

## **Partnership Agreements Among Band Members**

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*The views and opinions expressed in this article are not meant to substitute for legal advice which should be sought in each particular instance.*

### **Introduction**

This article discusses some of the basic terms and issues surrounding a typical band partnership agreement.

Musicians often avoid the uncomfortable, and somewhat complicated discussions surrounding the business structure of their creative entity (sounds uncomfortable already right?). Although it is not often necessary to delineate the rights and obligations of individual members/partners at the first band rehearsal, it is prudent to be aware of those rights and obligations at an early stage in the relationship. Consider the following when thinking about your working relationship with other band members.

### **Defining The Partners**

Who are the partners? Sometimes the answer to this question is not so simple. A partnership involves commitment and potential liability. On the positive side, it can also guarantee rewards. In smaller tight knit groups it will be easier to define the partners as opposed to larger ensembles where part time/guest performers may not be included as partners. There are no rules to fully define who a partner is. Each circumstance dictates its own course. A partnership agreement should clearly list the partners.

### **Decision Making**

How are decisions of the partnership made? Bands decide many things. For example, songs to include on an album; expenditures; hiring/firing personnel ( i.e.: managers, booking agents, publicist, etc.) and tour scheduling.

Partnerships will typically elect to decide most issues by a majority vote with each partner retaining one vote each. In some circumstances individual band members may unilaterally determine more minor issues such as expenditures below \$250.00 or issues of a "nonsubstantial" nature. More substantial matters such as the execution of exclusive recording agreements or the forced departure of a partner may require near unanimous decisions.

### **Leaving Partners**

Leaving partners may or may not retain their interest in the partnership depending on the language found in the partnership agreement. For example, a partner may only be involved in the recording, release, and promotion of one album in a band's five album career. If the partner is forced out of the partnership by the other partners should this leaving partner be denied income related to the album which he/she was integrally involved with or, should he/she continue to collect a portion of royalty income following his/her departure from the group? Should it matter whether the partner left the partnership voluntarily?

Should it matter if the partner left the partnership due to legitimate health or family concerns?

Again, these questions merely raise a portion of the issues that you should review when discussing your partnership agreement with your music lawyer of choice.

### **Ownership Of The Band Name**

As the band gains profile in the marketplace the band name gains value. Who retains the rights to use the name when, and if, the group disbands?

### **Division of Income**

Hopefully the partnership will make a profit. When it does, the partnership agreement should clearly describe how and when the profits are to be divided among the partners. Typically, partnership agreements will require that particular expenses be paid prior to payment to the partners. Musicians may elect to divide profits evenly or disproportionately depending on the level of contribution of each member. For example, one or two partners may be primarily responsible for conducting band business and may, as a result, collect a larger share of partnership profit.

### **Generally**

In this article I've tried to outline some major points and issues that should be addressed in band partnership agreement, however, space does not allow me to discuss more issues that arise in such agreements. For example, band members should be aware of the implications of spousal rights under the country's varied family law legislation. Your attorney should also review with you the pros and cons of utilising a corporate entity as your basic structure for conducting band business. Finally, and perhaps most importantly partners should understand the issues of liability which arise when conducting business under a partnership because decisions undertaken by individual partners on behalf of the partnership can potentially have serious ramifications for other members of the partnership.

A partnership agreement does not have to be in writing to be enforceable. The law states that a partnership may be deemed where persons are carrying on business together with a view to profit. Many bands are acting as a partnership and may not even realize that obligations may have attached despite the lack of a written agreement.

A properly drafted partnership agreement should clearly delineate the rights and obligations of individual band members. However, even the most comprehensive document cannot account for the myriad of issues which arise. Often partners must revise and amend their agreements as the relationships between the partners evolve.