

# **SAMPLE CLAUSES FOR FARM PARTNERSHIP AGREEMENTS**

For Use with the Publication  
Farm Business Partnerships in  
British Columbia

A study prepared for the B.C. Ministry of Agriculture, Farm  
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## **PREFACE**

A farm business can be organized as a proprietorship, partnership, corporation or could involve joint ventures, syndicates, or other form of working agreement. Each method of business organization has specific tax, legal, operational and other requirements.

In looking at many father-son and other forms of partnership agreements in British Columbia, we find that many do not have written agreements. The absence of a written agreement can create serious problems in cases where disputes arise amongst partners over issues relating to income sharing, purchases of capital items, sharing of work loads or management responsibilities, and other issues.

This publication has been designed to provide some general information on the issues that should be covered when drafting a farm partnership agreement. This publication is intended for use with the general publication entitled "Farm Business Partnerships in British Columbia — A Layman's Guide". It is expected that farm managers who are interested in developing farm partnership agreements will find the contents of this bulletin very useful to them as they discuss alternative arrangements with their partners and members of their family.

This publication is not intended as a substitute for professional advice. It is intended to provide a checklist that will allow a farm manager to gain a better grasp of the issues that he must discuss with his accountant or lawyer when he begins to put together a partnership agreement for his farm unit.

B.A. Hackett, Head  
Farm Economics Branch

September, 1978

## INTRODUCTION

This publication has been produced as a guide to the readers of "Farm Business Partnerships in British Columbia". The subjects referred to do not exhaust the points to be considered in drafting a partnership agreement. There are several other subjects the proposed partners should consider. For instance, consideration should also be given to:

- a) insurance requirements, both life and disability;
- b) additional limitations on individual partner's activities;
- c) payments to retired partners or to the estate of deceased partners, *i.e.* mode of payment, frequency and amount;
- d) whether any particular partner will be entitled to nominate a new partner for automatic admission to the partnership, whether any partner will be entitled to assign or bequeath his share in the partnership to his children.

You are advised to utilize this information merely as a checklist in the preparation of a draft partnership agreement. It is strongly recommended that any such draft agreement be referred to your lawyer and accountant to ensure the various subjects have been dealt with in a manner most suitable to your unique and particular circumstances. Each proposed partnership arrangement requires careful examination to determine the peculiar needs of the parties involved. The partnership agreement must be tailored to meet those needs and your lawyer working with the advice of your accountant will be in the best position to achieve the desired results. Staff of the British Columbia Ministry of Agriculture can also assist with outlining some of the alternatives, defining goals and objectives, and acting as a third party in discussions amongst family members.

Not only are there other subjects to be considered but there are innumerable methods of dealing with any particular subject and the sample clauses provided herein obviously cannot exhaust those alternatives.

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SUBJECTS TO BE CONSIDERED IN A  
PARTNERSHIP AGREEMENT RELATED TO  
THE BUSINESS OF FARMING AND  
SUGGESTED ALTERNATIVES FOR DEALING  
WITH THESE SUBJECTS.

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SAMPLE CLAUSES

1. The Agreement should immediately and clearly:
  - a) date the agreement for reference;
  - b) identify the partners;
  - c) identify the purpose for forming the partnership.

*THIS PARTNERSHIP AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.*

*BETWEEN: \_\_\_\_\_, farmer, of \_\_\_\_\_ in the Municipality of \_\_\_\_\_, in the Province of British Columbia, (hereinafter called the "First Partner"),*

*OF THE FIRST PART;*

*AND: \_\_\_\_\_, farmer, of \_\_\_\_\_, in the Municipality of \_\_\_\_\_, in the Province of British Columbia, (hereinafter called the "Second Partner"),*

*OF THE SECOND PART;*

*AND: \_\_\_\_\_, farmer, of \_\_\_\_\_, in the Municipality of \_\_\_\_\_, in the Province of British Columbia, (hereinafter called the "Third Partner"),*

*OF THE THIRD PART;*

*WHEREAS IT IS AGREED that the parties hereto (hereinafter sometimes referred to together as the "Partners" and singularly as a "Partner") will be Partners in the business of farming upon the terms hereinafter contained;*

*NOW THEREFORE the Partners covenant and agree each with the other as follows:*

- 2. Identify the legal name ("firm name") under which the business of the partnership will be conducted and the property on which the business of the partnership will be conducted and the property on which the business will be conducted.

*The partnership business shall be carried on under the firm name of \_\_\_\_\_, on the property described as:*

*(Legal Description)*

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*(hereinafter called the "Farm Property"), consisting of \_\_\_\_\_ acres (more or less) together with any other land as the partners may approve.*

- 3. Determine the duration of the partnership to be, for example,
  - a) for a specific number of years; or
  - b) until terminated pursuant to a procedure described in a later clause of the agreement, (see Item 5); or
  - c) for the period of joint lives of the Partners; or
  - d) a combination of the above.

*The Partners agree to carry on the business of farming in partnership from the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_, until the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_.*

*OR*

*The Partners agree to carry on the business of farming in partnership until such time as the partnership is terminated in the manner provided in Clause \_\_\_\_.*

*OR*

*The Partners agree the partnership shall continue for the joint lives of the Partners.*

*OR*

*The Partners agree the partnership shall continue for the joint lives of the Partners unless earlier terminated in the manner provided in Clause \_\_\_\_.*

4. Identify events which will automatically constitute dissolution of the partnership as well as events which will not automatically constitute dissolution of the partnership. Choose the events in each case carefully.

An attractive alternative is to ensure the partnership does not terminate for any reason except by deliberate action of the partners. Such deliberate action can be described in a later clause (See Item 5).

*The partnership shall be dissolved on the happening of any of the following events:*

- a) *(death of a Partner);*
- b) *(insanity of a Partner);*
- c) *(bankruptcy of a Partner);*
- d) *(legal or physical disability of a Partner);*
- e) *(withdrawal of any Partner from the partnership);*
- f) *(introduction of a new partner or partners to the partnership).*

AND

*The partnership shall not be dissolved by reason of the occurrence of any of the following events:*

- a) *(death of a Partner);*
- b) *(insanity of a Partner);*
- c) *(bankruptcy of a Partner);*
- d) *(legal or physical disability of a Partner);*
- e) *(withdrawal of any Partner from the partnership);*
- f) *(introduction of a new partner or partners to the partnership).*

OR

*The partnership shall continue until terminated in the manner provided in Clause \_\_\_\_\_ hereof, and for greater certainty, the partnership shall not be dissolved by reason of:*

- a) *any one or more Partners ceasing to be a Partner by reason of withdrawal, death, incapacity, retirement or bankruptcy;*

4. (continued)

- b) *the addition to the partnership of a new partner or partners;*
- c) *operation of law; or*
- d) *for any other reason whatsoever, in which event the partnership shall be continued by the remaining Partners or by the remaining Partners and added partners as the case may be.*

5. Consider including a method by which the partnership can be deliberately terminated.

*The partnership may be dissolved at any time, only by the affirmative vote, at a meeting of the Partners called expressly to consider dissolution, of a majority of partners entitled to vote on the question of dissolution.*

*OR*

*The partnership may be terminated at any time only by unanimous agreement in writing of all the Partners, or by agreement in writing of all except one of the Partners.*

*OR*

*The partnership may be terminated at any time by a Partner giving written notice to all other Partners of his intention to so terminate the partnership at least \_\_\_\_\_ months prior to the date of termination, such date to be established in the said notice.*

- 6 Establish and set out the capital contributions to be made to the partnership by each partner.

*The capital account of the Partners shall be determined by an accountant and an opening balance sheet shall be attached to this Agreement as Schedule 1, and the said Schedule 1 shall be revised annually.*

OR

*Each of the Partners agrees that as of the date of this Agreement, each shall have contributed land, buildings, machinery, equipment, livestock, grain and feed supplies and other assets to the partnership in the amounts and for the values respectively set opposite the names of each of them in Schedule "A" hereto and the Schedule "A" shall be revised annually with respect to each Partner; (a sample Schedule "A" is attached).*

7. If any partner(s) is to receive any direct remuneration for property legally owned by the individual but used in the business of the partnership, this must be stated.

*Any asset that is used in the business of the partnership, legal ownership of which is retained in the name of a partner, and which is not included in the assets set forth in Schedule "A", may be rented or leased to the partnership by the individual partner upon such terms as the partnership may agree. In the absence of a specific agreement as to the rental or lease of such an asset, the partnership shall be considered to enjoy the use of the asset in return, in part, for the share of profits allocated to that particular partner.*

OR

*(if real estate is the only significant asset affected)*

*The partnership shall pay compensation in the form of rent from partnership funds of \$ \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, in each year to (name) \_\_\_\_\_, who owns real property and has contributed the same to the partnership for the use of the partnership.*

8. Set out the manner in which profits and losses are to be divided among Partners.

*The net profits of the business of the partnership shall be divided among the Partners equally and they shall in like proportions bear all losses including loss of capital.*

OR

*The net profits of the business shall be divided among the Partners in the following manner:*

*First Partner* \_\_\_\_\_ %

*Second Partner* \_\_\_\_\_ %

*Third Partner* \_\_\_\_\_ %

*and they shall in like proportions bear all losses including loss of capital.*

9. Specify any salaries to be paid by the partnership to any partner and the extent to which a partner is to dedicate his time to the business of the partnership.

*Each partner shall give his whole time and attention to the business of the partnership and shall be allowed to take \_\_\_\_\_ weeks' holiday in each year.*

*The partnership shall pay each Partner an annual salary of \$\_\_\_\_\_ to be paid (date).*

*Any salary paid to a partner in accordance with this Clause shall be a deduction in determining the profits or losses of the business to be divided among the Partners in accordance with Clause 8.*

OR

*The Partners shall devote the following proportions of their time and attention to the business of the partnership:*

*First Partner* \_\_\_\_\_ %

*Second Partner* \_\_\_\_\_ %

*Third Partner* \_\_\_\_\_ %

10. If any interest is to be paid to a Partner on his capital contributions, this must be stated.

*Each of the Partners shall be entitled to interest at the rate of \_\_\_\_\_ per cent per annum on the amount for the time being of his share of the partnership capital, such interest to be credited each year before the profits of the partnership are divided.*

11. The maintenance of accounting records should be assigned to a specific person who may or may not be a Partner. Reference should be made to the method of accounting to be used in determining partnership profits and losses.

\_\_\_\_\_ shall have the responsibility and duty to establish and maintain the account books and records of the partnership for the purpose of showing partnership income and expenses, each Partner's capital and income status, the financial condition of the business and other information necessary for good management of the business of the partnership. At the close of each fiscal year he shall make a full accounting. The books shall be open to inspection by the Partners at any reasonable time. The partnership accounts shall be maintained on an accrual basis in accordance with generally accepted accounting principles. A separate accounting statement prepared on the "cash" basis in accordance with Section 28 of the Income Tax Act shall be prepared for each year for each of the partners for purposes of income tax reporting only.

OR

*The usual books of accounts with respect to the business of the partnership shall be properly kept and posted by \_\_\_\_\_ and an annual accounting shall be prepared at least once a year by an accountant and signed by all partners. The statements referred to in such accounts as prepared by the accountant shall be binding upon all partners.*

12. The fiscal period to be used for the partnership should be stated. The events specified in this particular clause *must be* consistent with the particular choice made with regard to sample Clause 4.

*The fiscal year of the partnership shall terminate on \_\_\_\_\_ during the currency of the partnership or on such other date as the partners may from time to time determine. The fiscal year-end of the partnership shall not be affected by the death, insanity, bankruptcy, disability or withdrawal of any partner, or by the admission of a new partner.*

13. Determine the level of cash withdrawals to be permitted by the partners during the fiscal year on account of that partner's share of capital or profits.

*The capital contributions of the Partners to the partnership shall not be subject to withdrawal except upon dissolution of the partnership.*

*Each of the Partners shall be entitled to draw out of the partnership bank account sums not exceeding \$ \_\_\_\_\_ in the aggregate in any one month on account of his share of profits, or such other monthly sums as the Partners may from time to time agree.*

14. The manner of conduct of the business of the Partnership should be specified. For example, management of partnership affairs might be by:

*Except as otherwise herein expressly provided, the Partners, by majority vote, shall at all times have and exercise all the power, authority and responsibility for management of the business of the partnership. By majority vote the Partners may delegate all or part of the authority so vested in them and may at any time cancel any such delegation of authority.*

- a) majority vote of the partners, with power to delegate functions; or
- b) majority vote of the partners, with certain partners being entitled to cast a greater number of votes than others; or
- c) unanimous agreement of the Partners; or
- d) a combination of the above.

OR

*Partners shall have the following number of votes on matters to be decided with respect to the management of the business of the partnership:*

*First Partner \_\_\_\_\_ %*

*Second Partner \_\_\_\_\_ %*

*Third Partner \_\_\_\_\_ %*

14. (continued)

*Except as otherwise provided in this Agreement, a majority of votes shall be required to adopt any decision with respect to the management of the partnership.*

*OR*

*The unanimous vote of all Partners shall be required to adopt any decisions with respect to the management of the partnership.*

*OR*

*The unanimous vote of all Partners shall be required to adopt any decision with respect to the following partnership matters:*

- 1. Capital expenditures of an amount greater than \$\_\_\_\_\_;*
- 2. Amendment to this agreement;*
- 3. (Insert any additional matter considered vital to the partners in the particular circumstances.)*

*Except as otherwise hereinbefore provided, a majority of vote shall be required to adopt any decision with respect to the management of the partnership.*

15. The procedure for expelling a partner can be set out. In the absence of any provision, no majority of the partners will be able to expel a partner. In many circumstances this may be the most desirable alternative.

*No Partner shall be expelled from the partnership except by agreement in writing of all except one of the Partners.*

16. The procedure to be followed for withdrawal from the partnership by retirement as well as the rights of the remaining partners on retirement (or death) of a partner should be established.

*Any Partner may voluntarily withdraw from the partnership at any time upon \_\_\_\_\_ days' written notice to the remaining Partners.*

*In the event any Partner shall withdraw from the partnership whether by death or otherwise, the remaining Partners shall, from the date of that withdrawal, in the proportions in which they were at that date entitled to share in the net profits of the partnership, succeed to the share of the deceased or withdrawing partner for a price to be set at the date of withdrawal.*

17. The procedure to be followed for the introduction of a new partner should be considered. Absence of any such provision in the partnership agreement will result in introduction of a new partner requiring unanimous consent of the existing partners.

*A new partner or partners may be admitted to the partnership by a majority decision of the existing Partners.*

OR

*A new partner or partners may be admitted to the partnership with the approval of not less than \_\_\_\_\_ per cent of the votes cast at a partnership meeting.*

18. A means of arbitrating disputes between Partners should be established. Such disputes are best referred to a third-party arbitrator.

*All disputes and questions whatsoever which shall arise between the Partners touching this partnership agreement or in any way relating to the business of the partnership shall be referred to a single arbitrator in accordance with the provisions of the Arbitration Act of British Columbia and amendments thereto. Such arbitrator shall be appointed by unanimous agreement of the Partners and in default of agreement by \_\_\_\_\_.*

18. (continued)

*OR, WHERE THERE ARE BUT TWO PARTNERS*

*Any dispute between the Partners arising under this Agreement as to any problem which must be mutually agreed upon to be binding will be submitted to arbitration if either partner so requests. Such a request must be in writing, must be signed by one Partner, must be delivered to the other Partner and must state the problem to be settled. Within ten (10) days after such request has been delivered, the Partners will each appoint one person to act as arbitrator; the two thus appointed will select the third; those three arbitrators will decide the problem. The decision of two of those arbitrators will be binding on the partners.*

19. The partnership's banker should be appointed and consideration given to any required restrictions on partners' dealings with such bank account.

*The bank of the partnership shall be \_\_\_\_\_ at \_\_\_\_\_ British Columbia. Any cheques drawn in the name of the partnership shall be signed by (at least two), (all) Partners. All money received on behalf of the partnership shall be paid into the bank of the partnership.*

20. Should the partners wish to impose any special rights and duties on a partner, these should be stated. For example, partners may wish to restrict a particular partner from pledging the credit of the partnership or otherwise contracting on behalf of the partnership.

*No Partner shall incur any obligation exceeding \$\_\_\_\_\_ on behalf of the partnership in any fiscal year, whether by buying, borrowing or by any other manner without the consent of (all, (at least one)) of the Partners.*

**SAMPLE SCHEDULE "A"**

**REFERRED TO IN ITEM 6**

PARTNER \_\_\_\_\_

ASSETS CONTRIBUTED TO PARTNERSHIP	FAIR MARKET VALUE AT DATE OF TRANSFER TO THE PARTNERSHIP	ELECTED VALUE FOR INCOME TAX PURPOSES AT DATE OF TRANSFER	"COST AMOUNT" OF ASSET TO PARTNER AT DATE OF TRANSFER
1. <b>REAL PROPERTY</b> Legal description and no. of acres			
2. <b>BUILDINGS</b> Description			
3. <b>MACHINERY</b> Description			
4. <b>LIVESTOCK</b> Description			
5. <b>GRAIN AND FEED SUPPLIES</b> Description			
<b>TOTAL VALUE</b>	_____	_____	_____