

DO YOU HAVE A BAND PARTNERSHIP AGREEMENT YET?

Why even have a written agreement between the members of a band or group? Entering into a band agreement is advisable, not necessarily because you don't trust your band mates, but because it forces the members of the band to address difficult issues and hopefully reduce misunderstandings. To paraphrase Timothy B. Schmitt, bassist/singer with The Eagles: "In my experience, all rock & roll bands are on the verge of breaking up at all times." Yes, disputes will arise and you will be in a better position to deal with them if you have a comprehensive band agreement—in writing.

Band Name: The agreement should indicate the band name and any logo. It should also indicate who owns the band name. This issue has come up with some famous bands, like The Beach Boys. When a band breaks up, the question often arises as to who owns the name and, consequently, who can record and perform using that name. There are alternatives for ownership of the band name. For instance, the agreement can provide that the band owns the name, and departing band members have no right to use the name. Or let's say two members were instrumental in forming the band; the agreement could say "should those members leave, the band shall cease using the band name and logo."

Other Projects: The agreement may provide that band members can participate in other music projects (solo albums, solo performances, side artist appearances, etc.) so long as it does not interfere with band obligations.

Representations and Warranties: The agreement should include typical ("boilerplate") representations, such as: members have the legal right to enter into the band agreement; they will not do anything to harm the band partnership; that members are under no restriction that would interfere with the agreement; and that they will not sell their interest in the band without the consent of the other band members.

Profits and Losses: The simplest way to divide profits and losses is to provide in the agreement that the band members will share equally in them. This provision should also provide for a specific definition of "net profits." And it should specify expenses: such as band salaries, accounting, legal and office expenses. However, splitting band profits and losses may not be equitable to all band members under certain circumstances. For instance, where one band member does all the songwriting, is already famous, or invests most of the money in the band, the profits and losses section can have special provisions for that.

Publishing: There are a number of options with regard to splitting publishing income. The band agreement can provide that the band will split all music publishing income (writer's and publisher's share) equally among the members. Or a more complex formula can be used such as publishing income is shared equally, but songwriter income is to be equally divided among the writers of the composition. It all depends on what is fair under the circumstances. Where one member does no writing or one member does all the writing, the agreement should take this into account. If a band publishing company is set up it can have the worldwide

exclusive right to administer and control the copyright ownership in the recorded compositions and the right to enter into sub-publishing agreements or otherwise deal with the copyrights.

Meeting and Voting: The agreement should provide when there will be meetings and may provide that any member can call a meeting. It should also provide what types of things require a majority or unanimous vote. For instance, perhaps it will take a unanimous vote to expel a member, or a majority vote to admit a new member, or for bonuses, or entering into band agreements.

Books and Records: Books and records on the band's business dealings should be maintained and available for inspection by any band member.

Adding New Member: Adding a new member can often lead to disputes.

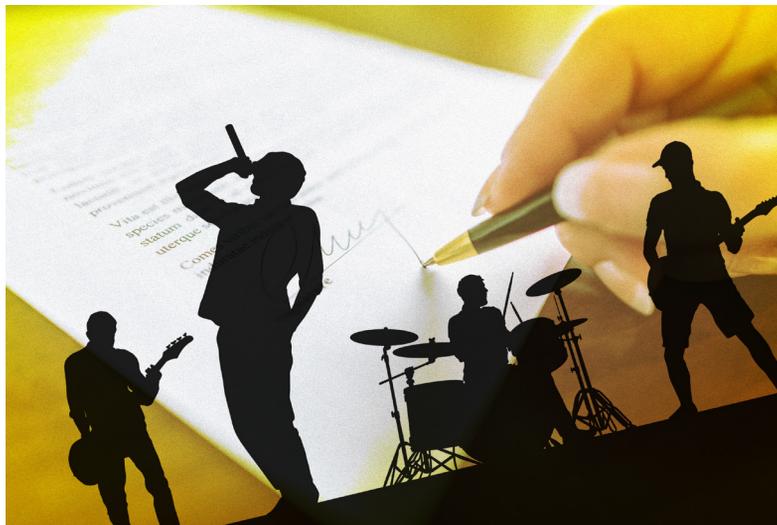
The procedure for adding a new member should be spelled out in the agreement. It should specify if all members have to agree to a new member. And it should require any new member to agree to the band agreement. In addition, a new member should usually not have any right to income from recordings created before the new member was admitted.

Leaving Member: The agreement can provide for voluntarily or involuntarily (death, disability, being expelled) leaving the band. It should specify what will constitute grounds to expel someone from the group. One possible provision could be that any member who leaves must give 30 days notice and that written notice will be given to any expelled partner. It should also provide what a leaving member is entitled to: share of net worth, royalties, etc.

Binding Arbitration: Providing for binding arbitration of disputes is usually a good idea. You will often have a quicker and less expensive resolution of your dispute. You could also provide for mediation (informal settlement conference with a retired judge) before an arbitration to try and settle without the costs of a binding arbitration.

General Provisions: There are a number of typical provisions included in a band partnership agreement. These include: California law applies to any disputes; email signatures on the band partnership agreement is sufficient; the agreement shall be binding on each member's successors-in-interest, and if one provision of the partnership agreement is held invalid by an arbitrator or court, the remaining provisions shall remain in effect.

Finally, each band member should have an independent attorney represent him or her with regard to the partnership agreement and each band member should receive a copy of it.



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