

Start Your Music Group With a Pre-Incorporation Agreement

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People often want to form a band or other musical group to get gigs, record music, and basically, make money in exchanging for plunking on instruments and looking cool. However, you need to make sure that the problems do not cause the money to become funny and keep the group happy and willing to stay together for everyone's benefit.

Groups fall apart for various reasons, ranging from problems with finances, loyalty, and petty jealousies. While drama can be unavoidable, having a strong agreement, in writing, can help to provide clarity on management and financial issues. A musical group should start with drawing up documents to form a corporation, limited liability company, or other organization to limit personal liability and use tax advantages not available to individuals and partnerships.

But what if your group members are tentative, in transition, or just plain old unsure if they want to associate together in the music business? For example, California usually charges \$800 per year for corporations before making their first dime of income. Do not just move forward without getting something in writing. Otherwise you will probably never get the group members to later commit themselves in writing to form the official corporation. Then you will have unclear where you stand as to songs written by group members, performances recorded, concert earnings, merchandise revenue, and many other issues. For example, do you want one guy leaving and using the group's name and songs with another group?

If you do not have the time or ability to form a group corporation, consider drawing up a pre-incorporation agreement. Such an agreement might also be useful when thinking of paying fees and taxes for incorporation charged by state governments

A pre-incorporation agreement can serve to record the member's intent to incorporate and a basic understanding of how the corporation will operate once formed. Some may consider the pre-incorporation agreement to be a waste of time, seeing as the same terms will be in the actual corporate documents anyway. However, the pre-incorporation agreement

may help to protect everyone's interests during the transition period before corporate formation. Also, as a practical matter, any negotiation over the terms of the pre-incorporation agreement can reveal problems that prompt people to exit before going through the hassle and expense of forming the corporation.

One rampant issue is who gets credit for authoring the group's music. If group members cannot agree on how songwriting credit (and consequently, royalties) is allotted, they are not likely to agree after the opus becomes a hit.

Get it in writing first, unless you like paying lawyers money to attempt to correct your mistakes.

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