A general partnership is formed when two or more individuals come together to work on a venture for profit.\(^1\) A general partnership is similar to a sole proprietorship, except that there are multiple owners invested in the business. This presentation will outline the characteristics of a general partnership, the legal obligations associated with a partnership and the formation process.

The relationship between partners is usually outlined in a partnership agreement, although a partnership exists even without a defined agreement so long as all parties are acting together toward the success of the business and sharing in the profits and debts. A general partnership is a pass-through entity. Profits and losses are either shared equally or in a proportion articulated in the partnership agreement.

Partners are obligated to joint and individual liability, meaning a partner is individually liable for 100\% of the business debts even though there are co-owner in the business.\(^2\) A third party may seek relief from one or all partners. After a third party is made whole, partners can seek reimbursement from one another. This is called indemnification.

It is good practice to have a partnership agreement. Without one, several default legal rights exist with regard to partners’ relationships with each other and the partnership’s relationship with third parties.\(^3\)

In regards to the relationship between one another, each partner has equal rights to manage the company,\(^4\) unless a partnership agreement states otherwise. As a default rule, ordinary business matters can be decided by a majority vote of the partners, and no new partners can be added to the company without the consent of all partners.\(^5\) Further, partners share equality in profits and losses.\(^6\) Should business partners wish to operate outside of the default rules, they must execute a partnership agreement specifying a deviation from these items.

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1. See N.Y. P’SHP LAW § 10 (Consol. 2013).
4. See id. § 40(5).
5. See id. § 40(8).
6. See id. § 40(1).
At all times, partners have the right to access the partnership’s books.\(^7\) In addition, partners have a fiduciary relationship to the business.\(^8\) This means they must act for the benefit of the company. They cannot act in bad faith or else they could be liable for any capital lost from an action taken in bad faith.

**PARTNERS’ RIGHTS IN RELATION TO THIRD PARTIES (SLIDE 4)**

As a default rule, each partner is treated as an agent of the entity.\(^9\) As an agent, a partner can bind the partnership in agreements with third parties in the ordinary course of business, with or without the knowledge of other partners.\(^10\) Whether these agreements are enforceable depend on the third party’s perception of the partner’s authority to contract. In short, if a third party reasonably believed a partner had the authority to contract, the obligation will be upheld.\(^11\) Further, notice of that partner’s act to contract is imputed to the partnership and therefore other partners.

Because of this, it is prudent that all partners create a partnership agreement detailing the management of partnership affairs, amongst other things.

**PARTNERSHIP AGREEMENT (SLIDE 5)**

The partnership agreement is possibly the most important item a general partnership can create. It outlines the rights and obligations of all the parties and puts everyone on notice about the policies and procedures of the business.

**Partnership Agreement**

A partnership agreement is a legally enforceable contract between business partners. It outlines the nature of the relationship and treatment of the relationship should any dispute arise involving the business. This is an important document. Partners should be open and honest when building a partnership agreement.

At the very least, a partnership agreement should outline the:

- Name, address and duration of the partnership
- Purpose of the partnership
- Membership, which includes providing
  - A list of members
  - The process for adding new members

\(^7\) See id. § 41.
\(^8\) See id. § 43.
\(^9\) See id. § 20.
\(^10\) Cf. id. (“An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not being the partnership unless authorized by the other partners.”).
A process to remove partners and
An assignment of responsibilities

The partnership agreement should also outline

- Management of the partnership, including any limits of authority placed on partners
  - Ask each other what items must be brought to a vote and which topics can be resolved without the group.
  - If an item needs to be brought to all partners, how does that happen and how many votes are needed for valid action.

Be sure to also discuss the partners’

- Contributions to the partnership
- Allocation of profits and losses
- Accounting information, and
- Plan for the dissolution of the partnership
  - Outline what events would trigger a dissolution and what happens should a dissolving event take place.

Review the template partnership agreement in this resource. You can see from this template that this list is not exhaustive. These items, however, are excellent conversation topics to bring up when developing a partnership agreement.

FORMATION (SLIDE 6)

Forming a general partnership is relatively simple. The entity exists once two or more persons work together on a venture for profit. Partners should execute a partnership agreement as soon as possible. Owners must also file a certificate of assumed name with the county clerk in which the company operates.¹²

Partners can purchase insurance to help shield one another from certain debt obligations. A list of mandatory and optional insurances is provided in this resource.