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I share insights on how to succeed in business partnership.

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Five Clauses Every Partnership Agreement Needs

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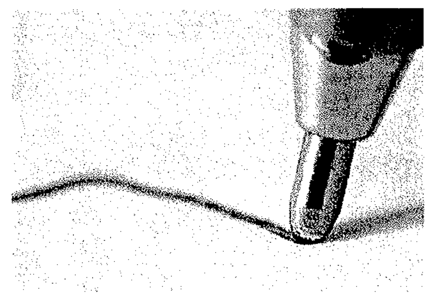
There are some parts of starting up that can be fun: coming up with a name and logo; refining the product offering; planning the amazing expansion that will happen once everyone realizes how awesome your business is.



And there are some things that are not really very much fun at all. Writing an operating agreement, for example.

An operating agreement (or the partnership agreement if you're a multi-member LLC, or the corporate by-laws if you've formed a corporation) is the legal document that defines each person's rights and responsibilities, as well as provisions for running the company, both day-to-day and in the event that someone dies or the company dissolves. (Now you know why people avoid this part.)

It's one of the most important things you can do before you start investing time and money in a joint venture. Some states even require that your create one by law so it's a really, really good idea to do it.

You don't have to hire a lawyer. Check your local bar association website to see if they have samples you can use as a starting point (for example, the New York State bar posted sample agreements here and here). SCORE publishes articles and templates, and occasionally hosts workshops for new business owners. Once you have a good draft, find a solo practitioner (who can offer rates that are more reasonable than a lawyer at a big firm) to look it over once it's done.

I asked Megan Eiss-Proctor, an attorney who specializes in working with start -ups, to identify the most important clauses. Then I added two of my own. So if you talk about nothing else, make sure you address these:

1. **Decision-making.** Talk about and decide how you will make decisions, especially in those cases when it's an important topic and there is no consensus. In one of my partnerships, we had decided that major decisions

had to be unanimous. When we couldn't get there, we didn't move forward.

2. **Capital Contribution.** This is the section where you say how much money each person is putting in to start the business. "You should also address what will happen if that initial influx of money is not enough to carry you through to profit," says Eiss-Proctor. "What will happen if the business needs more money? Will you close your doors? Seek outside investment or have the owners put in more money themselves? It is always good to plan for worst case scenario ahead of time. Also, if one partner is the "money" partner and another is a workhorse, it is good to make this clear on paper so that everyone understands what they are getting into."
3. **Salaries/Distributions.** According to Eiss-Proctor, these are technically 2 different sections, but they are getting at the same thing. She suggests starting with basic questions like: When will the partners be able to take money out of the business? If one of the partners wants to build a national brand, this may require keeping the money in the company longer (and thus fewer distributions) than if the other partner wants to make it a mom and pop shop and live on the small salary. Will partners ever get re-paid for the investments they put in, if so, when? You and your partners should be in agreement about the ways the money should be allocated among the owners.
4. **Death/Disability.** It seems so unlikely, but bad things happen sometimes, and it's best to be prepared. Insurance, trusts, and wills all come into play on this topic, so you'll have to think through who in your life you trust to make decisions on your behalf; who would inherit your shares of the company; and would you want your beneficiaries to have a say in what happens to the company (or, conversely, are you prepared to share power with your partner's spouse/family member/friend.)
5. **Dissolution.** "No one ever wants to talk about this one," says Eiss-Proctor. "But it is extremely important to discuss at the beginning of the business relationship. Figure out now, while everyone is getting along, what will happen if one of the partners doesn't want to be involved anymore. Think ahead to a time when you and your partner(s) may not be in agreement about the business. That is not the time to start arguing about the exit strategies. The time to figure out exit strategies is at the beginning when everyone is working to make the business take shape."

NB: This discussion is for informational purposes only and not for the purpose of providing legal advice. You should contact an attorney to obtain advice with respect to any particular issue or problem.

Do you have these clauses in your partnership agreement? Or have you put the agreement off far too long? Tell me about it in the comments or tweet me @furiouslymandy with the hash tag #committed.

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