
INTELLECTUAL PROPERTY AND TRANSACTIONAL LAW CLINIC



LIMITED PARTNERSHIPS

INTRODUCTORY OVERVIEW

A limited partnership is a business entity comprised of two or more persons, with one or more general partners and one or more limited partners. A limited partnership differs from a general partnership in the amount of control and liability each partner has. Limited partnerships are governed by the Virginia Revised Uniform Partnership Act,¹ which is an adaptation of the 1976 Revised Uniform Limited Partnership Act, or RULPA, and its subsequent amendments.

HOW A LIMITED PARTNERSHIP IS FORMED

To form a limited partnership in Virginia, a certificate of limited partnership must be filed with the Virginia State Corporation Commission. This is different from general partnerships which require no formal recording with the Commonwealth. The certificate must state the name of the partnership,² and, the name must contain the designation “limited partnership,” “a limited partnership,” “L.P.,” or “LP;” which puts third parties on notice of the limited liability of one or more partners.³ Additionally, the certificate must name a registered agent for service of process, state the Post Office mailing address of the company, and state the name and address of every general partner. The limited partnership is formed on the date of filing of the certificate unless a later date is specified in the certificate.⁴

¹ VA. CODE ANN. § 50, Ch. 2.2.

² VA. CODE ANN. § 50-73.11(A)(1).

³ VA. CODE ANN. § 50-73.2.

⁴ VA. CODE ANN. § 50-73.11(C)0.

GENERAL PARTNERS

General partners run the company's day-to-day operations and hold management control. The scope of individual general partner responsibilities should be outlined in the partnership agreement. General partners have the power to bind the partnership and the other partners in contracts that are made in the ordinary course of partnership business. General partners take on the legal debts and obligations of the business for which they are jointly and severally liable. They must be named in the certificate of limited partnership as a "general partner."⁵ General partners may be an individual, a partnership, a limited partnership (domestic or foreign), a trust, an estate, an association, a corporation, or any other legal or commercial entity.⁶ A general partner may leave the partnership at any time, however, if the partnership agreement contains exit provisions, a failure to adhere to them may result in damages or other legal remedies.

LIMITED PARTNERS

Limited partners contribute investment capital in the form of cash, property, services rendered, or a promissory note or other obligation to contribute the same.⁷ They generally do not participate in the daily operations of the company. Limited partners are shielded from personal liability for company debts and actions, except to the extent of their contribution.⁸

Limited partners may be granted voting rights in a partnership agreement.⁹ Additionally, they have rights to inspection and information regarding the partnership and the financial condition of the business.¹⁰ Limited partners may be more involved in a partnership's daily operations; however, too much involvement will cause them to be treated legally as general partners with full personal liability.

Limited partners may only leave the limited partnership at times or upon events specified in the partnership agreement.

PARTNERSHIP AGREEMENT

A limited partnership agreement is a contract between the general and limited partners. The nature of the agreement allows for flexibility with regard to profit and loss sharing and the ability to determine voting rights of the partners.¹¹ The partnership

⁵ VA. CODE ANN. § 50-73.1.

⁶ VA. CODE ANN. § 50-73.22:1, VA. CODE ANN. § 50-73.1.

⁷ VA. CODE ANN. § 50-73.32.

⁸ VA. CODE ANN. § 50-73.24.

⁹ VA. CODE ANN. § 50-73.23.

¹⁰ VA. CODE ANN. § 50-73.26.

¹¹ VA. CODE ANN. § 50-73.23.

agreement may specify events, upon the happening of which, the limited partnership will be dissolved.¹²

ADVANTAGES OF LIMITED PARTNERSHIPS

Partnerships are generally an inexpensive and easily formed business entity. Limited partnerships also have the advantage of being able to attract large individual investors because even if financial or legal problems arise, limited partners are only liable for the capital they invest in the business. Limited partners can also leave the business or be replaced without dissolving the limited partnership.

The contractual nature of the partnership agreement allows for great flexibility in the structure of the business as well. Limited partnerships are not required to hold formal management meetings or report earnings. Therefore, general partners are better able to focus their efforts on running the business while the investors are removed from daily operation decisions.

DISADVANTAGES OF LIMITED PARTNERSHIPS

Unlike limited partners, the general partners of the partnership assume personal liability for all of the debts and other obligations of the business. General partners may also be constrained in their ability to operate the business freely if the voting rights of limited partners are not drafted carefully. Equal voting rights or veto power of partners may result in a deadlock.

Outside private financing can be limited in a limited partnership because there can be no sale of company stock as in a corporation. Obtaining institutional financing for the partnership may require security from the partners, negating any limitations on personal liability.

Lastly, unlike in a general partnership, limited partnerships must formally file with the state in which they are located.

COSTS OF FORMATION AND MAINTENANCE

Formation of a limited partnership requires the filing of the certificate of limited partnership which carries a \$100 filing fee in Virginia. Additionally, a limited partnership must pay an annual registration fee with the State Corporation Commission of \$50. There are no reporting requirements; therefore there are no associated costs with preparing or filing financial statements.

¹² VA. CODE ANN. § 50-73.49.

LIFE AND DEMISE OF THE LIMITED PARTNERSHIP

A limited partnership is dissolved and the business affairs wound up upon the happening of any of the following: an event specified in the certificate of limited partnership or partnership agreement, unanimous written consent of the partners, the withdrawal of a general partner (unless a different general partner carries on in the business), failure to make payment of the annual registration fee to the State Corporation Commission, or involuntary dissolution by judicial decree or by order of the State Corporation Commission.