



Partnership Agreements by Scott D. Abel

A partnership is a form of business organization where two or more persons carry on a business with a view to profit. Each province in Canada has a statute, which governs and addresses legal issues of partnership. In Manitoba, to no one's surprise, the statute is called *The Partnership Act*.

The Partnership Act establishes the legal relationships between partners, and also the legal relationships between the partnership, and the outside world.

A partnership agreement allows the partners to modify or change the legal relationship as between themselves, that has been established by the *The Partnership Act*.

For example, *The Partnership Act* provides that upon the death of a partner, the partnership is terminated. A partnership with three or more partners may not want the partnership to be terminated upon the death of a partner. Accordingly, the partnership agreement can provide for the continuation of the partnership, despite the

death of one of the partners.

The partnership agreement can address many other issues, which may include the admittance of new partners, the partnership name, and the manner in which profits are divided.

However, a partnership agreement cannot change or alter the provisions of *The Partnership Act* as it relates to the outside world and its relationship to the partnership.

For example, *The Partnership Act* states that every partner is liable with the other partners, for all debts and obligations of the firm incurred while he or she is a partner. The partnership agreement cannot change the liability of the partners in relation to that third party. The third party is entitled to sue each or all of the partners for the debt owing to the third party. Each of the partners has unlimited liability.

A partner however, can limit his or her liability, through what is known as a limited partnership. A limited partnership is a

partnership just like a regular partnership, except that the limited partner has limited liability. The liability of the limited partner is generally restricted to the amount of money he or she has invested in the partnership. A limited partner is not entitled to take part in the day to day decisions of the partnership. A limited partner invests his or her money, and then cannot participate in management decisions. If the limited partner does participate in the day to day decisions, he or she could lose their limited liability.

Regardless of the content of the partnership agreement, it is something that every partnership should consider obtaining.