

FORMING A PARTNERSHIP

There are two types of partnerships: general partnerships and limited partnerships. Both general and limited partnerships can elect certain legal rules that give partners in these partnerships greater protection against personal liability. A general partnership that makes this election is called a “limited liability partnership”; a limited partnership that makes this election is called a “limited liability limited partnership.”

A general partnership that is formed in a state other than Minnesota, or in a foreign country, is called a foreign general partnership. A limited partnership that is formed in a state other than Minnesota, or in a foreign country, is called a foreign limited partnership and is subject to additional regulatory requirements. A limited liability partnership (or limited liability limited partnership) formed in a state other than Minnesota, or in a foreign country, is called a foreign limited liability partnership (or foreign limited liability limited partnership) and is subject to additional regulatory requirements.

GENERAL PARTNERSHIPS

A general partnership is a business that is owned by two or more persons who associate to carry on the business of the partnership for profit. General partnerships have specific attributes, which are defined by Minn. Stat. § 323A. The general rule is that in a general partnership all partners share equally in the right, and responsibility, to manage the business, and each partner is responsible for all the debts and obligations of the business. General partnerships that have elected limited liability partnership status operate much like general partnerships, but generally partners in limited liability partnerships are not personally liable for the wrongful acts of other partners or for the debts or obligations of the partnership.

Regulatory Requirements

From a regulatory standpoint, a partnership must obtain business licenses if necessary, obtain federal and state tax identification numbers and an unemployment insurance employer account number and will need to register the business name as an assumed name, unless the first and last name of each partner is included in the name of the partnership. Note that, as explained below, it is also strongly recommended that the partnership (no matter what type) draw up a written agreement addressing key issues like the allocation of management responsibilities, the distribution of profits and losses, and rights upon termination. The partnership agreement is not filed with the state, however. Issues commonly addressed in a partnership agreement are discussed in the next section.

A list of business licenses required by the state of Minnesota appears in the section of the the Small Business Assistance Office publication, *A Guide To Starting A Business In Minnesota*, titled Directory of Licenses and Permits. Procedures for registering the business name as an assumed name are discussed in the the *Guide*.

Note that any partner of a general partnership that has elected limited liability partnership status, or professional limited liability partnership status, is jointly and severally liable for contributions or reimbursement, including interest, penalties and costs with respect to unemployment insurance

benefits if the partnership, as an employer, fails to pay any amounts with respect to unemployment insurance benefits due to the Minnesota Unemployment Insurance Program.

Although the partnership itself is not a taxable entity, it must file an annual federal and state “information” return with the Internal Revenue Service and the Minnesota Department of Revenue. For this reason, both federal and state tax identification numbers must be obtained by the partnership. A partnership that will be selling a product or service that is subject to sales tax also will need to register for purposes of Minnesota sales and use tax. A partnership that will hire employees, even if those employees are members of a partner’s family, must secure workers’ compensation insurance covering employees. These taxes and procedures for obtaining tax numbers are discussed in the section of the *Guide* on business taxes.

Partnerships that will be hiring employees also should review the section of the *Guide* on issues for employers.

Registration of Domestic and Foreign Limited Liability Partnerships

In order to become a limited liability partnership, a Minnesota general partnership must file a registration to that effect. A form that includes the specifically required language is available from the Secretary of State website at www.sos.state.mn.us/index.aspx?page=331, and is also available by mail from that office. The partnership is subject to limited liability partnership rules of law on and after the date the registration is filed. That registration is valid indefinitely as long as the annual registration for the partnership is filed on a calendar year basis.

Non-Minnesota limited liability partnerships must similarly register with the Secretary of State and must attach to the registration a certificate of good standing or status from the state or province where the foreign limited liability partnership is formed.

The Partnership Agreement

The partnership agreement addresses a number of issues relating to the management and operation of the partnership. In drawing up the partnership agreement, the prospective partners should consult with legal counsel to assure that the needs and desires of the partners and relevant legal issues are addressed. Some of the issues typically addressed in a partnership agreement include:

- Name of the partnership.
- Duration of the partnership.
- Location of its place of business.
- Capital contribution of each partner.
- Whether partners may make additional contributions.
- The level at which capital accounts of the partners must be maintained.
- Participation of each partner in profits and losses.
- The amounts of any regular drawings against profits.

- Responsibilities and authority of each partner.
- Amount of time to be contributed by each partner.
- Prohibition of partners' outside business activities which would compete with the partnership business.
- Name of the managing partner and method for resolving management disputes.
- Procedure for admitting new partners.
- Method of determining the value of goodwill in the business, in case of death, incompetence, or withdrawal of a partner or dissolution of the partnership for any other reason.
- Method of liquidating the interest of a deceased or retiring partner.
- Circumstances under which a partner must withdraw from active participation, and arrangements for adjusting the partner's salary and equity.
- Whether or not surviving partners have the right to continue using the name of a deceased partner in the partnership name.
- 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.
- Period of time in which retiring or withdrawing partners may not engage in a competing business.
- Procedures for handling the protracted disability of a partner.
- How partnership accounts are to be kept.
- The fiscal year of the partnership.
- Whether or not interest is to be paid on the debit and credit balances in the partners' accounts.
- Where the partnership cash is to be deposited and who may sign checks.
- Under what conditions limited partners may be accepted into the firm, and, if so, who shall be designated as the general partner.
- Prohibition of the partners' pledging, selling, hypothecating, or in any manner transferring their interest in the partnership except to other partners.
- Identification of material contracts or agreements affecting the liability or operation of the partnership.

LIMITED PARTNERSHIPS

A limited partnership is a type of partnership in which the limited partners share in the partnership's liability only up to the amount of their investment in the limited partnership. By statute, the limited partnership must have at least one general partner and one limited partner. The general partner has the right and responsibility to control the limited partnership, and is responsible for the debts and obligations of the limited partnership. The limited partner, in exchange for limited liability, generally does not participate in the day-to-day management and control of the business.

Regulatory Requirements

As is the case with general partnerships, a limited partnership will need to obtain business licenses if necessary, obtain federal and state tax identification numbers and may need to register the business name as an assumed name. A limited partnership that will hire employees, even if those employees are members of a partner's immediate family, must obtain an unemployment insurance employer account number and worker's compensation insurance for those employees. The limited partnership must file a certificate of limited partnership with the Secretary of State before commencing business. The filing requirements are discussed in the next section.

A limited partnership that will be selling shares in the limited partnership to the public likely will be required to register with the federal Securities and Exchange Commission and the Minnesota Department of Commerce. Persons contemplating such an offer or sale should consult with legal counsel well in advance of the offering to assure that it complies with federal and state securities laws.

Certificate of Limited Partnership

A limited partnership must file a certificate of limited partnership with the Secretary of State. Minn. Stat. § 322A.11 sets forth the minimum content requirements of the certificate. A form containing these requirements is available from the Secretary of State website at www.sos.state.mn.us/index.aspx?page=331, and is also available by mail from that office. A limited partnership is formed at the time the certificate of limited partnership is filed with the Secretary of State or at a later time specified in the certificate.

In addition to the certificate of limited partnership, the limited partnership may also adopt a limited partnership agreement. As is the case with a general partnership agreement, the limited partnership agreement governs the details of the partnership and the management arrangement between the general partners and the limited partnership. Issues and concerns to be addressed in the limited partnership agreement as well as consideration of securities law requirements and tax consequences should be discussed with legal counsel.

In order to become a limited liability limited partnership, the first step is to establish the limited partnership, second, it is necessary to follow the procedures required for creating a limited liability partnership described in the *Guide*. It is recommended that the name of the limited partnership and the name on the limited liability limited partnership registration match so that there is no question whether the limited partnership entity has elected limited liability partnership status.

FOREIGN LIMITED PARTNERSHIPS

A limited partnership that does business in Minnesota and is formed in another state or country must register with the Secretary of State as a foreign limited partnership. Filing requirements are established by Minn. Stat. § 322A.70. A registration form containing the required information is available from the Secretary of State by mail, fax, or from the website. The foreign limited partnership must attach to its registration a certificate of good standing (sometimes called a certificate of status) from the state or province where the foreign limited partnership is formed.

A foreign limited partnership also must obtain a Minnesota tax identification number. If the foreign limited partnership has employees, even if those employees are members of a partner's immediate family, it must obtain an unemployment insurance employer account number and workers' compensation insurance covering its employees.