

## Legal Considerations in Forming a Band

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A few years ago, an extremely well-known (but then obscure) rock band secured a recording agreement and went on to make a record that went platinum. There were five in the band at the time the deal was secured, but subsequently four of its members kicked out one member who had spent the previous two years in the group. When the group hit, the musician brought a lawsuit for violation of partnership duties and recently settled for a six-figure sum.

The point derived from this case is that legal duties and rights exist among band members at all times, whether or not an agreement is in writing, and even whether the legal relationship among band members has been considered by *any* of them. The law always exists; it extends into intra-band relations, and ignorance of its workings is no excuse.

Partners are individually liable for the debts of a partnership if the partnership defaults. Moreover, unless restrictions are agreed upon up front, a member of a partnership can incur debts of the partnership. Partners share profit and losses in the partnership, usually in proportion to their ownership interest in the partnership.

The wise musical group or partnership (songwriters who collaborate are usually partners) will put the partnership agreement in writing, covering such points as:

1. Who owns the name of the group if the partnership splits up or members leave.
2. How major decisions are made (majority rule, two-third, three-quarters or unanimous votes).
3. Partnership buy-outs if a member leaves.
4. Rights to co-written songs. In the absence of an agreement, both songwriters are free to use, record and license jointly written songs, but must account to each other.
5. How debts will be incurred or repaid. (For example, saying that no debts will be incurred except upon authorization of a majority of partners). If a partner loans money to the group, is he entitled to interest?
6. How monies, including profits, are disbursed, and in what percentages.
7. Music publishing. Some agreements provide that publishing will be shared with non-writers in the group. If so, how much and for how long?
8. How disputes are handled: by arbitration or through the court system. The agreement should provide that in the event of a dispute, the prevailing party should get attorney's fees and reasonable costs incurred in connection with the litigation.

A group also can incorporate. The advantage of this is that it limits personal liability of the shareholders: the disadvantage is that it costs about \$1,000 in costs and lawyers' fees to do so and there are additional fees, forms and taxes that must be dealt with each year. An accountant and a lawyer should be consulted.

Agreements can also be made on audio or videotape. You can tape important business meetings. A tape provides sure evidence in the case of faulty memories, but taping should always be done with the permission of all parties.

Legal housekeeping saves time and money in the long run. If you haven't already, address these issues now. If you can't afford a lawyer, do the best you can without one. Something in writing (or on tape) is always better than nothing. Moreover, it focuses a group on its realistic needs and the business issues facing it. In

any event, if you can't or won't make an agreement, the law will do it for you and you may not like the result. Obviously, it makes sense to stay on top of these matters. ~