

Checklist – Buy/Sell Agreements – Contingencies

I. Basic types of buy-sell agreements

- A. Entity purchase,
- B. Cross purchase, and
- C. Wait and see purchase.

II. Entity purchase or redemption buy-sell agreement

- A. Business itself buys separate life insurance policies on the lives of each of the co-owners.
- B. Business usually pays the annual premiums and is the owner and beneficiary of the policies.

III. Cross purchase buy-sell agreement

- A. Each co-owner buys a life insurance policy on each of the other co-owners.
- B. Each co-owner pays the annual premiums on the policies they own and are the beneficiaries of the policies.

IV. Wait and see buy-sell agreement

- A. Combines features from both the entity purchase and cross purchase models.
- B. Business can buy policies on each co-owner, the individual co-owners can buy policies on each other, or a mixture of both methods can be used.

V. Applicability

- A. Should the agreement apply only to the current owners or should be binding on all owners throughout the life of the business entity.
- B. Should the agreement provide that it supersedes all other agreements to redeem a business interest?
- C. Is the agreement being reviewed annually? (Changes of price or terms should require a unanimous vote of the owners.)

VI. Type of Agreement

- A. Should the agreement be structured as a redemption agreement or as a cross-purchase agreement?
- B. Should the agreement be structured:
 - 1. To require the seller to sell and the buyer to buy?
 - 2. To give the buyer an option to require the seller to sell?
 - 3. To give the seller an option to require the buyer to buy?
 - 4. To give a right of first refusal to the buyer?
 - 5. Should the death of an owner cause an automatic buyout of the owners interest or should his family be allowed to remain as an owner?

VII. Buyout Price and Time for Payout

- A. Should the buyout price from the estate or heirs of a deceased owner be addressed?
 - 1. If yes, when should be paid?
 - 2. What interest rate should the obligation bear?
- B. Should the buyout price to a disabled owner be addressed? If yes, when would be paid?

- C. Should the buyout price to an owner who resigns or is dismissed be addressed? If yes, when should be paid?
- D. Should there be a difference in price if there an amiable parting of ways? If yes, when should be paid?
- E. Should the buyout price to an owner who goes bankrupt be addressed? If yes, when should it be paid?
- F. Should the price reflect the fact that you are selling to a long time business associate rather than an outsider?
- G. Should the agreement provide that the buyout be funded by life insurance or some other investment vehicle?
- H. If funded with life insurance, should the type of life insurance used be addressed (i.e. term life, ordinary life, last to die, paid-up life, universal or an endowment policy?)
- I. Should a life insurance trust be used?
- J. Should all of the policy proceeds be required to be used to redeem the interest?
- K. Can part of the proceeds be used to help the entity recover from the loss of the owner?
- L. Should whole life insurance policies with cash values be transferred to the owner at termination or retirement?

VIII. Security

- A. Should the agreement be guaranteed or secured?
- B. If so, should the security be in the form of:
 - 1. A pledge of business assets?
 - 2. A personal guarantee by the other owners?
 - 3. An agreement obligating the entity to refrain from increasing salaries, paying dividends or making loans until all outstanding liabilities to beneficiaries are paid?
- C. Should the disposition of owners' loans, whether receivables or payables, in the event of termination because of death or disability be addressed?
- D. Should the disposition of owners' cans in the event of termination other than because of death or disability be addressed?

IX. Covenant Not to Compete

- A. Should there be a covenant not to compete?
- B. If so, should there be geographic and time limitations?

X. Other

- A. Should there be a period of disability before the other owners of the business have the right to buy out a disabled owner?
- B. Should an owner have the right to transfer or assign to a trust, for estate-tax planning purposes, their rights and interests in the business?
- C. Should the spouses of the owners sign the buy/sell agreement?
- D. Do other family members presently own any stock?