



Missouri

Ag Law Brief

General Partnerships

Every business owner made a decision regarding the type of business entity they would use when they started their business. That decision may have been to operate as a Sole Proprietorship, Partnership, Limited Liability Company, or some type of Corporation. Entrepreneurs recognize that this decision needs to be reevaluated as the business grows or the business environment changes. An additional complexity involved in the reevaluation of this decision comes in recognizing that the criteria used in making the initial decision have likely changed over time as the business has grown, as the family has grown, and as the marketplace has changed.

There are several groups of criteria which entrepreneurs might consider in deciding whether or not a transition in the business entity type is wise. These categories include: Management characteristics such as who should own what assets? Who should control the decision-making process? Who should benefit from the success of the business? Who should carry the various risks inherent in the business? Of course, the answer to each of these questions may involve a number of people, but the decision then becomes how to allocate, for example, the business risk, and how that allocation might change over time based on established milestones.

Another category of issues to consider in identifying or transitioning business entities is related to estate and business transfer planning. Finally, the impact of taxes on the overall business as well as individual owners needs to be considered in determining the best business entity structure. The outline below

describes some of the characteristics of Partnerships as they relate to the criteria entrepreneurs consider in choosing a business entity. Partnerships are defined by the Missouri Statutes as “an association of two or more persons to carry on as co-owners a business for profit”.

How is this entity legally formed?

External Documents

1. A Partnership is not registered with the state.
2. There are no formalities required in forming a Partnership in Missouri. However, Missouri Law requires anyone doing business under a name other than their true name must register the name of the business, referred to as a “fictitious name”, with the Secretary of State's office.
3. When a Partnership is formed, each owner along with her respective percentage ownership in the Partnership is a single legal entity, legally indistinguishable from the other partner's ownership percentage. Consider the example of three entrepreneurs who have decided to form a Partnership together. Prior to forming the Partnership, the three partners are three separate legal entities. After the Partnership is formed, there are still only three separate legal entities. Each partner and the percentage of the Partnership which she owns is a



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separate legal entity. The Partnership by itself is not a legal entity.

4. The existence of the Partnership need not be reported to the Internal Revenue Service or the Missouri Department of Revenue upon formation. Income and expenses for the Partnership are transferred to each partner's personal tax returns which may be these agencies first knowledge of the Partnership's existence.

Internal Documents

1. Partnership Agreement. Missouri Statutes provide many default rules for Partnerships but at the same time allow those defaults to be overridden if there is advance agreement among the partners. The Partnership Agreement is the written document which should be used to specify all of the agreements between the partners dealing with the assets, liabilities, risks, and even how the Partnership should be dissolved if that becomes necessary. The statutory defaults are discussed further below.
2. Who receives the income stream? A partner's "ownership interest" in the Partnership, which is considered her personal property, is her share of the profits and surplus. The share of profits of each partner is assumed to be equal unless provided for otherwise in the Partnership Agreement. The share of expenses for each partner is assumed to be the same as the share of profits unless otherwise provided in the Partnership Agreement.
3. Who has decision rights? The Missouri Statutes provide a default in case a Partnership Agreement does not exist or is not specific on this topic. The default rule is that all partners have equal rights in the management and conduct of the Partnership business unless otherwise agreed upon in advance in the Partnership Agreement.
4. Who is liable, and to what extent/proportion does that liability extend, for debt and legal claims against the business for the acts of partners, employees, agents, or contractors?
 - a. Every partner is personally liable for his/her own actions.
 - b. Every partner is liable for the actions of all other partners, employees and agents when those actions occur in the ordinary course of business.
 - c. Every partner is an agent of the Partnership. Any act of a partner which appears to be for the usual purposes conducted by the Partnership binds the Partnership. This includes the execution of any financial instrument or contract in the Partnership name unless the partner so acting has in fact no authority to act for the Partnership in the particular matter, and the person with whom she is dealing has knowledge of the fact that the partner has no such authority.
 - d. All partners are liable jointly and severally for debts and obligations of the Partnership. Under joint and several liability any single partner may be forced to personally pay for liabilities for the acts of the partners, employees, or agents. It is the responsibility of the partner who



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paid the liability to collect from the other partners.

- e. A person admitted as a partner into an existing Partnership is liable for all the obligations of the Partnership arising before her admission as though she had been a partner when such obligations were incurred. However, this liability only extends to the Partnership property and not the personal assets of the new partner.

Tax Treatment of Income and Losses

- 1. Partnerships are generally considered an association of co-owners and each of the partners is taxed on her proportional share of Partnership profits.
- 2. Flow-through taxation. The Partnership itself does not pay income taxes. Each partner reports their share of business profits or losses on their individual tax return.

Disassociation, Dissolution, and Winding Up

Each of these processes is part of either a transition in a Partnership to new or different owners or the complete termination of a Partnership. A Partnership is generally not terminated simply by a declaration of its owners to terminate.

Dissolution

- 1. A dissolution of a Partnership generally occurs when one of the partners ceases to be a partner in the firm.
- 2. Although the term *dissolution* implies termination, dissolution may actually be just the beginning of the process which ultimately terminates a Partnership and the associated obligations of the former partners.
- 3. Dissolution is, in essence, only a change in the relationship between the partners.
 - a. For example, when a Partnership removes one of the partners or a partner resigns from the Partnership, the Partnership is considered legally dissolved.
 - b. However, this does not mean the Partnership has terminated but merely that the relationship among the former partners is now different than it was before the dissolution.
- 4. Generally speaking, unless the Partnership Agreement states otherwise, dissolution begins the process whereby the Partnership's business will ultimately be wound up and terminated. However, a new Partnership may be formed between the remaining partners immediately after the previous Partnership has been dissolved.



Dissociation

1. Similar events which may have caused a dissolution of a Partnership may instead cause only a disassociation of a partner from the Partnership.
 2. When the Partnership Agreement allows disassociation, any partner may withdraw from the Partnership. However, unlike dissolution, the Partnership may continue to operate as it did before without moving toward winding up and termination.
 3. When disassociation is an option, dissolution may not be required.
- b. Partners who are also creditors of the Partnership
 - c. Partners who have contributed capital to the Partnership are entitled to their capital contributions.
 - d. Remaining assets are then divided among the remaining partners in accordance with their respective share of Partnership profits

Winding Up

1. Winding up refers to a process of completing the current business that is going on when a dissolution occurs and for liquidating any remaining Partnership assets after dissolution before distribution of the remaining assets to the creditors and partners.
2. Winding up provides a priority-based method for discharging the obligations of the Partnership, such as making payments to non-partner creditors and remaining partners. Missouri Statutes set out a default procedure to be used to wind up Partnership business although many of the statutory default procedures can be modified in the Partnership Agreement.
3. The default distribution requires the liquidators of a Partnership to pay out remaining Partnership assets in the following order:
 - a. Non-partner creditors



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