

CHECKLIST FOR GENERAL PARTNERSHIP / LIMITED LIABILITY COMPANY

1. What state will the partnership be formed under?
2. What will be the name of the partnership?
3. Does the proposed name conflict with a name of another business or constitute a trademark infringement?
4. Where will the principal place of business be?
5. What is the term of the partnership?
6. What will the "purpose" of the partnership be?
7. Will a fictitious name statement be necessary?
8. Who will be the agent for service of process?
9. What will be the initial capital contributions of the partners?
10. If the partnership needs additional capital, will the partners be obligated to contribute it? In what proportion? Subject to a cap?
11. Will there be partners contributing services to the partnership? What are the specific services and time commitments?
12. Will there be interest paid on capital contributions?
13. Under what circumstances can capital contributions be withdrawn from the partnership?
14. Will there be loans made by the partners to the partnership? What are the terms and interest rate?
15. How are profits and losses allocated among the partners?

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16. When are distributions of profits to be made? Who decides? Are there profits that will be retained in the business and not distributed?
17. What is the fiscal year of the partnership?
18. What is the accounting method for the partnership?
19. How will the business be managed? Will there be a Managing Partner?
20. What acts will require the majority consent of the partners?
21. What acts will require the unanimous consent of the partners?
 - a. Investment decisions
 - b. Variation from mandatory cash withdrawals
 - c. Additional Capital Contributions
22. Who is authorized to handle the funds of the partnership?
23. What outside activities of the partners are freely permitted?
24. What outside or competitive activities of the partners are restricted?
25. Is any partner entitled to a salary?
26. How can new partners be added?
27. How can existing partners withdraw?

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28. Exclusivity among partners
- a. Business opportunities
 - b. Other Investments
 - c. Right to proceed if LLC refuses

Buy/Sell Terms

1. Conditions upon which buy-sell agreement will become operative, such as:
- a. Death of any partner.
 - b. Permanent disability of any partner.
 - c. Retirement of any partner.
 - d. Withdrawal of any partner from business of corporation.
 - e. Attempted sale or transfer by any partner of all or part of his or her interest.
 - f. Bankruptcy
 - g. Divorce
 - h. Lack of effort
 - f. Other operative conditions.
2. Parties entitled to purchase shares under buy-sell agreement:¹
- a. Remaining partners (cross-purchase agreement);
 - b. Corporation (entity purchase agreement); or
 - c. Combination of cross-purchase and entity purchase agreement.

¹ Although the parties may express a preference for a particular type of buy-sell arrangement, legal considerations may dictate the type of arrangement that will actually be most advantageous or suitable.

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3. Nature of purchaser's obligation under buy-sell agreement; either:²

- a. Mandatory duty to purchase shares; or
- b. Optional right to purchase shares (right of first refusal).

4. How parties intend to fund purchase of shares:³

- a. Life insurance.
- b. LLC cash.
- c. Distribution of corporate assets.
- d. Personal assets.

5. Valuation Issues

- a. FMV at the time (with or without discount)
- b. Value of Contributions
- c. Arbitration to resolve disputes (straight or baseball)

² Purchase upon death of a partner is usually made mandatory, to ensure that the business will continue despite the death of a partner, while purchase upon any other events is usually made optional. The nature of the obligation to purchase can affect the determination of whether or not the valuation stated in a buy-sell agreement will be controlling for federal estate tax valuation purposes.

³ When eliciting this information, the attorney should bear in mind that the method of funding contemplated by the clients may not necessarily be the most desirable, and should counsel them that further investigation may be necessary. Funding should always be investigated and reconsidered at the preliminary determination stage.