

LexisNexis (R) Texas Annotated Statutes
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*** This document is current through the 2007 Regular Session ***
*** Annotations through cases posted on Lexis.com as of Oct. 20, 2008 ***

BUSINESS ORGANIZATIONS CODE
TITLE 4. PARTNERSHIPS
CHAPTER 152. GENERAL PARTNERSHIPS
SUBCHAPTER B. NATURE AND CREATION OF PARTNERSHIP

GO TO TEXAS CODE ARCHIVE DIRECTORY

Tex. Business Organizations Code § 152.051 (2007)

§ 152.051. Partnership Defined

(a) In this section, "association" does not have the meaning of the term "association" under Section 1.002.

(b) Except as provided by Subsection (c) and Section 152.053(a), an association of two or more persons to carry on a business for profit as owners creates a partnership, regardless of whether:

(1) the persons intend to create a partnership; or

(2) the association is called a "partnership," "joint venture," or other name.

(c) An association or organization is not a partnership if it was created under a statute other than:

(1) this title and the provisions of Title 1 applicable to partnerships and limited partnerships;

(2) a predecessor to a statute referred to in Subdivision (1); or

(3) a comparable statute of another jurisdiction.

(d) The provisions of this chapter govern limited partnerships only to the extent provided by Sections 153.003 and 153.152 and Subchapter H, Chapter 153.

HISTORY: Acts 2003, 78th Leg., ch. 182, § 1, effective January 1, 2006.

NOTES:

Revisor's Notes. --

Section 152.051(a) is new and has been added to clarify that, in this section, "association" has the plain English meaning, not the meaning used in Chapter 1 of the Code. Section 152.051(d) is new and has been added as an appropriate cross-reference to the provisions in Chapter 153 dealing with "linkage" between the general partnership provisions and the limited partnership provisions.

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Tex. Business Organizations Code § 152.052 (2007)

§ 152.052. Rules for Determining If Partnership Is Created

- (a) Factors indicating that persons have created a partnership include the persons':
- (1) receipt or right to receive a share of profits of the business;
 - (2) expression of an intent to be partners in the business;
 - (3) participation or right to participate in control of the business;
 - (4) agreement to share or sharing:
 - (A) losses of the business; or
 - (B) liability for claims by third parties against the business; and
 - (5) agreement to contribute or contributing money or property to the business.
- (b) One of the following circumstances, by itself, does not indicate that a person is a partner in the business:
- (1) the receipt or right to receive a share of profits as payment:
 - (A) of a debt, including repayment by installments;
 - (B) of wages or other compensation to an employee or independent contractor;
 - (C) of rent;
 - (D) to a former partner, surviving spouse or representative of a deceased or disabled partner, or transferee of a partnership interest;
 - (E) of interest or other charge on a loan, regardless of whether the amount varies with the profits of the business, including a direct or indirect present or future ownership interest in collateral or rights to income, proceeds, or

increase in value derived from collateral; or

(F) of consideration for the sale of a business or other property, including payment by installments;

(2) co-ownership of property, regardless of whether the co-ownership:

(A) is a joint tenancy, tenancy in common, tenancy by the entirety, joint property, community property, or part ownership; or

(B) is combined with sharing of profits from the property;

(3) the right to share or sharing gross returns or revenues, regardless of whether the persons sharing the gross returns or revenues have a common or joint interest in the property from which the returns or revenues are derived; or

(4) ownership of mineral property under a joint operating agreement.

(c) An agreement by the owners of a business to share losses is not necessary to create a partnership.

HISTORY: Acts 2003, 78th Leg., ch. 182, § 1, effective January 1, 2006.

NOTES:

Revisor's Notes. --

No substantive change is intended. The last sentence of Section 2.03(c), Texas Revised Partnership Act, is included in Section 152.053(b).

LexisNexis (R) Notes:

CASE NOTES

1. Given the testimony presented, the trial court, which served as the finder of fact in this case, could have believed the majority of the factors indicating the formation of a partnership to exist. Assuming the trial court believed the testimony presented by appellee, it could have found that appellee received a share of the profits, that the tax forms and alleged conversations expressed the brothers' intent to be partners, that the even split of expenses evidenced a sharing of losses, and that appellee contributed money to the business. *McDowell v. McDowell*, 143 S.W.3d 124, 2004 Tex. App. LEXIS 3682 (Tex. App. San Antonio 2004).

2. In an adversary proceeding in which the trustee filed suit against an insurance company requesting that the court declare that the insurance company was a partner with the debtor in the ownership and operation of nursing homes in Illinois and Texas and that, as a partner, the insurance company was liable for all of the debtor's debts, the court found that, under Texas law, the trustee had established that the insurance company was a partner in the debtor's business; the trustee had established that the insurance company had a right to receive a share of the profits of the business, had expressed an intent to be an equity owner in the business, and, accordingly, the debtor and the insurance company had a community of interest in the business. *Lain v. ZC Specialty Ins. Co. (In re Senior Living Props., L.L.C.)*, 309 B.R. 223, 2004 Bankr. LEXIS 539 (Bankr. N.D. Tex. 2004).