

**ABO'S HITLIST
TO CONSIDER IN THE BUY-SELL VALUATION OR FORMULA

AND

122 ITEMS TO CONSIDER FOR BUY-SELL AGREEMENTS**

**Abo and Company, LLC
Abo Cipolla Financial Forensics, LLC**

Certified Public Accountants / Litigation & Forensic Consultants
Website: www.aboandcompany.com

South Jersey Office (correspondence)
307 Fellowship Road, Suite 202
Mt. Laurel, NJ 08054
(856) 222-4723

New York City Office
1301 6th Avenue
35th Floor
New York NY 10019
(212) 495-0400

North Jersey Office
851 Franklin Lake Rd
Franklin Lakes NJ 07417
(201) 490-1117

Philadelphia Office
1500 Market Street
Philadelphia PA 19102
(215) 736-3156

Philadelphia Suburb Office
449 N. Pennsylvania Ave
Morrisville PA 19067
(215) 736-3156

Long Island Office
68 South Service Rd.
Suite 100
Melville NY 11747
(631) 271-8600

Martin H. Abo, CPA/ABV/CVA/CFF

Martin H. Abo, CPA/ABV/CVA/CFF is Managing Member of **Abo and Company, LLC** – Certified Public Accountants. He is co-managing member of **Abo Cipolla Financial Forensics, LLC**, an affiliate of the core accounting firm exclusively providing expert witness testimony on financial matters and other litigation support services as well as business valuations.

Marty has comprehensive experience in individual and corporate financial, business and tax planning. His previous experience includes several years with the tax department and audit staff of a Big Four CPA firm as well as regional firms before he founded the present enterprise. Marty has developed a specific expertise in performing dispute resolution and other consulting services. Clients, as well as the banking, insurance, judicial and legal community, increasingly call upon him to provide technical assistance, arbitration or expert testimony on financial accounting matters, business valuations, structuring buy-ins and buy-outs, divorce, estate controversies, insurance claims and other forensic/investigative analysis covering a wide range of topics and industries. He has operated in a supportive capacity to attorneys, judges, adjusters and clients in providing ongoing facilitation in the negotiation and/or litigation process. Marty assists attorneys to strengthen cases by clarifying language & economic concepts, preparing useful exhibits & reports, & testifying as an expert witness.

A graduate of Syracuse University, Marty is an active member and chaired for several years the Litigation Support & Forensic Accounting Interest Group of the New Jersey Society of CPAs. Marty holds the professional designation of Certified Valuation Analyst from the National Association of Certified Valuators and Analysts and has been awarded the designation of ABV, Accredited in Business Valuation, and CFF, Certified in Financial Forensics, by the American Institute of CPAs.

Marty volunteers his time and expertise to many other business and professional organizations: he had previously served as a director of a local bank and, 14 times, had been one of 150 participants selected by the S.E.C. from CPAs, lawyers, bankers, venture capitalists and economic development experts, from across the nation for its annual conference on issues of Small Business Capital Formation. He was selected a NJ delegate to the White House Conference on Small Business under two U.S. Presidents while the Small Business Administration had named him "**Accountant Advocate of the Year**". He serves as a Director of Deborah Hospital Foundation; serves as a Director of the Society of Financial Service Professionals-South Jersey Chapter; is an active member and served as President of the Estate and Financial Planning Council of Southern New Jersey; is an active member and served as a Director of the Chamber of Commerce of Southern New Jersey; he serves on the Matrimonial Accounting Interest Group of the NJSCPA; and had served as a special advisor to the New Jersey Small Business Development Centers. Marty is a director and treasurer of Exit Planning Exchange-Philadelphia (XPX), whose members include estate planning attorneys, CPAs, investment bankers, wealth management advisors, commercial lenders, executive coaches, M&A attorneys, marketing and mgt consultants as well as former business owners who now advise fellow business owners on exit planning.

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ASSETS TO CONSIDER

Accounts Receivable	Investments (other than marketable securities)
Advances	Land
Air and Water Rights	Land Improvements
Autos and Trucks	Lawsuit Receivable
Bargain Purchase	Layaway Accounts Receivable
Barter Receivable	Leasehold Improvements
Brand Name	Library
Brochures/Pricelists	Licenses
Building Improvements	Marketable Securities
Buildings	Mineral Exploration Rights
Buyouts on leased assets (purchase options)	Net Operating Loss Carryforwards
Cash	Notes Receivable
Cash Advances	Oil and Gas Deposits
Cash Undeposited	Overfunded Pension
Certificate of Need	Pallets
Claims Receivable	Patents
Client Costs Advanced	Pineland Credits
Containers	Pledges
Copywrites	Premiums Advanced
Costs Incurred on Uncompleted Contracts	Prepaid Advertising
Covenant Not To Compete	Prepaid Expenses-other
Customer/Patient Lists	Prepaid Insurance
Debt Issue Costs	Prepaid Maintenance Agreements
Deferred Charges	Prepaid Rent
Deferred Income Taxes	Prepaid Royalties
Deposits Placed	Prepaid Taxes
Development Rights	Put Options
Dies Inventory	Receivables Sold/Collateralized
Displays	Related Party Receivable
Dividends Receivable	Research and Development
Due From Shareholder/Officer	Reserve for Bad Debts
Employee Receivable	Restricted Cash
Equipment	Retainage
Fees held in Trust	Retained Interest in Sold Assets
Financial Instruments	Retentions Receivable
Foreign Currency Translation	Return of Premium Disability Insurance
Franchise Fee	Royalties Receivable
Furniture and Fixtures	Self Constructed Assets
Goodwill	Software or Software Development Costs
Income Tax Refunds	Sport Tickets
Installment Sale Receivable	Stock Rights

ABO'S HITLIST TO CONSIDER IN THE BUY SELL VALUATION OR FORMULA

ASSETS TO CONSIDER (cont.)

Insurance Policy Values	Stock subscriptions Receivable
Intellectual Property	Subscription Lists
Intercompany Accounts Receivable	Supplies
Interest in Affiliate	Sweetheart Leases
Inventory in Transit	Tools Inventory
Inventory on Consignment	Trade Secrets
Inventory-Finished Goods	Trademarks
Inventory-Parts	Travel Advances
Inventory-Raw Materials	Unbilled Contracts in Process
Inventory-Supplies	Unbilled Costs
Inventory-Work-in-Process	Unbilled Work-Process

LIABILITIES TO CONSIDER

Accounts Payable	Employee Garnishments Payable
Accrued Bonuses Payable	Financial Instruments
Accrued Commissions Payable	Fire, Burglary and Other Loss Claims
Accrued Expenses-other	Foreign Currency Translation
Accrued Interest Payable	Intercompany Accounts Payable
Accrued Payroll Payable	Lawsuit Payable
Accrued Payroll Taxes Payable	Leases Payable
Accrued Pension Payable	Letters of Credit
Accrued Taxes Payable	Line of Credit Payable
Accrued Vacations Payable	Loans Payable
Advances Received	Loss Contingencies
Bank Overdrafts	Mortgages Payable
Bonds Payable	Notes Payable
Capitalized Leases Payable	Payroll Taxes Withheld
Contingent Liability – Malpractice	Premium Due
Contingent Liability-Environmental	Purchase Commitments
Contingent Liability-OSHA	Related Party Payable
Contingent Liability-Other	Reserve for Bad Debts
Contingent Liability-Product Liability	Retentions Payable
Credit Cards Payable	Royalties Payable
Deferred Compensation	Sales Tax Payable
Deferred Income	Self Insurance Liability
Deferred Income Taxes	Stock Redemption Payable
Deposits Held	Unearned Income
Dividends Payable	Unfunded Pension Liability
Due To Shareholder/Officer	Warranty Work Payable
Employee 401K Deferrals	

REVIEW ITEMS TO CONSIDER FOR BUY-SELL AGREEMENT

CLIENT: _____
 ATTORNEY: _____

DATE PREPARED: _____
 PREPARED BY: _____

The following checklist should allow us, as CPAs, to assist our business owner clients and their attorneys in addressing fundamental issues relating to the continuity of their venture and an orderly transition of ownership. It should hopefully identify key areas of substantive business, tax and estate planning for all such closely held businesses. Our ideal approach would be to complete the checklist with the client and then review it at a follow-up meeting with the client and their attorney. Clients and counsel are also recommended to utilize the two other ABO AND COMPANY, LLC questionnaires we make available: *“Financial and Estate Planner - Inventory of Personal Assets”* and our *“Annual Fiscal Checkup”*. The effectiveness of these three checklists/documents results in their playing key roles in our personal planning for business clients.

	<u>YES</u>	<u>NO</u>	<u>N/A</u>
1. Does agreement identify entity, all current owners, trustee(s), escrow agent(s), and insurance policies?			
2. Is the agreement binding on all new shareholders/partners throughout the life of the entity?	___	___	___
3. Is there a statement that the agreement supersedes all other agreements to redeem or purchase an ownership interest?	___	___	___
4. Does the agreement consider all other parties who might have an option to purchase stock or an interest in the entity?	___	___	___
5. Does the agreement include a statement binding future owners to accept the terms and conditions of the agreement?	___	___	___
6. Is the admission of new shareholders/partners subject to a unanimous, majority or supermajority vote?	___	___	___
7. Does the agreement set forth the requirements for ownership such as professional qualifications, membership in certain organizations, having a certain amount of client/customer billings, capital to invest, etc.?	___	___	___
8. Should the agreement address the amount and timing of salary payments?	___	___	___
9. Does the agreement identify the method of accounting and the accounting periods for determining profits, losses, cash flow, capital contributions, distributions, loans made to the business, loan repayments, etc.?	___	___	___
10. Does the agreement avoid the use of vague, incomplete and inappropriate accounting policies and definitions?	___	___	___
11. If the agreement identifies an agreed upon value, is it clear how and when such value is to be determined (ensure accounting policies and definitions are clear and understandable)?	___	___	___
12. Does the agreement provide alternative valuation methods where the stated or agreed upon value has not been reviewed or changed for a pre-determined period of time (i.e. consider closing books, unusual variations on interim basis, adjustments typically deferred until year end such as inventory write downs, profit sharing accruals, bonus computations, accounts receivable write offs, etc.)?	___	___	___

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Review Items To Consider For Buy-Sell Agreement (Continued)

	<u>YES</u>	<u>NO</u>	<u>N/A</u>
13. Does the agreement address a method to break a stalemate if the owners cannot agree on the value to use in establishing or updating the agreement?	___	___	___
14. If the agreed upon value is directly or indirectly tied to life insurance, does this same value apply to triggering events other than death such as disability, retirement, bankruptcy, etc.(need to consider adequacy of funding)?	___	___	___
15. Are there different valuation methods/standards identified for different purposes (i.e. death, disability, normal retirement, early retirement, voluntary termination of employment, involuntary termination of employment, loss of license, bankruptcy, other circumstances, etc.)?	___	___	___
16. If an appraisal method is to be utilized, does the agreement specify the qualifications required of the person chosen as appraiser?	___	___	___
17. Is the method of selecting an appraiser adequately explained in the agreement (i.e. mutual consent of parties, each party selects an appraiser and they then select a third appraiser, averaging two appraisals, etc.)?	___	___	___
18. Does the agreement state who pays for the cost of the appraisal(s)?	___	___	___
19. Does the agreement properly address how key man life insurance is to be <u>valued</u> when death occurs (i.e. should the estate of the deceased shareholder/partner be entitled to a pro-rata share of the life insurance proceeds or should such proceeds, intended to fund the buyout, be excluded in the valuation)?	___	___	___
20. Is it preferred to state in the agreement specific formulas or guidance on constructing a realistic liquidation balance sheet based on net realizable values? Such might address:			
-investment assets at realizable value after estimated broker commissions or other costs of disposition	___	___	___
-goodwill at a predetermined formula	___	___	___
-valuation of inventory (LIFO treatment)	___	___	___
-life insurance at cash value or face amount	___	___	___
-accounts receivable (perhaps at face multiplied by a ratio of receipts to billings for past 6 months or discounting based on aging or specific write off policies, etc.)	___	___	___
-unbilled/uncollected cash disbursements on behalf of clients at realizable value	___	___	___
-unbilled work-in-process, net of reserves for uncollectability	___	___	___
-recoverable costs at realizable value after deducting conversion costs	___	___	___
-include the present value of the unamortized cost of leasehold improvements if they can be recovered by subletting the improved space at a premium (similar for prepaid expenses or organizational costs)	___	___	___
-unapplied client retainers or deposits	___	___	___
-identifiable intangibles (patents, copyrights, licensing agreements, royalty agreements, etc which may require special appraisals)	___	___	___
-fixed assets at resale value, as a specific percentage of original cost or by professional appraisal (who bears cost)	___	___	___
-supplies inventory or small tools typically not carried on books as an asset	___	___	___
-present value of any bank debt obligations	___	___	___
-normal trade and other accounts payables	___	___	___
-present value of any equipment or space lease obligations	___	___	___
-present value of guaranteed payments to retired shareholders/partners	___	___	___
-accrued liabilities for estimated severance payments to existing employees	___	___	___
-accrued liabilities for estimated costs of winding down if actually liquidating the business such as file storage, accounting fees, etc.	___	___	___

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Review Items To Consider For Buy-Sell Agreement (Continued)

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| 21. Does the agreement specify the factors to be used in determining profit sharing allocations, the mechanism for applying them and how precise share amounts are to be decided and, if necessary, disputed? | _____ | _____ | _____ |
| 22. Does the agreement provide definitive guidance to the appraisers on using or not using valuation discounts (i.e. marketability, minority, loss of key person, blockage, etc.)? Is each shareholder/partner entitled to the proportionate value of the entire entity or is each interest to be reduced by any or all of the aforementioned discounts? | _____ | _____ | _____ |
| 23. Does the agreement include a clause that requires all major decisions be made by all shareholders/partners and then define "major"? | _____ | _____ | _____ |
| 24. Similarly, does the agreement define which decisions must be made by a majority, supermajority or unanimous consent of the equity owners? | _____ | _____ | _____ |
| 25. Does the agreement provide a method for designating a managing partner/member? | _____ | _____ | _____ |
| 26. Does the agreement designate a managing partner/member and delineate his or her rights, responsibilities and perhaps compensation? | _____ | _____ | _____ |
| 27. Does the agreement specify the rights and responsibilities of each shareholder/partner to bind the entity, accept clients, incur incidental expenses in connection with his professional activities, perform tasks that are part of the profession, prepare client bills, maintain professional certifications, etc.? | _____ | _____ | _____ |
| 28. Is there a clause detailing the cash or other assets each owner has contributed to the entity or withdrawn from the entity? | _____ | _____ | _____ |
| 29. Does the agreement discuss the responsibility of the equity owners to make additional capital contributions, including notice requirements and penalties if capital requirements are not made as required? | _____ | _____ | _____ |
| 30. Is there a need to include a statement of management duties and responsibilities, especially if several of the owners are involved in all phases of the business? | _____ | _____ | _____ |
| 31. Is there a mediation or arbitration clause included for resolving conflicts that can't be solved informally? | _____ | _____ | _____ |
| 32. Should the agreement address which shareholders/partners have the first option on continuing to use real estate, leases and equipment should the existing entity not occupy the facilities or use the equipment? | _____ | _____ | _____ |
| 33. Does the agreement address who gets to continue use of telephone numbers, fax #, domain name and/or website, or which party has the first option to so choose? | _____ | _____ | _____ |
| 34. Should the agreement address unvested retirement plan benefits in the event of an early termination of employment by an owner (i.e. if one owner is only 20% vested, the other gets a windfall)? | _____ | _____ | _____ |
| 35. Will the death of an owner result in an automatic buy-out of his ownership interest or will a legal heir or spouse be allowed to continue as a shareholder/partner? | _____ | _____ | _____ |
| 36. On a similar note, will the heirs have altered or reduced voting rights? | _____ | _____ | _____ |
| 37. Does the agreement consider allowing the owner to purchase the non-owner spouse's marital interest if it doesn't pass under the will or is not awarded by a divorce court? | _____ | _____ | _____ |
| 38. If such a purchase option exists but the owner fails to exercise it, does the entity or other owners have the option to buy the interest? | _____ | _____ | _____ |
| 39. For a buyout upon death, will the entity use term life insurance, ordinary life, paid-up life, universal life or an endowment policy to fund the buyout? | _____ | _____ | _____ |
| 40. If insurance is unavailable, insufficient or not used, should the beneficiaries be paid from earnings and profits, a distribution of corporate/partnership assets followed by a leaseback, a private annuity, etc? | _____ | _____ | _____ |

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Review Items To Consider For Buy-Sell Agreement (Continued)

	<u>YES</u>	<u>NO</u>	<u>N/A</u>
41. Has a life insurance trust or partnership been established to hold the insurance and then receive and distribute the proceeds? If not, does the agreement include a clause to ensure that one of the owners or heirs does not keep the insurance proceeds?	_____	_____	_____
42. For a buyout upon death, will all of the proceeds from life insurance be used to purchase the interest as opposed to retaining some or all to mitigate the business' loss of a key person?	_____	_____	_____
43. Does the agreement address the disposition of shareholder/partner loans or advances?	_____	_____	_____
44. Does the agreement clearly spell out if the remaining owners or the entity have an option or an obligation to buy a decedent's interest?	_____	_____	_____
45. Does the agreement have a provision for an extended payout schedule when a lump sum redemption amount may be a hardship for the enterprise?	_____	_____	_____
46. If the buyout is optional, does the agreement clearly spell out who has the right to exercise the option (i.e. the entity, the heirs and/or the remaining owners)?	_____	_____	_____
47. Is there a specified period of time to exercise such an option?	_____	_____	_____
48. Are the terms and conditions for exercising the option clearly spelled out (i.e. written notice, payment amounts and timing, closing date, etc)?	_____	_____	_____
49. Are the terms and conditions for exercising the option to purchase defined including written notice, payment amounts, timing, closing date, etc.?	_____	_____	_____
50. If there is a bona fide offer by an independent, third party to buy an interest, does the entity or the shareholders/partners have a right of first refusal to purchase at the same terms and price?	_____	_____	_____
51. Does the agreement identify a deadline to exercise such a right of first refusal?	_____	_____	_____
52. Does the agreement stipulate proper written notice be given to the entity and other owners of any such offer?	_____	_____	_____
53. If the party with the right of first refusal fails to so exercise the option, does the remaining party or parties have such an option to exercise a right of first refusal on the portion of the equity that was not purchased?	_____	_____	_____
54. Does the agreement address the possibility of purchasing part of the interest on such an option or must the entire interest be purchased?	_____	_____	_____
55. If the right of first refusal is not exercised, does it become available again if the independent third party deal does not proceed during a stated period of time?	_____	_____	_____
56. Does the agreement indicate how and when payment is to be made for any buyout where insurance is not sufficient or available (i.e. at closing, over a period of time, terms of payment, interest rate, security, etc.)?	_____	_____	_____
57. Does the agreement formulate a procedure for determining disability and is the term "disability" clearly defined?	_____	_____	_____
58. Does the agreement spell out what the period of disability is before the other shareholders/partners or the business has the right to buy out the disabled shareholder/partner?	_____	_____	_____
59. Under a disability buyout, does the agreement adequately spell out if a buyout is required or optional?	_____	_____	_____
60. If the disability buyout is optional, who holds the option (i.e. the entity, the disabled shareholder/partner or the remaining shareholders/partners)?	_____	_____	_____
61. Under a disability buyout, does the agreement define the deadline for exercising an option to force a sale?	_____	_____	_____
62. Does the agreement clarify when a voluntary retirement is allowed and when an involuntary retirement is required?	_____	_____	_____

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Review Items To Consider For Buy-Sell Agreement (Continued)

	<u>YES</u>	<u>NO</u>	<u>N/A</u>
63. Does the agreement spell out if a sale is optional or required for an involuntary disposition (i.e. bankruptcy, insolvency, loss of professional license, failure to make required capital contribution, failure to meet designated minimums in hours worked or billed or billings to clients, etc)?	_____	_____	_____
64. Does the agreement address expulsion of a shareholder/partner for “cause” as well as for “without cause” to avoid protracted and acrimonious disputes?	_____	_____	_____
65. Does the agreement detail how such expulsion would actually occur (i.e. specify if vote is by per capita or weighted in some basis such as by partners’ varying capital contributions, etc.)?	_____	_____	_____
66. Does the agreement consider a different or reduced purchase price under such a scenario?	_____	_____	_____
67. Does the agreement spell out if the purchase of an ownership interest is optional or mandatory in the event of termination of employment?	_____	_____	_____
68. If the purchase is optional, does the agreement address who holds such an option, when it must be exercised, how it is to be exercised, if the striking price differs for a voluntary termination versus for cause, etc?	_____	_____	_____
69. If termination of employment is involved, will a covenant not to compete be used?	_____	_____	_____
70. Does the agreement embody or dovetail into a separate employment agreement that specifies the terms of employment, responsibilities and basis for termination?	_____	_____	_____
71. If a covenant not to compete is used, does the agreement define a reasonable geographic area and indicate the time period it involves?	_____	_____	_____
72. Does the agreement require that stock certificates have restrictive language to clearly identify the existence of a buy sell agreement?	_____	_____	_____
73. Does the agreement have a provision that automatically negates any invalid, unenforceable or illegal provision from the agreement?	_____	_____	_____
74. Does the agreement identify which state’s laws govern and where a case should be tried in the event of a dispute?	_____	_____	_____
75. If a pass through entity such as an S corporation, partnership or Limited Liability Company, does the agreement have a provision requiring mandatory distributions at least sufficient to cover the shareholders/partners/members personal tax liabilities resulting from the entity?	_____	_____	_____
76. Does the agreement have a provision detailing how the flow-through entity’s income or loss is allocated in the year any owner withdraws, especially one owning less than a 50% interest (i.e. based on the actual books and records or based on the per share, per day allocation)?	_____	_____	_____
77. Does the agreement state that the partnership or Limited Liability Company’s year closes with respect to a partner/member who disposes of his entire interest?	_____	_____	_____
78. Do the tax allocation and distribution sections of the agreement ensure proper priority return to the contributing partner/member and proper capital account maintenance?	_____	_____	_____
79. Does the agreement require partners or members of a Limited Liability Company to make a Section 754 election, stepping up or stepping down the new partner/member’s basis in the entity’s property?	_____	_____	_____
80. Similar to life insurance for death buyouts, does the agreement consider disability buyout insurance?	_____	_____	_____
81. Does the agreement require a physician’s written statement confirming the disability of a shareholder/partner?	_____	_____	_____
82. Is the business afforded the opportunity to obtain its own medical evaluation?	_____	_____	_____
83. Does the agreement provide for a procedure if the two medical evaluations do not agree on whether the equity owner is disabled?	_____	_____	_____

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Review Items To Consider For Buy-Sell Agreement (Continued)

	<u>YES</u>	<u>NO</u>	<u>N/A</u>
84. Does the agreement spell out how long salary or benefits will be continued for a disabled shareholder/partner?	_____	_____	_____
85. Will a shareholder/partner have the right to transfer or assign his ownership interest to a trust or family limited partnership for estate planning purposes?	_____	_____	_____
86. Does the agreement consider the cash surrender values on life insurance policies of retiring or terminated owners?	_____	_____	_____
87. Will such policies be transferred to the insured with or without consideration?	_____	_____	_____
88. Does the agreement require the entity to guarantee obligations to a departing or deceased shareholder/partner?	_____	_____	_____
89. Does the agreement entitle the “policy rollout” for all such life and disability policies on the departing shareholder/partner?	_____	_____	_____
90. Does the agreement require the remaining shareholders/partners and/or their spouses personally guarantee the obligations to a departing/deceased owner?	_____	_____	_____
91. Is there a statement that the attached document is the entire agreement?	_____	_____	_____
92. Does the agreement indicate that it cannot be changed or revoked without written agreement by all parties?	_____	_____	_____
93. Does the agreement provide addresses for notices to all parties and the method to provide such notices (certified, return receipt requested first class mail, fax, etc.)?	_____	_____	_____
94. Does the agreement call for a security interest in the ownership interest while a payment obligation remains outstanding?	_____	_____	_____
95. Does the agreement identify who is entitled to benefits of the ownership interest while any payment obligations are outstanding (i.e. dividends, distributions, voting rights, etc.)?	_____	_____	_____
96. If an escrow agent is used, does the agreement specify the agent’s compensation?	_____	_____	_____
97. Does the agreement spell out if and how the escrow agent is indemnified and what happens if the agent does not act, resigns or becomes incapacitated?	_____	_____	_____
98. Does the agreement name a joint or alternate escrow agent or trustee?	_____	_____	_____
99. If there is more than one escrow agent or trustee, does the agreement require unanimous or majority approval by the agent or trustee and offer a method to resolve disagreements?	_____	_____	_____
100. Does the agreement consider malpractice tail coverage and who is responsible for the payment of such premiums (i.e. the entity or the departing professional)?	_____	_____	_____
101. Does the agreement address benefits/health coverage of the departing owner?	_____	_____	_____
102. Does the agreement deal with the long term lease commitments of the entity and or guarantees by the shareholders/partners?	_____	_____	_____
103. Does the agreement deal with the obligations to retired partners/shareholders?	_____	_____	_____
104. Does the agreement deal with incremental costs consequential to a departing owner?	_____	_____	_____
105. Does the agreement specify each owner’s obligation to bring opportunities to the firm and refrain from diverting business to his/her own account?	_____	_____	_____
106. Does the agreement describe situations in which an owner can engage in an economic activity for his or her own benefit, such as adjunct teaching?	_____	_____	_____
107. For a voluntary separation, does the agreement require a specified period of time for written notice of withdrawal?	_____	_____	_____
108. Does the agreement prohibit contacting clients or customers before the entity so the business can contact them first to retain their business?	_____	_____	_____
109. Is there a required forfeiture of any termination or retirement payment if a withdrawing shareholder/partner violates the non-solicitation or non-competition provisions of the agreement?	_____	_____	_____

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Review Items To Consider For Buy-Sell Agreement (Continued)

	<u>YES</u>	<u>NO</u>	<u>N/A</u>
110. Does the agreement address obligations to the business for future capital (i.e. distinguish between owners' potential liability to outside creditors and to themselves)?	___	___	___
111. Does the agreement cover required capital infusions, setting maximum and minimum amounts that owners must contribute to keep a deficient firm in business?	___	___	___
112. Does the agreement contain a deficit restoration obligation requiring partners/members pay off any deficit capital account balance on partnership/LLC liquidation?	___	___	___
113. Does the agreement consider any attempt to voluntarily withdraw except by normal retirement to be deemed a breach of the agreement?	___	___	___
114. If so, is such a breach addressed by discounting the withdrawing owner's redemption amount and allowing the entity to deduct any monetary damages caused by the withdrawal?	___	___	___
115. Does the agreement obligate the business to refrain from increasing salaries, paying dividends, making distributions or making loans until all outstanding liabilities to departing owners or their beneficiaries are paid?	___	___	___
116. Is there a dissolution provision which sets a specified termination date, describes an event that would make it impractical or illegal to continue or determines that failure to reach certain performance levels would trigger termination?	___	___	___
117. Is there a provision that would specify how the assets are to be liquidated and distributed?	___	___	___
118. Is there a provision that, under a separation or termination, provides for future access to transferred files and the actual preservation of client/customer files?	___	___	___
119. Is there a need for the agreement to include a provision that a sale of the business, in whole or in part, <u>after</u> a shareholder/partner's interest has been bought/redeemed at a higher price might trigger an adjustment (i.e. tag along rights)?	___	___	___
120. Is there a need to consider having a clause that states if a partner/shareholder leaves to join a competitor and takes another employee/associate, the firm can deduct from his separation payment an amount equal to 35% of the employee's salary to cover employment agency fees to replace the person?	___	___	___
121. Should the agreement have a provision that assesses economic penalties when a partner or group of partners depart with a hard copy or magnetic media copies of proprietary firm materials (i.e. model forms, automated systems for drafting documentation, client/customer lists, etc.)?	___	___	___
122. Does the agreement reflect that each party has had independent legal, accounting, and financial advisors or the opportunity to consult with their own independent attorneys, accountants and financial advisors?	___	___	___

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Martin H. Abo, CPA/ABV/CVA/CFF

Martin H. Abo, CPA/ABV/CVA/CFF is Managing Member of **Abo and Company, LLC** – Certified Public Accountants. He is co-managing member of **Abo Cipolla Financial Forensics, LLC**, an affiliate of the core accounting firm exclusively providing expert witness testimony on financial matters and other litigation support services as well as business valuations.

Marty has comprehensive experience in individual and corporate financial, business and tax planning. His previous experience includes several years with the tax department and audit staff of a Big Four CPA firm as well as regional firms before he founded the present enterprise. Marty has developed a specific expertise in performing dispute resolution and other consulting services. Clients, as well as the banking, insurance, judicial and legal community, increasingly call upon him to provide technical assistance, arbitration or expert testimony on financial accounting matters, business valuations, structuring buy-ins and buy-outs, divorce, estate controversies, insurance claims and other forensic/investigative analysis covering a wide range of topics and industries. He has operated in a supportive capacity to attorneys, judges, adjusters and clients in providing ongoing facilitation in the negotiation and/or litigation process. Marty assists attorneys to strengthen cases by clarifying language & economic concepts, preparing useful exhibits & reports, & testifying as an expert witness.

A graduate of Syracuse University, Marty is an active member and chaired for several years the Litigation Support & Forensic Accounting Interest Group of the New Jersey Society of CPAs. Marty holds the professional designation of Certified Valuation Analyst from the National Association of Certified Valuators and Analysts and has been awarded the designation of ABV, Accredited in Business Valuation, and CFF, Certified in Financial Forensics, by the American Institute of CPAs.

Marty volunteers his time and expertise to many other business and professional organizations: he had previously served as a director of a local bank and, 14 times, had been one of 150 participants selected by the S.E.C. from CPAs, lawyers, bankers, venture capitalists and economic development experts, from across the nation for its annual conference on issues of Small Business Capital Formation. He was selected a NJ delegate to the White House Conference on Small Business under two U.S. Presidents while the Small Business Administration had named him "**Accountant Advocate of the Year**". He serves as a Director of Deborah Hospital Foundation; serves as a Director of the Society of Financial Service Professionals-South Jersey Chapter; is an active member and served as President of the Estate and Financial Planning Council of Southern New Jersey; is an active member and served as a Director of the Chamber of Commerce of Southern New Jersey; he serves on the Matrimonial Accounting Interest Group of the NJSCPA; and had served as a special advisor to the New Jersey Small Business Development Centers. Marty is a director and treasurer of Exit Planning Exchange-Philadelphia (XPX), whose members include estate planning attorneys, CPAs, investment bankers, wealth management advisors, commercial lenders, executive coaches, M&A attorneys, marketing and mgt consultants as well as former business owners who now advise fellow business owners on exit planning.

Website: www.aboandcompany.com
South Jersey Office (Correspondence)
307 Fellowship Road, Suite 202
Mt. Laurel, NJ 08054
(856) 222-4723

New York City Office
1301 6th Avenue
35th Floor
New York NY 10019
(212) 495-0400

North Jersey Office
851 Franklin Lake Rd
Franklin Lakes NJ 07417
(201) 490-1117

Philadelphia Office
1500 Market Street
Philadelphia PA 19102
(215) 736-3156

Philadelphia Suburb Office
449 N. Pennsylvania Ave
Morrisville PA 19067
(215) 736-3156

Long Island Office
68 South Service Rd.
Suite 100
Melville NY 11747
(631) 271-8600

MARTIN H. ABO, CPA/ABV/CVA/CFF

MARTY@ABOANDCOMPANY.COM / MARTY@ACFF.COM

307 Fellowship Road, Suite 202 Mt. Laurel, NJ 08054 (856) 222-4723

EDUCATION AND LICENSES

BS 1972 Syracuse University (Dual major in Accounting & Transportation)
CPA 1974 New York (earliest permitted, currently inactive) 1977 New Jersey 1977 Pennsylvania

PROFESSIONAL EMPLOYMENT HISTORY

1969 -Norman Abo, CPA, P.C. 1979 - Abo Uris & Altenburger/now Parente Beard
1972 -Touche Ross/now Deloitte & Touche 1997 - Martin H. Abo, CPA / now Abo and Company
1976 -Alloy Silverstein Shapiro et al 2013 - Abo and Company/Abo Cipolla Financial Forensics
1977 - Martin H. Abo, CPA

PROFESSIONAL DESIGNATIONS & ASSOCIATIONS

Awarded CVA (Certified Valuation Analyst) by National Association of Certified Valuators & Analysts

Awarded ABV (Accredited in Business Valuation) by the American Institute of CPAs

Designated as CFF (Certified in Financial Forensics) by the American Institute of CPAs

Appointed by the Supreme Court of NJ and its Office of Attorney Ethics for its Ethics Committee

American Institute of CPAs - Forensic & Valuation Services Section (Member)

NJ Society of CPAs- Litigation Support, Valuation, Matrimonial & Forensic Accounting Groups (Member/Past Chairman)

Selected as a NJ Delegate to the White House Conference on Small Business for 2 U.S. Presidents and selected as "Accountant Advocate of the Year" by the U.S. Small Business Administration.

Estate and Financial Planning Council of Southern NJ (served as President/member)

Exit Planning Exchange – Philadelphia (Member/Treasurer-Director)

Society of Financial Service Professionals - Member/Director of South Jersey Chapter

Uniform Securities Agent, Licensed Series 6 & 63/Health/Accident/Life Insurance in NJ, PA, De, NY, FL

Chamber of Commerce of Southern NJ (Served as Director and member of Executive Committee)

National Federation of Independent Business – Member / Selected as Spokesperson

Selected 14 times by U.S. SEC for its *Govt/Business Forum on Small Business Capital Formation*

Cherry Hill National Bank (now Wells Fargo Bank)-Director-Loan & Audit Committee (Chairman)

Deborah Heart & Lung Center / Deborah Hospital Foundation – Board member/Director

Lecturer for Chester & Camden County, NYC and NJ State Bar Associations on Buy-sell agreements; for NJ Institute for Continuing Legal Education on *Tax Aspects of Personal Injury Awards*, on *Accounting for Lawyers*, on *Representing a Buyer of Seller of an Ongoing Business*, on *ABC's of ADR for Family Lawyers*, on *Financial Side of a Law Practice* and on *Damages in Employment Cases*; for Risk Management Assoc. on *Financial Statement Manipulation*; for Nat'l. Business Institute on *Accounting 101 for Attorneys*, on *Business Law for Attorneys* and on *Forensic Accounting for Attorneys*; Tax Issues for NJ Family Law Judges' Conference; National Association of Employment Lawyers-NJ on *Collections*; Camden County Bar Association on *IRS Audit Guide for Attorneys*; Society of Financial Service Professionals-SJ on *Finding the True Income of the Divorcing Couple* and *Planning for Tax Deductible Alimony*; Estate & Estate Planning Council of Southern NJ on *Valuation and Succession Planning for a Business*;