purposes.
- 10) Participation of each partner in profits and losses (percentage).
- 11) Salaries, if any, to be paid to partners and whether or not these salaries are to be treated as expenses in determining distributable profits.
- 12) The amounts of or conditions under which drawings may be made against profits.
- 13) Whether or not interest is to be paid on the partners' debit or credit balances in the account(s), and is so at what rate or index.
- 14) Where the Partnership cash is to be deposited and who may sign checks and/or binds the Partnership to third parties (vendors, subcontractors, etc.).
- 15) Whether or not all partners shall have access to the Books of Account.
- 16) Whether the accounts will be kept on a cash (when payment is received) or accrual basis (when payment is earned), and if on the cash basis, the method of compensating the partner who withdrew or retired for income realized on services rendered, but not invoiced at the time of their withdrawal or retirement, or income streams which have been developed but not yet realized.

C) PARTNERSHIP STRUCTURE

- 17) Duties, responsibilities and sphere of activities of each partner.
- 18) Will voting rights be reflective of percentage interest?
- 19) Buy or sell agreement between partners.
- 20) Amount of time to be contributed by each partner. If the time commitment changes, how will that affect the Partnership/salaries of the partners?
- 21) Prohibition of outside business activities by partners, which would be in

competition with the Partnership.

- 22) Who is to be the managing partner and whose decisions will prevail in case of a tie or dispute?
- 23) Will the partners be required to use alternative dispute resolutions mechanisms prior to or in lieu of litigation?
- 24) Procedure for admitting a new partner.
- 25) A method of admitting junior partners without capital if such a procedure is to be considered desirable.

#### D) MATERIAL CHANGES IN PARTNERSHIP CIRCUMSTANCES

- 26) Method of determining the value of goodwill in the business, in case of dissolution of the Partnership for any reason.
- 27) Method of liquidating the interest of a deceased or retiring partner.
- 28) Is there an age at which a partner must withdraw from active participation and arrangements made for adjusting his or her salary and equity.
- 29) Whether or not surviving partners shall have the right to continue using the name of a deceased or withdrawing partner in the Partnership name.
- 30) Period of time or geographic location in which a retiring or withdrawing partner may not engage in a competing business.
- 31) The basis for expulsion of a partner, method of notification of expulsion and the disposition of any losses that arise from the delinquency of such a partner.
- 32) How will the protracted disability of a partner be handled?
- 33) Under what circumstances limited partners may be accepted into the firm, and, if so, who shall be designated as the general or managing partner.

#### E) PROTECTION OF THE PARTNERSHIP

- 34) Indemnification of the Partnership by each partner in the event a pre-existing or independent claim arises against a partner.
- 35) Prohibition of partners pledging, selling, hypothecating, or in any manner transferring their interest in the Partnership except to other partners.
- 36) Identification of any material contracts or agreements affecting the liability or operation of the Partnership.
- 37) Insurance to be maintained by the Partnership (business, director, liability, key man) and if so amounts and beneficiaries.

Information provided by Stacy Kohn Schreiber, Esq.