THE DE FACTO PARTNERSHIP AND POTENTIAL CONSEQUENCES

Perhaps you and a trusted colleague have finally decided to act on your long awaited dreams to manufacture and sell a new revolutionary product. Excited at the possibilities of your new business, you and your colleague hurriedly pool your money together and begin buying equipment, materials, office space, and all other necessities to carry on your new business. Caught up in the excitement, you and your colleague did not discuss your exact roles in the business or your visions for future development, and you have failed to put any basic agreements into writing. As a result, without consulting with you first, your colleague has unexpectedly committed your business to a long-term contract with a material supplier. Within a few short months, you default under the terms of payment on the contract, and you are facing a lawsuit for damages from the supplier.

This predicament now leaves you with a myriad of worries and questions: Am I personally liable to the supplier?; Are my personal assets at risk?; Am I still liable even though I never consented to the contract signed by my colleague?; and, Can I simply take my original investment and part ways with my colleague? Generally, a "partnership" is simply defined as an association of two or more persons to carry on a business for profit. Where there is no written partnership agreement or formal entity registered with the Department of State, this informal association of two or more persons, as portrayed in our hypothetical above, will likely be regarded as a "de facto" general partnership.

This classic, and all too familiar, scenario is the direct result of a failure to properly form a legal entity and to adopt a viable partnership agreement between you and your now "de facto" partner. Under this "de facto" general partnership, the partners are typically afforded no insulation from personal liability, and each general partner has the ability to act on behalf of the partnership and bind the other partners through their actions. Obviously, a "de facto" general partnership can lead to disastrous results and leave your personal assets at risk if the business fails.

Florida partnership law has developed over the years to accommodate and protect those who wish to form a partnership. The Limited Partnership (LP), Limited Liability Partnership (LLP), and Limited Liability Limited Partnership (LLLP) all afford varying degrees of protection from personal liability for both general and limited partners. Choosing which form of partnership best suits the needs of your business will play an important role in the life of your business and relationship with your partners. If you are considering forming a partnership, it is vital to the success and protection of the business that a formal partnership agreement be adopted and a legal entity be registered with the Department of State before any formal action of the business is carried out.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

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