



Are We Partners?

Implied Partnerships

Explained

You and a family member, friend, or colleague start a business. The idea is great and getting noticed, with opportunities—maybe even money—rolling in. The whole thing is exciting. Nothing about the business, however, is formalized or documented in any way. Still, everyone understands how to handle profits, liabilities, contributions, day-to-day tasks, and long-term decisions.

Has a partnership been formed, even if accidentally?

Possibly.

Implied, or “defacto,” partnerships are formed when two or more persons carry on a business as co-owners for profit. They are just as legally binding as express or written partnerships.

Intent to form a partnership is not required. Instead, a variety of factors determine whether a partnership has been formed. Perhaps the most important factor is the sharing of profits. Indeed, in most states the sharing of profits creates a legal presumption that a partnership exists.

Once an implied partnership exists, state law can provide the missing terms and conditions of how that partnership functions. State partnership acts—often modeled after the Uniform Partnership Act (UPA) or Revised Uniform Partnership Act



(RUPA)—set forth default rules on partnership formation, decision making, distributions, fiduciary duties, dispute resolution, and termination. Those rules may or may not reflect how you or the others wanted to conduct the business. Disagreements may ensue.

So, avoid the uncertainty and related consequences of an implied partnership. Document the nature of the business relationship and how it operates, whether in a partnership agreement, limited liability company (LLC) agreement, corporation articles and bylaws, or independent contractor agreement.



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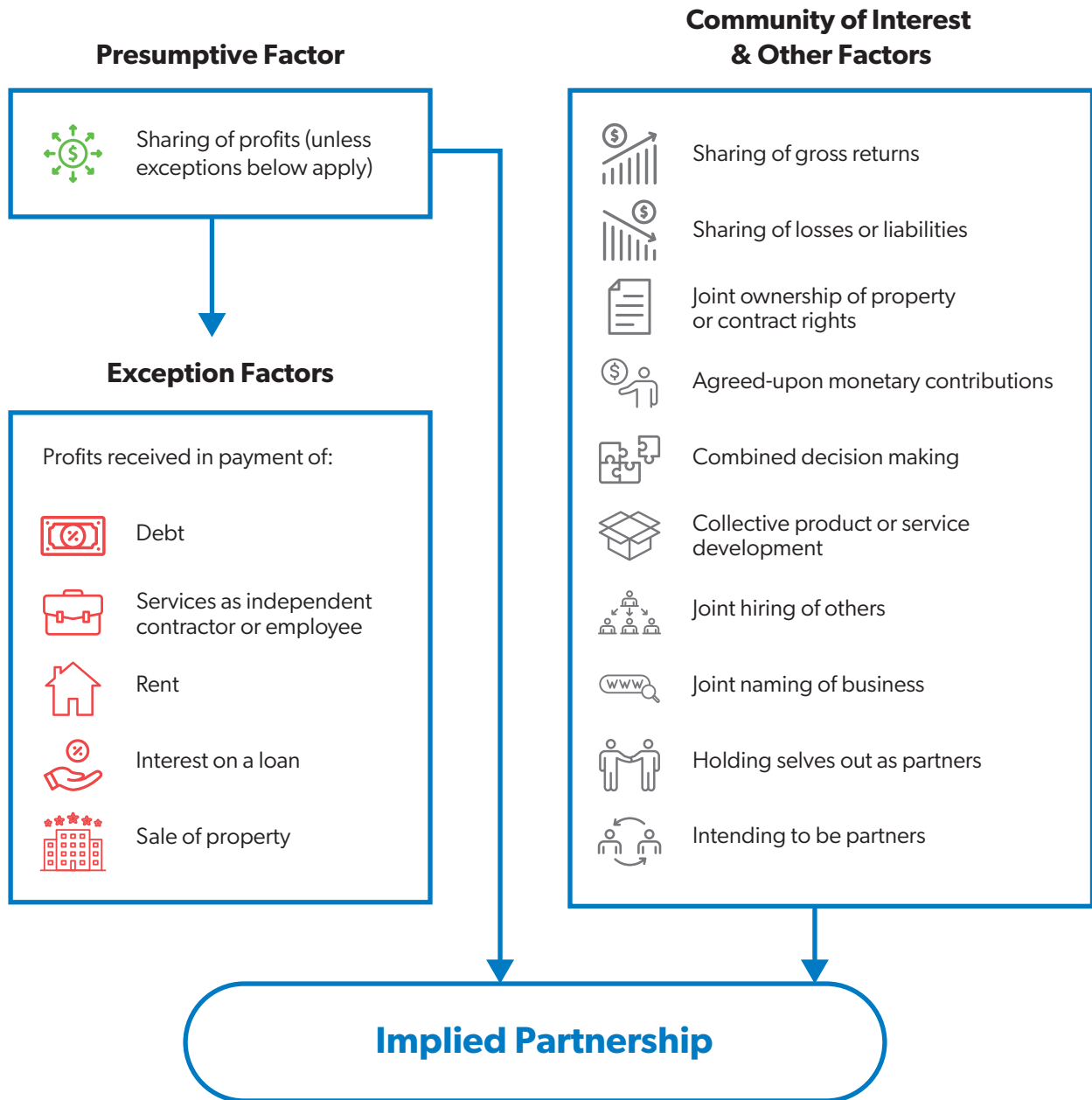
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Factors



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