

JOINT VENTURES BETWEEN BUSINESS ENTITIES

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UTCLE
LLCS, LPS AND PARTNERSHIPS
JULY 14-15, 2022

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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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First appeared as part of the conference materials for the

31st Annual LLCs, LPs and Partnerships session

"Joint Ventures Between Business Entities"