

# JOINT VENTURES BETWEEN BUSINESS ENTITIES

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## What Is a Joint Venture?

*People use the term in different ways*

- General partnership narrowly focused on one activity
- Any business owned by multiple persons, regardless of legal form—*e.g.*, partnership, LLC, closely held corporation
- Long-term contractual relationship that benefits all parties

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## What Is a Joint Venture in Law? Older Cases

- In older case law, a joint venture had these features:
  - a community of interest in the venture
  - an agreement to share profits
  - an agreement to share losses, and
  - a mutual right of control or management of the enterprise

*E.g., Ayco Development Corp. v. G.E.T. Service Co.*, 616 S.W.2d 184 (Tex. 1981)
- If these features are present:
  - Fiduciary duties apply—*e.g.*, no competition, submission of business opportunities, due care, good faith
  - Apparent authority to bind the business
  - Joint and several liability to third parties

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## What Is a Joint Venture in Law? Current Statutes

- Modern partnership law statutes provide that an association labelled a “joint venture” is a partnership if it meets the criteria for being a partnership—*E.g., TBOC § 152.051(b)(2)*
- Statutory definition of partnership — *TBOC § 152.051(b)*
  - association of two or more persons
  - to carry on
  - a business for profit
  - as co-owners

*regardless of whether they*

  - intend to create a partnership or
  - call themselves a partnership or joint venture

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## Implication of Definition

- No need for a written agreement, although “association” implies some agreement
- Participants do not need to self-identify as partners
- No business needs to have been conducted, only an association “to carry on”
- Must be a business for profit

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## Factors Affecting Partnership Status

- Factors to be weighed include (but are not limited to)
  - Receipt or right to receive profits
  - Expression of intent to be partners
  - Right to participate in control
  - Agreement to share or actual sharing of losses
  - Agreement to contribute or actual contributions of capital
- Factors insufficient by themselves
  - Right to receive profits in payment of debt, wages, purchase price
  - Co-ownership of property (as opposed to joint activity)
  - Sharing of or right to share gross returns

TBOC § 152.052; *Ingram v. Deere*, 288 S.W.3d 886 (Tex. 2009)

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