



# BRENT TURMAN ON DALLAS BUSINESS JOURNAL TALKS BUSINESS PARTNERSHIPS IN TEXAS AND FORMATION BY CONDUCT

July 17, 2018

Bell Nunnally attorney Brent A. Turman authored the article titled, “Are you in a business partnership and don’t know it?,” featured on the *Dallas Business Journal*. The piece delves into the issue of business partnerships in Texas, and considers whether one may have entered into one simply through actions, rather than a formal agreement with other parties. Turman begins by noting that business partnerships are different from other arrangements, such as limited liability corporations, or LLCs, in that partners may be liable for each other’s actions. And, while the lay person may be under the impression that formation of a business partnership is done through formal, signed agreements, the Texas Business Organization Code stipulates that the conduct of a business’ participants can be cause for determining that a partnership has been created. Turman adds that the court considers the “totality of circumstances” in coming to its partnership determination and weighs a set of factors, with: 1) the right to share profits; and 2) control of the business as the two most important ones. Whether a business partnership has been created becomes much more important, Turman notes, as the business starts to generate cash flow. He concludes by noting that the ambiguity over whether a business is or is not a partnership can be headed off by proactively entering into a negotiated partnership agreement early on in a venture’s lifespan.

Full text of the article is below, and can be viewed on the *Dallas Business Journal*’s website by clicking [here](#).



## Are you in a business partnership and don't know it?

---

*Being a member or part-owner of a business is not a worry-free endeavor. In addition to having to beat the odds and rise above your competitors and market forces, you have the weight of legal obligations and responsibilities squarely on your shoulders.*

*However, not all types of entities are equal, and being involved in a partnership can create more substantial pitfalls than simply being a member or shareholder of a business that is a different form of entity.*

*One major way that a partnership differs from other types of entities —like limited liability companies and corporations — is that partners are liable for each other's acts. Understandably, becoming someone else's partner should not be taken lightly.*

*Because creating legal and business relationships should not be taken lightly, these relationships are generally solidified and commemorated in writing. However, that is not always the case when it comes to partnerships in the state of Texas. In fact, you could be in a legal partnership without knowing it (or ever intending to be in one).*

*The Texas Business Organizations Code provides guidance as to when a business venture may be a partnership, not because a signed partnership agreement exists, but due to the various individuals' conduct. The statute specifically discusses five factors that indicate whether an association of two or more people have created a partnership:*

- *Receipt or right to receive a share of profits of the business.*
- *Expression of an intent to be partners in the business.*
- *Participation or right to participate in control of the business.*
- *Agreement to share or sharing losses and/or liabilities.*
- *Agreement to contribute or contributing money or property to the business.*

*Texas courts address the issue of whether a partnership by conduct exists by considering the "totality of the circumstances." While you don't have to have evidence of all factors, you generally need conclusive evidence of at least more than one factor, and the two most important factors are sharing profits and the control over the business.*

*In a perfect world, the party seeking to prove that a partnership exists will have evidence of most, if not all, of the factors. Obviously, if the evidence speaks to a higher number of factors, then it will increase the likelihood that a court or jury will find that a partnership exists.*

*Not surprisingly, disputes regarding whether a partnership exist generally begin after a business receives a lot of money. To experienced businesspeople, this concept should be troubling. When will someone come*

*out of the woodworks to claim that they are entitled to a share of profits? On the other hand, this idea should be even more troubling to individuals who have been conducting business as partners, but relying on blind trust and a handshake deal instead of legal documents.*

*When it's too late and swords have been drawn, it's time to prepare for a fact-intensive battle in the courtroom. But, you can head the "partnership by conduct" fight off at the pass much earlier (and cheaper) if you can get a signed agreement before the big money comes in the door.*

## Related Practices

---

Entertainment, Advertising and Media  
Litigation

## Practice Area Contact

---

Brent A. Turman