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LAWYERS & CONSULTANTS

The Business Partnership Protection Guide

How to Protect Your Business—and Your Relationship

Prepared by DSA Law – Melbourne’s Commercial Law Team for Founders

01
02

Introduction

You're excited about starting a business together. That's great! But here's the hard truth: around 50% of business partnerships fail—and most could have been saved with one simple document.

A partnership agreement isn't a sign of distrust. It's a sign of respect, professionalism, and care for both your business and your relationship. At DSA Law, we've helped hundreds of Victorian founders—friends, siblings, and colleagues—launch strong, protected partnerships. This guide gives you the exact steps to do the same.

The Uncomfortable Truth

Why "We're Friends" Isn't a Business Strategy

Friendship builds trust. But it doesn't define ownership, decision rights, or what happens if someone wants out. Without legal clarity, even the closest relationships can fracture under business pressure.

The Statistics

50%

of business partnerships dissolve within 5 years

Top 3 reasons they fail:

- Unclear roles and responsibilities
- Disagreements over money or profit
- No plan for exit or conflict

The Uncomfortable Truth

Real-World Warning Stories

01

Mark and James were best mates who launched a landscaping business. Mark worked full-time; James helped weekends. After 18 months, Mark felt used. James felt blindsided when Mark demanded 70% ownership.

→ An agreement would have defined contributions and ownership upfront.

02

Two sisters opened a café. When one got sick and couldn’t work, the other resented carrying the load—but couldn’t buy her out because they’d never agreed on valuation.

→ An agreement would have included a fair exit process.

03

Three colleagues quit their jobs to build an app. One wanted to sell early; the others wanted to scale. With no deadlock clause, they spent $120,000 in legal fees fighting.

→ An agreement would have outlined how to resolve major disagreements.

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The Good News: Most of these disasters are 100% preventable with one clear, well-drafted agreement.

The 3 Conversations You MUST Have Before You Start

01
02

Yes, this feels awkward. But having these talks now builds trust—not breaks it.

Conversation 1: Money & Ownership

Who's contributing what? Cash? Time? Equipment? IP? Ownership should reflect real contributions—not just "we're equal."

Questions to Discuss:

- Initial capital contribution from each partner?
- Ongoing financial contributions expected?
- How do we value non-financial contributions (e.g., full-time work vs part-time)?
- What if we need more money later—do we dilute ownership or loan it?
- How are profits and losses shared? (Not always the same as ownership %!)

The 3 Conversations You MUST Have Before You Start

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Conversation 2: Roles & Responsibilities

Clarity prevents resentment. “We’ll figure it out” leads to burnout and blame.

Questions to Discuss:

- What’s each person’s role (sales, ops, finance, etc.)?
- Who can sign contracts, spend over $X, or hire staff?
- What decisions need both of us to agree? (e.g., loans, new partners)
- What’s the minimum time commitment? (e.g., 30 hrs/week?)
- How do we handle it if someone needs reduced hours (baby, illness, etc.)?

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Conversation 3: Exit Strategy

This isn't negative—it's responsible. The best time to plan your exit is when you're not exiting.

Questions to Discuss:

- How can someone voluntarily leave? How much notice?
- How do we value their share? (Use a formula, not emotion.)
- Can they sell to anyone? (Or do we get first right to buy?)
- What if someone dies? (Their spouse becomes your partner?)
- What if someone becomes disabled or mentally unfit?
- What if we hit a deadlock on the future of the business?

Remember: Planning for the worst shows you care about the best outcome for everyone.

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Partnership Agreement vs Shareholders Agreement

What's the Difference?

Partnership Agreement:

Used if you're operating as a partnership (no company). Governs how you share profits, make decisions, and exit.

Shareholders Agreement:

Used if you've set up a Pty Ltd company. Covers share ownership, voting rights, and transfer rules.

Which Do You Need?

- Operating as "Sarah and Mark trading as Green Landscapes"? → Partnership Agreement
- Registered a company (e.g., "Green Landscapes Pty Ltd")? → Shareholders Agreement
- Not sure? → Talk to us—we'll help you pick the right structure and agreement.

The 7 Clauses That Prevent 90% of Disputes

These aren't "legal fine print"—they're your relationship's safety net.

01
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Clause 1: Ownership Split & Capital Contributions

- Defines exact % ownership
- Lists initial contributions (cash, assets, IP)
- Sets rules for future investment

→ Prevents "I did more!" arguments later.

Clause 2: Roles, Responsibilities & Decision-Making

- Outlines who does what
- Sets spending/signing limits
- Lists decisions needing joint approval

→ Eliminates confusion and overreach.

Clause 3: Profit & Loss Distribution

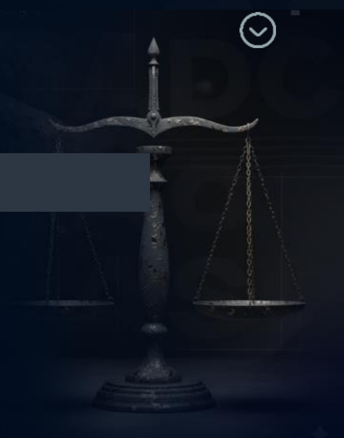
- Specifies how and when profits are paid
- Clarifies if distributions match ownership %
- Covers reinvestment vs. drawdown

→ Avoids money tension from Day 1.

Clause 4: Time & Effort Commitments

- States expected hours or availability
- Addresses part-time vs. full-time roles
- Includes consequences for chronic underperformance

→ Protects the partner doing the heavy lifting.



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Clause 5: Buy-Sell Provisions (Exit Strategy)

- Sets valuation method
- Defines payment terms (lump sum or installments)
- Triggers: death, disability, voluntary exit, breach

  → *This is THE most important clause. It keeps strangers out and gives you control.*

Clause 6: Dispute Resolution

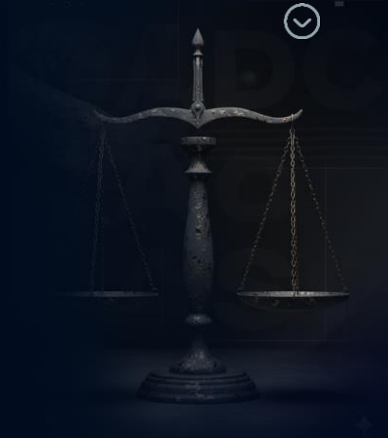
- Requires mediation before court
- Names a neutral third party (e.g., accountant, advisor)
- Includes a "deadlock" process (e.g., forced buyout)

  → *Saves your friendship—and your bank account.*

Clause 7: Restraint of Trade / Non-Compete

- Stops a departing partner from opening a rival business next door
- Limits use of your client list or IP
- Must be reasonable in time and geography

  → *Protects your business value if someone leaves.*



Buy-Sell Provisions Explained (Simply)

This clause determines what happens when someone leaves—and it's non-negotiable.

Why This Matters Most:

- Without it, your partner's ex-spouse, sibling, or even a stranger could become your new business partner.

Key Elements:

Valuation Method:

- Fixed price (updated annually)
- Formula (e.g., 3x average profit)
- Independent valuer (agreed-upon accountant)
- Book value

→ For most small businesses, a simple formula works best—and avoids costly fights.

Payment Terms:

- Lump sum (rare—most can't pay $200k cash)
- Installments over 2–5 years (with interest)

→ Reasonable terms protect both buyer and seller.

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Key Elements:

Trigger Events:

- Voluntary exit
- Death or total & permanent disability
- Breach of agreement (e.g., fraud, abandonment)
- Irreconcilable deadlock

Right of First Refusal:

- If a partner wants to sell, they must offer it to you first—at the same price/terms as any outside offer.
  → This keeps your business in trusted hands.

Warning Signs Your Partnership Is in Trouble

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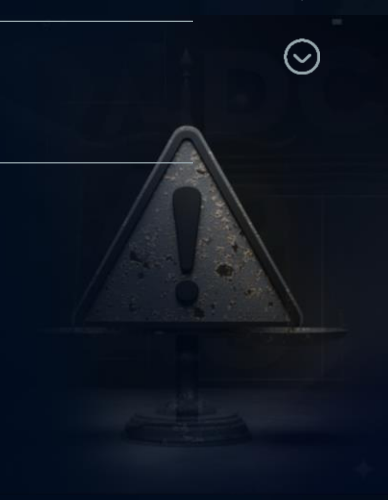
Red Flags to Watch For:

- One partner consistently missing meetings or deadlines
- Money disappearing or financial records unclear
- Major decisions made without consultation
- Constant arguing about direction or priorities
- Resentment over unequal workload
- Personal conflicts spilling into work
- Avoiding conversations about the future

What to Do:

- Talk early: Address issues before they fester
- Refer to your agreement: Let it guide the conversation
- Bring in a neutral mediator if you're stuck
- Get legal advice if:
  - → *Someone refuses to share financials*
  - → *A partner is acting against the business*
  - → *You're considering walking away*

If you don't have an agreement yet—and you see these signs—it's urgent.



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How to Have "The Agreement Talk" With Your Partner

Conversation Starter:

"I've been reading about business partnerships, and I think we should put a simple agreement in place—not because I don't trust you, but because I value our friendship and want this to succeed long-term."

Reframe It Positively:

- "This protects both of us equally."
- "It means we've thought through the hard stuff together."
- "It gives us confidence to invest more in the business."
- "If we can't agree on paper, how will we handle real problems?"
- "Would you get married without discussing finances or kids?"
- "If you won't talk about this, what else won't we talk about?"

Next Steps Together:

01

Schedule a 90-minute planning session

02

Use this guide's checklists to prepare

03

Agree to get legal advice together

04

Commit to signing before you open your business bank account

Your Partnership Protection Checklist

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Getting Your Agreement Done:

- Don't use a free online template (they're often unenforceable)
- Invest in proper legal drafting (~$2,000–$5,000)
- Both partners should review with their own lawyers
- Sign it BEFORE you start trading or spend money
- Store signed copies securely (cloud + hard copy)

Ongoing:

- Review your agreement every 12–24 months
- Update after major life or business changes
- Address small issues early—don't wait for crisis

Next Steps

Get It Right From the Start:

Cost of a partnership agreement:

$2,000–$5,000

Cost of a partnership dispute:

$50,000–$200,000+

(plus lost time, stress, and broken relationships)

Which would you rather pay?

What DSA Law Can Do:

- Draft clear, fair Partnership or Shareholders Agreements
- Review agreements from the other party
- Advise on the best structure for your goals
- Help resolve disputes—if they ever arise

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Next Steps

Book Your Consultation:

We offer a free 15-minute initial consultation to discuss your partnership. Bring your co-founder—we'll guide you through the process together.

(03) 8595 9580

www.dsalaw.com.au