“General Partnership”

The “General Partnership” is a business entity consisting of two or more persons getting together for a business purpose. It is probably one of the oldest forms of business and can be statutory or non-statutory. Whether or not a formal written agreement is entered into a “Partnership” may exist. Depending on the activities undertaken and the relationship of the individuals concerning those activities and each other.

All Partners in a “General Partnership” are considered “General Partners” and all have full liability for its actions and debts jointly and severally even if they hold varying percentages of the total ownership. If a person does not intend this circumstance or has significant personal assets, such a relationship should be avoided. For this reason, few General Partnerships are purposely formed these days. Most opting for the more popular business forms such as LLC, Corporation or Limited Partnership.

Although in most jurisdictions registration is not required for the General Partnership the registration of a fictitious name may be. Such registration may also prevent name duplication within your State. Due to the “Statute of Frauds,” it is always advisable to put agreements in writing. Many problems and disagreements can be avoided by having shared expectations as well as defined responsibilities. The “Statute of Frauds” relieves the courts of the responsibility to hear and decide cases for the arguments of aggrieved parties when the dollar value has exceeded the statutory amount, and the parties have failed to put their agreement terms in writing. Said amount may be as low as $500 in some venues.

One use and advantage of a simple General Partnership agreement in today’s business environment would be to protect individuals working together on a joint venture from having one individual be considered the employee of another, thereby avoiding misunderstandings regarding employee tax withholding or workman’s compensation insurance.

The Law in most States today provide that any business, whether Sole Proprietor, LLC, Corporation or a General Partnership, needs to provide ‘Workers Compensation Insurance” starting at the moment you hire employee number one. This requirement is usually waived for company owners themselves although the option usually exists to have it apply to the owners as well if so desired. At times this can be a good idea. This coverage compensated any worker who is injured on the job and will cover medical costs and a portion of lost wages.

For purposes of the Chapter note that it makes a big difference if the person working next to you in your business is your employee or your partner or co-owner. Partners in a General Partnership, members of an LLC and owners of other entity types are not usually required to have insurance on themselves nor are they required to withhold taxes on each other as a W-2 employee.

Let’s say self-employed carpenter Jack is doing business as “JC Builders” and receives a contract to build a barn for customer McDonald. Because it is a big job, he decides to have self-employed carpenter Stanley help him. Jack plans to pay Stanley a percentage or fixed portion of the amount being charged to McDonald. After agreeing on the dollars involved they start the job. A few days in Stanley falls from a ladder and is seriously injured. An ambulance takes Stanley to the hospital and conveys that an accident has occurred at work. The hospital assumes “Workers Compensation Insurance” coverage and bill accordingly.

A week or two later “JC Builders” receives a cease and desist order from a State employee who says

to Jack that the State has discovered that he does not have “Workers Compensation Insurance” so his business must cease operations until it is acquired. Jack tries to explain that he has no employees and does not need that coverage. He is told to take it up at his upcoming hearing. Jack attends the hearing sure he will straighten the whole thing out since he knows the law doesn’t require him to have “Worker Compensation Insurance” when he has no employees.

He plans to explain Stanley worked for himself and was just a contractor. Upon arriving at the hearing, Jack sees Stanley’s wife with a guy he doesn’t know, and she seems like she’s avoiding having a conversation. Suddenly the case is called, and the stranger with Stanley’s wife steps forward and announces himself as an attorney representing the injured party who is still in the hospital. He explains how it has come to their attention that Mr. Stanley’s employer Jack of JC Builders was conducting business without the legally required insurance.

Jack jumps up appalled at the characterization and explains he is not an employer and Stanley was a contractor who worked for himself. The attorney interjects that this is not the families understanding and Stanley has suffered injury, is hospitalized and has lost wages since the accident. After another round of outrage and stammering Jack is asked if he is an attorney or has representation. When he replies that he does not, he is advised to hire one and a new hearing date is set. Jack returns home very upset only to find his wife is also upset after having been visited by a very arrogant man from a Federal Agency call OSHA. (The Occupational Safety & Hazard Administration)

Do you think this is a far-fetched highly unlikely scenario? If you do, you would be very wrong. This situation and many very similar occur daily in the good ole USA these days. I have personally aided clients in the settlement after the fact in three such situations over the past several years. Even the quickest and easiest settlements in such cases are at great expense, frustration, and anxiety to all. Hiring so-called “under the table” workers, self-employed individuals with no official business registration or partnering without agreements in place should be avoided like the plague.

The above situation could have been avoided by planning for proper insurance coverage and documented agreements. Even industries where the use of contractors and subcontractors are the norm the use of “Contractor Agreements” and even one or two-page partnership agreements on temporary jobs and joint ventures can be lifesavers. By setting shared expectations and having an orderly and documented system of business to business transactions, it will establish a record and history of the legal and ethical manner in which you conduct your business. Preventing even one such scenario as the one described herein will be worth its price in gold.

As stated General Partnerships although not in wide use today can have their place in business. Used properly and creatively they can save you money and headaches. Partnerships can be used between two individuals or many individuals. They can also be between one entity type and another or between multiple entities. Corporation A may be a business with its own products and market place and become partners with Corporation B who also has its own products or services totally independent of Corporation A yet the two Companies for a shared goal or product could become partners in Partnership C in an effort to gain a share of a particular market place.

A partnership does not have to denote a 50/50 ownership. Ownership interests can vary depending on the agreement of the parties. They can be 60/40, 70/30 or even 1% to 99%. Be aware that partnerships with uneven interests such as ownership interests of over 90% and others under 10% may not be considered a bonafide interest for some uses. For instance, giving a person a 5% share in your partnership may not cause him to be considered an owner rather than an employee for Worker’s

Compensation Insurance purposes or to prevent the IRS's requirement to withhold from employees. Individual financial institutions may have similar issues. In other words be careful of ideas that are ploys. The rule should be substance over form, not the other way around. Meaning it may not hold up just because it's on paper if it's not also the actual practice or the real deal!

I hope the preceding report or information has been helpful and that it provided you with some information you did not previously have. If you have any unanswered questions or would be interested in exploring further options for business or estate planning please feel free to contact us.

We offer a free first consultation which typically runs from 30 to 60 minutes. In that time we give a short overview of the services we provide and attempt to answer any questions you may have and to discern what services if any that we may be able to provide you with. We are not high pressure and will not ask you to make any purchase or decision during that time.

We will take the information offered by you and prepare a quote or estimate for any services you may have an interest in. We will provide that quote or estimate within a day or two of the free consultation by whatever means you prefer ie email, phone, fax or postal mail. It will be up to you after that whether to contact us again or not. We will not send endless emails, make harassing phone calls, or send continuous junk mail and we will never provide your information to other companies for any reason.

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