

NOTE: In this checklist the terms Partner and Partnership are used generically, and apply equally to Members of a Limited Liability Company (LLC).

Fifty Questions to Answer In a Partnership Agreement

A written partnership agreement should answer the following 50 questions. You and your partner must decide whether to use an attorney to draft the agreement, or an accountant to guide you toward the best tax structure for your needs. You can save money by discussing these ideas with your partner before meeting with a lawyer or accountant. Many partners prepare a draft of an agreement and have a lawyer formalize it after they have prepared answers to all 50 questions.

Company Name, Location and Hours

1. What are the partners' names? Are they individuals, corporations or Limited Liability Companies? What is the designated name and purpose of the partnership?
2. Will we register the company name as a trademark?
3. Where will the office be located? Will we own it or rent it? Will any partners work out of a home office full-time or part-time?
4. What will be our working hours? What autonomy will partners have to set their own hours? Do we need to service clients during any certain time each day? How often will the partners meet to discuss business?

Contributions

5. What will each partner contribute to the business in terms of:
 - Cash
 - Skills
 - Property
 - Tools and equipment
 - Intellectual property (know-how)
 - Network and professional contacts
 - Reputation
 - Labor
 - Customers
 - Insurance, benefits, company perks
6. What is each partner's ownership share of the business?

Accountability

7. How will we measure job performance and hold each partner accountable for meeting expectations?

Taxes

8. What partnership structure will we choose and how will that affect our taxation? e.g. general partnership, limited partnership, limited liability partnership (LLP) limited liability company (LLC).

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Liability

9. Will the Agreement limit the joint and several liability that partners have by law for their partners' behavior? Will the partners' contractual commitments and representations bind me?
10. What is my liability if my partner does something illegal while representing the company?
11. Who is responsible for what percent and kind of company debt?

Authority

12. How will authority and decision making be structured? Will we operate by consensus, or based on share of ownership? What is the tie-breaking mechanism used to avoid deadlock? Will partners have authority to control certain functional areas of the business without the approval or involvement of the other partners? What is the authority to act on behalf of the company without unanimous agreement?
13. What is the procedure for borrowing money in the company name? When does borrowing require approval of the other partners? What is the scope of expense account authority before needing to consult with the other partners?

Responsibilities

14. Who will handle what? How will your roles and responsibilities be divided? Who will have what management duties?
15. How will workload be assigned and monitored?

Personnel

16. How will we choose a lawyer, accountant, banker, insurance agent or any other professional service provider?
17. What process will be used to expand and admit new partners?
18. How will we hire employees or contract workers?
19. How will we select vendors and suppliers?
20. How will we select customers or clients?

Insurance

21. What kind of business liability and/or property damage insurance will we purchase?
22. Will we provide medical, life or disability insurance or a pension plan for ourselves and our employees?
23. Will we provide key man insurance on the lives or disability of the partners?

Ownership and Compensation

24. How will ownership percentages be determined?
25. If one partner had the original idea for the business, should he receive compensation or additional ownership rights?
26. How will profits be apportioned? How will losses be allocated?

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27. What amount of profits will be withheld for investment back into the business?
28. How will salaries or draws against profits be determined?
29. How will company perks be assigned? Cars, stadium/theater seats, etc.
30. What other benefits will we provide? Vacation, holidays, sick time, etc.
31. How will we provide for the unexpected? Serious family illness, disability, or some other life event that disturbs a partner's ability to work productively?
32. What extent of absence from productive work will require renegotiation of the partnership agreement?
33. Who will keep the books? What financial statements will the partners receive? How regularly will they be prepared?
34. Are there any restrictions on engaging in other outside business activity?
35. Will we forbid conflicts of interest and direct competition?

Buy/Sell Agreement

36. What happens to the business assets if a partner dies?
37. How will the value of the partners' shares of the business be determined?
38. If a partner leaves, will the company pay for his share? Can a departed partner remain as an investor?
39. Will a departing partner receive the same amount for his share if he joins the competition?
40. What restrictions and approvals apply to a partner selling his share of the business to a third party?
41. Do the other partners have a right of first refusal for the shares of a partner who dies or leaves?
42. Will the partners be required to sign a non-compete agreement? (These are now illegal in California.)
43. What is the process for firing a partner for incompetence or malicious behavior? What happens if a partner becomes impaired by drugs or alcohol, or gets arrested?
44. What process will we follow if an outsider offers to buy the business?
45. Upon dissolution of the partnership, how will shared assets be divided?
46. Who gets the rights to intellectual property, customer lists, company files and records?
47. Who can continue to use the company name and logo?
48. What method of alternative dispute resolution (arbitration or mediation) will be used in lieu of litigation to resolve disputes between the partners? How will the arbitrator/mediator be chosen?
49. What is the procedure for amending the partnership agreement?
50. If a partner fails to make a contribution as provided in the partnership agreement, or otherwise violates the agreement, what are the consequences?

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The following six pages contain an example of a LLC Operating Agreement based on this 50-question checklist.

Operating Agreement XYZ Enterprises, LLC

This Operating Agreement, referred to herein as the Agreement, is made this 1st day of January 2006 by and between Joe Smith, a resident of Pittsburgh, Pennsylvania, and his partner, Jane Doe, a resident of Greensburg, Pennsylvania, who are referred to herein as either the Partners or the Members, both terms having the same meaning.

The Members have formed a Limited Liability Company, which is known as XYZ Enterprises, LLC under the laws of the Commonwealth of Pennsylvania, and which is referred to herein as the Company. The two Members listed in the preceding paragraph are the only Members of the Company. In consideration of the mutual promises contained in this Agreement, and in order to establish procedures for operating the Company, and intending to be legally bound by the terms and conditions set forth herein, the Members hereby agree as follows.

A. The Company and its Business

1. The primary business to be conducted by the Company shall be the acquisition of merchandise from various sources, and reselling it on the Internet website known as eBay. The Company shall also act as a Trading Assistant, whereby it sells merchandise for others for a fee on eBay. The Company may also engage in any other lawful business that the Members may approve.
2. The name of the Company shall be registered as a trademark with the Office of the Secretary of State of the Commonwealth of Pennsylvania.
3. The registered office of the Company, and its principal place of business shall be located at 123 Wistful Vista, Greensburg, PA 15601, which is the home of Jane Doe, a Member of the Company. This is a home-based business.
4. Each Member is employed by another company. Each member shall work on the business of the Company part time as a second job, and will devote time to the business, as it is available, primarily on weekends. The business will not maintain regular working hours, but each Member will work whatever hours that are required to accomplish their respective responsibilities as set forth in this Agreement.

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B. Capital Contributions

5. Each Partner shall make equal contributions to the capital of the Company. Each Partner shall provide their own computer for use in the Company's business, and shall contribute the amount of \$1,000.00 in cash each for working capital. Subsequent capital contributions shall be provided by each Partner as may be required from time to time to operate the Company's business adequately.
6. Each Partner shall own an equal 50% share of the Company and its business.

C. Accountability

7. The responsibilities for each Partner's role in operating the Company's business are set forth in more detail later in this Agreement. Joe Smith is responsible for acquiring suitable merchandise for resale. Jane Doe is responsible for selling the merchandise acquired by her Partner. Each Partner shall be accountable to the other Partner for the satisfactory performance of their responsibilities, and shall devote whatever time and effort that may be required to accomplish the goals that may be established by mutual agreement between the Partners from time to time.
8. The Company is organized as a Limited Liability Company (LLC) pursuant to the Business Corporation Law of the Commonwealth of Pennsylvania. Having two Members, the Company shall be taxed by the Internal Revenue Service as a Partnership.

D. Liability

9. The personal liability of each Member shall be limited to their respective investment in the Company. The Members shall not be subject to joint and several liability as would affect the general partners in a general partnership.
10. The Company subscribes to the highest personal standards of ethical conduct in any activity related to the Company's business. Any improper, unethical or illegal activity undertaken by either Member shall be deemed to have been disavowed by the Company, and shall not affect the liability of the other Member. One Member shall not be held liable for the illegal activity of the other Member, provided the innocent Member had no knowledge or participation in such illegal activity.
11. Each Member shall be personally responsible for 50% of any debt that is incurred legitimately by the Company.

E. Authority

12. a. The Partners shall meet at least once a week, at a time that is mutually agreeable, at the office of the Company, to discuss the business of the

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Company. Each Partner shall have an equal vote in making decisions affecting the conduct of the Company's business. All decisions shall be made by consensus. In order to avoid a possible impasse or deadlock, in the event that the Partners are unable to agree on a major business decision, the matter shall be submitted for decision by the accountant who is retained by the Company to keep its books. The decision of the accountant shall be binding upon the Partners. If, for any reason, the accountant is unable or unwilling to make such a decision, the matter in controversy shall be referred to the lawyer who represents the Company, whose decision shall be binding upon the Partners.

- b. Each Partner is authorized to make decisions affecting his/her area of responsibility, as set forth in Section F, below, in the normal course of business, without consulting the other partner, provided the decision does not exceed the amount of \$5,000.00. Any decision affecting more than \$5,000.00 must have the prior approval of the other Partner.
- c. The Company shall be managed directly by its Members. The Company will not utilize a Manager unless the Members decide to do so by unanimous decision.

13. Either Partner may sign a check drawn on the Company's bank account, provided the amount of the transaction does not exceed \$5,000.00. Both Partners must sign any check in an amount more than \$5,000.00.

F. Responsibilities

14 a. Joe Smith shall be responsible for acquiring merchandise to resell. In this capacity, he shall attend auctions, flea markets and make purchases from other dealers. He shall acquire sufficient merchandise such that its resale value is adequate to meet the sales goals established by the Company. Joe Smith shall also be the Chief Executive Officer of the Company.

- b. Jane Doe shall be responsible to sell the merchandise on eBay, or any other similar website. Direct sales to private parties are allowed. Jane Doe shall also keep the books of financial accounts for the Company, and shall be its Chief Financial Officer.

15. Individual workloads will be established at the weekly meetings of the Partners as set forth in Section 12 a., above. Each Partner is encouraged to exercise individual initiative in order to achieve the goals of the Company, and provide for its prosperity.

G. Personnel

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16. The selection of professional service providers, such as accountant, lawyer, insurance agent and banker, shall be made by consensus between the Partners.
17. New Members shall be admitted to the Company only by unanimous agreement among the existing Members. As a condition of membership in the Company, new Members shall be required to execute a Joinder Agreement, whereby they subscribe to all the terms and conditions of this Operating Agreement, or whatever version hereof is in effect at the time.
18. Employees and/or independent contractors shall be hired by the Partners as the needs of the business may require.
19. Vendors and/or suppliers of goods or services that may be required by the Company may be selected by either Partner as needed.
20. Buyers of the Company's merchandise may be selected by either Partner.

H. Insurance

21. The need for general Liability insurance, Property insurance, Keyman Life and Disability insurance, and any other insurance coverage related to the Company and its business shall be determined by the Partners by mutual agreement.
22. Employee benefits, such as life insurance, disability insurance, pensions and any other similar benefits shall be provided as the Partners may decide by mutual agreement.
23. Providing Key man insurance is covered in section 21, above.

I. Ownership and Compensation

24. Each Member owns an equal 50% interest in the Company and its business. In the event that new Members are admitted, pursuant to the provisions of Section 17, above, new Membership interests shall be determined and allocated by the unanimous agreement of all existing Members.
25. Compensation and distribution of profits shall be made to the Members in equal shares, unless otherwise agreed by mutual consent.
26. Any losses incurred by the Company shall be allocated among the Members in equal shares, unless otherwise agreed by mutual consent.
27. The retention of profits for reinvestment in the Company's business from time to time shall be made as the Members may agree unanimously.
28. Salaries for the Members and any employees that may be hired shall be established and paid as the Members may determine by unanimous agreement.

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29. Company perquisites, such as company-owned cars and similar benefits, shall be provided to Members and/or employees as the Members may determine by unanimous decision.
30. Employee benefits such as vacation, paid holidays, sick time, family time, mental health time and similar benefits shall be provided, as the Members shall determine by unanimous decision.
31. Conditions which affect a Member's ability to work productively, such as serious illness, disability or other unexpected situation shall be dealt with as the Members may decide by mutual agreement.
32. Any extended absence from work of a Member, which adversely affects the performance of the Company and/or its business, shall be dealt with as the need arises in such manner as the Members may decide by mutual agreement. The continuation of pay and benefits during any such period of extended absence from work or disability shall be subject to unanimous agreement among all Members.
33. Pursuant to the provisions of Section 14 b., above, the books of account shall be kept by Jane Doe. An accountant shall be selected by the Members to prepare regular financial reports and tax returns for the Company.
34. Both of the Members have other jobs outside the Company, as stated in Section 4, above, and are expected to spend most of their working time for their outside employment. Nevertheless, in the event a Member is unable to devote sufficient time to his/her responsibilities as set forth in Section F, above, to the extent that it adversely impacts the performance of the Company and its business, that Member may be subject to having his/her compensation adjusted, or other measures taken as the Members may mutually agree, notwithstanding any provisions to the contrary contained in Section I, pertaining to equal compensation of Members.
35. As stated in Section 10, above, the Company adheres to the highest standards of personal integrity. Accordingly, all Members shall scrupulously avoid at all times any activity that could be detrimental to the welfare of the Company and its business. Any such conflict of interest that may arise would be grounds for severe disciplinary measures being taken against the offending Member, up to and including having his/her Membership in the Company revoked or terminated.

J. Buy-Sell Agreement

36. In the event of the death of a Member, the value of the deceased Member's interest in the Company, as determined according to the provisions of Section 37, below, shall be paid to the personal representative of the Member's estate.

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37. The value of a Members interest in the Company shall be based on the Book Value of such interest, as determined by the accountant who prepares regular financial statements for the Company.
38. If a Member leaves the Company, his/her employment with the company shall be terminated. The departed Member shall be paid the value of his/her interest in the Company as provided in Section 37, above, except as provided in Section 39, below.
39. If a Member leaves the Company to work for any competitor of the Company, the value of his/her interest in the Company, which shall be paid to the departing Member shall be reduced as the remaining Members may mutually agree.
40. No Member shall sell his/her interest in the Company to any person who is not a Member, unless the interest is first offered for sale to the remaining Members, who have a right of first refusal. Such offer must be in writing. Only if the remaining Members decline to purchase the Member's interest within 30 days of the date of the written offer of sale, may the Member's interest be sold to an outsider who is not already a Member. Any attempt to sell a Member's interest in violation of the terms of this section J. shall be null and void, and will not be honored by the Company.
41. Members shall not be required to sign a Non-Competition agreement, but they shall also observe the above-stated standards of personal integrity, and shall take no action that would be detrimental to the Company.
42. Any Member who fails to comply with all the provisions of this Agreement shall have his/her Membership revoked by the other Members.
43. Any offer to buy the Company or its business shall be referred to the Members for evaluation. The Members must agree unanimously in order to sell the Company or its business.

K. Company Dissolution

44. Upon dissolution of the Company, its assets will be offered for sale at their Book Value, first, to the Members in proportion to their respective shares in the Company, and then to the public. Shared assets shall be offered for sale to the public.
45. Any intellectual property owned by the Company, and proprietary information, such as customer lists, and Company files and records shall be disposed of as the Partners may mutually agree.
46. The continuing use of the Company name and logo shall be determined by the mutual consent of the members.
47. In the event of a dispute between the Members that cannot be reconciled, the members agree not to resort to litigation in court, but

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in lieu thereof agree to submit the dispute to binding arbitration under the rules of the American Arbitration Association.

48. This Agreement may be amended only by the unanimous consent of the members.

WITNESS the due execution of this Operating Agreement, consisting of 48 numbered sections on six pages, as of the day and year first written above, by the undersigned Members, being all the Members of XYZ Enterprises, LLC.

Joseph Smith, Member

Jane Doe, Member