



## **PARTNERSHIP/SHAREHOLDERS AGREEMENT**

The formation of a business with more than one owner is like a marriage. However, according to last year's statistics, a marriage has a better chance of surviving 7 years than a business association does. That means there is over a 50% chance the business association will end in dissolution within the first 7 years.

There are a number of reasons for this. One of these involves a lack of initial communication among the owners/partners that leads to trouble down the road. The biggest mistake people make in this regard going into a partnership association, whether it be a true partnership or as a shareholder in a corporation, or in a joint venture is the failure to set up an adequate partnership agreement. Note that for the purpose of this report the term "partner" will be used interchangeably with the term "shareholder" or "associate," to make for easier reading.

This lack of initial planning leads to many misunderstandings about the responsibilities, financials, and possible changes in the partnership. This alone will often initiate the actual destruction or break-up of the business association—even if it is financially sound.

**So a word of warning:** Always have a form of a partnership agreement before you begin any business association with anyone else. This can literally mean the difference between success and failure. In keeping with this advice, some suggestions as to the content of the actual agreement are listed below.

Please understand that **this is in no way meant to be a substitution for any legal advice** you should obtain—and you definitely should consider consulting with an attorney to assist you with any partnership/shareholder agreements. Rather, the enclosed guidelines are designed to help you decide which areas need to be considered in the drafting of such an agreement.

Thus, for your review are the following suggestions and tips on areas to consider in setting up a partnership/shareholder agreement:

1. Determine the official name and place of the business.
2. Date to be started, and duration/term of business.
3. Nature of business activities, and scope of operations.
4. Names, addresses, and social security numbers of owners/partners.
5. Establish various accounting/recordkeeping issues such as tax year, accounting methods, type of corporation or partnership, required financial reports, bank accounts, division of accounting duties, place where records will be kept.
6. Agree on various professional advisors to be used: accountant, attorney, insurer, lender, etc.
7. Determine each owner's work duties, positions, titles, responsibilities, work hours, fringe benefits such as sick pay.
8. Agree on capital contributions and ratios per owner: initial contributions to be listed and future contribution/withdrawal amounts to be discussed.
9. Decide on types of insurance coverages.
10. Agree on when and where business meetings will be held.
11. Decide on actual management authority of each partner.
12. Agree on draw amounts and/or guaranteed payments to partners.



13. Decide on profit distribution amounts and ratios per partner: how much, when to be done, by which authority and voting determinants.
14. Determine how future deficit funding will be handled.
15. Agree on methods and authority needed for borrowing money.
16. Establish a travel, entertainment, and expense account policy among partner/owners.
17. Decide how voting issues will be handled: majority rule on all issues? Unanimous vote on some issues? Required quorum?
18. Agree on how to handle any disputes that can't be resolved through normal voting procedures: a form of arbitration agreement should be established.
19. Set up restrictions on partners in their dealings with outsiders as representatives of the business.
20. Establish any required non-compete covenants.
21. Work up required sale-of-interest, buy-sell, or stock redemption agreements and valuation methods that would be used for these.
22. Arrive at agreements for change of partnership interests and valuation methods/determinants.
23. Decide how to handle possible changes in actual partners/owners. These issues center around such possibilities as admission of new partners, expulsion of existing ones, withdrawal or retirement, disability, bankruptcy, or partial liquidation of a partnership interest.
24. Agree on how future amendments to the partnership/shareholder agreement should be handled: timing of issue, required voting percentages, etc.

## Conclusion

In effect, a partnership agreement tries to deal with a number of important issues that fall into several categories: Actual formation purpose, and scope; Management authority and duties; Capital contribution issues; Distribution, divisions of monies; Terms and Terminations; Changes and Transfers; Accounting/recordkeeping.

Since these issues can be quite complex, the use of a partnership/ shareholder agreement can literally be a lifesaver to the peaceful continuation of a business. By getting all the pertinent issues of running a business out of the way before things get rolling, you can then spend the rest of the time in the most important quest: trying to build up the business in these tough, competitive, changing times.