

CHECKLIST FOR CREATING A PARTNERSHIP AGREEMENT

1. Consider formation options. Review “Choice of Entity for Legal Practice in Oregon” and the “From Startup to Endgame: Form of Entity Considerations for Your Law Practice” CLE, available at www.osbplf.org.
2. Recite all necessary formation details. Include the names and addresses of the partners, the name of the partnership, the purpose, and intent of the partnership, the term of the partnership, where the principal office of the partnership will be located, the entity’s fiscal year, and whether books will be kept on a cash or accrual basis.
3. Describe in detail the capital of the partnership, including any loans to the partnership. Itemize cash and assets contributed by the original partners on separate schedules attached to the partnership agreement. Include a goodwill clause if desired. Consider terms addressing capital contributions by subsequent partners. Refer to this article for more information: <https://www.olmsteadassoc.com/blog/capital-accounts-for-new-law-firm-partners/>.
4. Describe how profits, losses, income, and expenses of the partnership will be allocated.
5. Describe any special conditions where income and expenses of the partnership may be accrued but not yet due, such as a lease.
6. Describe the procedure for partnership draws and the consequences of a debit balance in a given partner’s drawing account.
7. Specify how management duties will be allocated among the partners, including participation in committees.
8. List any restrictions on partnership authority, such as engaging in another occupation, incurring partnership debt, charging an expense to the partnership, associating with another law firm, establishing an Of Counsel affiliation, or assigning an interest in the partnership without consent of the other partner(s).
9. Describe the partnership decision-making and voting process, including notice of meetings, proxy voting, adding, or removing partners, and whether issues will be determined by majority or supermajority vote.
10. Detail where funds of the partnership will be held and how withdrawals will be made.
11. Describe how and where partnership books will be maintained, who shall have access, and when books will be closed and balanced.
12. Provide for reimbursement and indemnification of the partnership for uninsured losses caused by a partner’s negligence or wrongdoing.
13. Address the availability and terms of benefits, including vacation, leave, sabbatical, and retirement.
14. Specify the procedures for adding new partners.
15. Require each partner to complete a business succession plan no later than three years prior to retirement.

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16. Consider pre-planning for buy-out of the partnership interest. Will there be an independent business appraisal? Will there be “Key Person” life insurance policies to fund the buy-out expense and cover overhead expense?
17. Include provisions addressing incapacity of a partner, death, and suspension of right to practice.
18. Specify the terms for withdrawing from partnership. Include details on the timing and manner of notice, duties of a withdrawing partner, liquidation of a withdrawing partner’s interest, how disputes will be resolved, and whether prevailing parties will be entitled to attorney fees.
19. Specify how clients will be notified when a partner withdraws. Best practices call for a joint letter sent by the departing partner and the firm on firm letterhead.

CAVEAT: Choice of representation is always the client’s decision. Therefore, one cannot hold clients to be property of the firm and prevent the clients from electing to leave with a partner. For more information related to the client’s choice of representation, visit the PLF website at www.osbplf.org. No client files or property should be removed from the firm without prior written consent of the client(s).

20. Specify the terms for dissolving and winding up the partnership. Include the specific steps that must be taken before dissolution, the number of votes required, how assets and liabilities are to be handled, who has the primary responsibility to perform the administrative tasks of dissolution, and how clients are to be notified.
21. Consider optional clauses addressing:
 - a. Acts to make the agreement effective
 - b. Severability and totality
 - c. Governing law
 - d. Adherence to ethical practices
 - e. Excess professional liability coverage. [Notify your carrier if you currently carry excess coverage and form a partnership.]
 - f. Continued use of the names of retired or deceased partners
 - g. Acts required to change the name of the partnership

22. Covenants not to compete are prohibited by ORPC 5.6(a). See [OSB Formal Ethics Opinion No. 2005-29](#).

23. Include an effective date and signature lines for all partners.

This checklist is offered for the purpose of generating ideas only. It does not cover all possible circumstances and is not intended to be an endorsement of specific terms.

Additional Resources

Articles

Janice Mucalov, LL.B. “What to Look For in a Partnership Agreement,” *Canadian Bar Association Practice Link*, <http://www.cba.org/Publications-Resources/CBA-Practice-Link/Young-Lawyers/2014/What-to-Look-For-In-a-Partnership-Agreement>.

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Books

Search the ABA website, www.americanbar.org, for additional resources relating to partnership. Certain ABA materials and products are available at a discount through the PLF. For more information, visit the PLF website, <https://www.osbplf.org/practice-management/aba-resources.html>.

Model Partnership Agreement

A “Model Partnership Agreement” is available from the ABA Web Store as a downloadable Word file at <https://www.americanbar.org/products/ecd/chapter/217899/>.

Partner Withdrawals and Partnership Dissolutions

Model withdrawal and dissolution agreements are available from the ABA Web store as downloadable Word files at <https://www.americanbar.org/products/ecd/chapter/217902/> and <https://www.americanbar.org/products/ecd/chapter/217903/>, respectively.

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