

**PB-02****PARTNERSHIP: A BUSINESS MARRIAGE****INTRODUCTION AND SUMMARY**

This Practice Bulletin provides an introductory review of partnerships, a common form of business relationship used by many architecture and interior design firms. The Practice Bulletin summarizes the provisions of the Partnership Act of Alberta, which apply to all partnerships unless agreed otherwise. A useful check list is provided to assist you in the planning of a partnership agreement. The Bulletin closes with three basic principles potential partners should carefully consider.

It should be noted that the Alberta Association of Architects regulates the Mode of Practice. This means that a business partnership must register as a partnership and obtain a Certificate of Practice under Section 20 of the *Architects Act* and Articles 26, 33 and 34 of the *Architects Act General Regulation*.

**PARTNERSHIP-A BUSINESS MARRIAGE**

Situations often arise when individuals or corporations wish to associate with each other for the purpose of carrying on business. The purpose and method of association raises important implications for the parties involved – do they intend to just “associate” or to form a **legal partnership**. There are pros and cons to both arrangements, which will not be reviewed in any detail in this article; however, one benefit of a partnership is the “firm concept”. Typically professionals carry on business as a firm and want the general public to view them as a “firm”. In the *Partnerships Act* of Alberta, the definition of “Firm” under Section 2 is as follows:

- ▶ Meaning of “firm” and “firm name”
  - » Persons who have entered into partnership with one another are, for the purposes of this Act, called collectively a “firm”, and the name under which their business is carried on is called the “firm name”.

If the intention is to form a partnership the parties involved are subject to all the rights and obligations of a partnership as defined in the Partnership Act.

A partnership is a relationship, which exists between persons, and may include corporations, carrying on a business in common with a view to profit. Whether or not a partnership exists are a question of fact and a matter of determining the true intention and effect of the relationship. For example, joint ownership of property and the sharing of gross returns do not in themselves create a partnership. The parties must agree to participate in business with a view to profit. Although the behaviour of partners is governed by the Partnership Act (Alberta), the rights and obligations of the partners are usually set out in a partnership agreement, whether written or verbal, which may confirm or vary the rights under the Act. A verbal partnership agreement presents the same problems which arise with any verbal agreement – there is a lack of certainty and misunderstandings arise with respect to the terms of the agreement. The recommended course of action is a written partnership agreement setting out the rights and obligations of the partners. A question often asked is “if the partnership is governed by the Act, is it necessary to have a further agreement”? In most cases the answer is “yes”! There are certain provisions of the Act that may

not reflect the intentions of the partners and unless the parties agree they will be bound by these provisions.

For example, unless agreed otherwise the *Partnership Acts* states:

- ▶ All partners share equally in the capital and profits of the partnership and must contribute equally towards the losses (Section 11)
- ▶ Any payments or advances beyond the amount of capital agreed to be subscribed by a partner shall bear interest, however, a partner is not entitled to interest on capital before ascertaining the profits of the partnership (Section 27)
- ▶ No one may be added to the partnership without the consent of all existing partners (Section 28)
- ▶ Differences arising as to the ordinary matters connected with the partnership business may be decided by a majority of the partners (Section 28)
- ▶ A majority of the partners do not have the power to expel a partner unless the power to do so has been previously conferred by express agreement between the partners (Section 28)
- ▶ If there is no fixed term for the partnership, any partner may at any time dissolve the partnership by giving notice of his intention to do so to all the other partners (Section 36)

These examples are often not the intention of the partners and therefore are sufficient reason to have your own “custom” agreement. It is often the case that partners have different perceptions of their rights and obligations which often only arise in the case of a dispute. A custom partnership agreement eliminates and deals with these differences before a problem arises.

## CHECKLIST

**The Following is a Checklist to Assist You in the Planning of a Partnership Agreement:**

1. **Date of the agreement** - what will be the effective date of the commencement of the partnership?
2. **Description of Partners** – the full names and addresses of the partners must be set out.
3. **Firm Name** – set out the name under which the partnership intends to carry on business and agree that the partners will not enter into any agreement on behalf of the partnership except in the firm name. Establish a means of changing the name at a future date. If it is intended that the partnership wants to retain the name of a retiring partner provide for the partners to indemnify a retired partner or his estate from any liability resulting from the continued use of his name.
4. **Term of Partnership** – under the Act, there are instances in which the partnership is automatically dissolved, such as the death of a partner, the assignment of a partner’s property in trust for the benefit of his creditors or the bankruptcy of a partner. The partners may not wish to have the partnership. The agreement should address these issues.
5. **Place of Business** – can be specifically set out in the agreement or stated to be at a location agreed by the partners.
6. **Description of Business** – a general description of the activities of the partnership is required.
7. **Percentage or amount of contribution to capital** – should be specifically set out in the agreement, whether by formula or otherwise, and should deal with whether or not additional contributions can be required from the partners and whether guarantees must be provided by the individual partners if requested by the financial institution dealing with the partnership.

8. **Division of Profits** – it is important to set the method for determination and distribution of profits.
9. **Accounting and other records** – proper books of account shall be kept to record all money received and paid out and all business transactions entered into by the firm on its own account and on behalf of clients.
10. **Fiscal Year** – should be fixed by agreement or by the approval of the partners. However, the new tax rules affecting certain partnerships and the requirement for the year end to be the calendar year end should be addressed by the firm's accountants.
11. **Auditors**
12. **Accounting Practices** – the basis for the preparation of annual accounts should be detailed. It is also advisable to have statements produced as often as possible.
13. **Banking arrangements**
14. **Partners to devote full time** – energy and ability to the business of the partnership, except with the consent of the partners.
15. **Management** – there are certain decisions of the partnership that should require the unanimous approval of all of the partners and the agreement should set out these instances, which may include all decisions or only major decisions affecting the partnership.
16. **Duties of a Partner** – may include a duty on a partner to duly and punctually pay his separate and private debts and to keep the partnership property and the partners free from all actions, proceedings, etc.
17. This type of provision may be unenforceable on a practical basis, but may assist in establishing a standard of conduct.
18. **Partnership contracts**
19. **Drawing and Electronic Data arrangements**
20. **Non-competition clause** – the agreement can include a restriction on carrying on the same business other than with the firm and may deal with the rules when a partner retires from a firm. Also consider a provision preventing a partner, without the consent of the other partners, from engaging directly or indirectly in any business other than the partnership.
21. **Sale of interest to outsider** – the limitations, requirements and procedures should be specifically set out.
22. **Expulsion of partner** – the grounds, methods and procedures should be set out.
23. **Grounds for dissolution**
24. **Admission of New Partner**
25. **Obligation or option to purchase** – this relates to the interest of a partner desiring to leave the firm
26. **Valuation of partnership interest**
27. **Partnership Property**
28. **Insurance**
29. **Arbitration of disputes and Mediation provisions**
30. **Registration** – is there a requirement for registration and if so, who has the responsibility for the registration? In the case of most professional partnerships there is no requirement to register the partnership. This is not to be confused with the licencing required by the AAA for the Partnership as a mode of practice.
31. **Amendments** – methods for approving amendments to the agreement should be specifically set out. In most cases, this involves the unanimous agreement of all partners, set out in writing.

This checklist should be reviewed as it raises many issues, which must be settled by the partners for inclusion in a written agreement, before disputes arise. The checklist and the accompanying commentary are only a starting point for an agreement and I recommend that legal and accounting advice be sought before finalizing any agreement.

### WORD OF CAUTION

**As a Final Word of Caution there are Three Basic Principles which the Potential Partners should be Aware of:**

1. A partnership **is not a legal entity**, separate from its partners, but is an entity made up of its partners acting together to carry on business. This should be noted in particular in dealing with the tax implications of a partnership. Each partner is jointly liable with the other partners for all debts and obligations of the partnership while he/she is a partner, to the full extent of his personal assets.
2. Each partner is **an agent of the partnership** and the other partners for the purposes of the business of the partnership and therefore each partner may legally bind the partnership and the remaining partners.
3. The partnership is liable, **and each partner is jointly and severally liable**, for any penalty or loss or injury caused to a non-partner by the wrongful act or omission of a partner acting in the ordinary course of business, or with the authority of his co-partners to the same extent as the wrong-doing partner.

### COMMENTS

Setting up a partnership is a satisfactory means of carrying on business in common with two or more parties and is best managed in the case where all parties are aware of and in agreement with the rights and obligations of the partners in the partnership.

### NOTES

The *Alberta Association of Architects* thanks Barbara Komisar for kindly providing this article. Ms. Komisar is a lawyer with *Ogilvie and Company* and practices in the areas of corporate and commercial law.  
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