

MORE ON BUY-SELL AGREEMENTS



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Abo Cipolla Financial Forensics, involved in many a partner/shareholder disputes, has been on a mission for so long in pressing for owners or partners in a business to establish a buy-sell agreement. We believe it is essential to protect your business interest and to provide a source of funds for your family especially if death occurs or a sudden disability that no longer enables you to work. Hey, even if you're a lawyer you think your needing such an agreement is any less?

The buy-sell agreement designates a buyer for your business interest and establishes a formula for valuing your business interest. Despite its importance, many business owners and partners (lawyers, too) neglect preparing or even updating this agreement because of its complexity, the cost associated with drafting the agreement or because they cannot face their own mortality. Has not the Pandemic at least shown us no one's business is "bullet proof" nor anyone's health a "given"?

Unless the firm or the partners supposed to buy out your business interest have significant cash, however, even the most carefully designed buy-sell agreement could be worthless. Buy-sell agreements are often funded with insurance. The primary insurance is life insurance, and either term or whole life insurance may be used. If the sole purpose provides funds to buy out the equity interest of the deceased owner and partner, term insurance which is inexpensive is frequently adequate. But if the owner or partner is considering supplementing a pension at some future point, or if business financing is contemplated, whole life insurance may be more suitable since the cash surrender value can supplement the pension and since it provides an additional asset the bank can consider when granting a loan. Unfortunately, the need for disability insurance with preparation of a buy-sell agreement is often overlooked, although the likelihood of suffering a disability is far greater for people of middle-age than death. However, unlike the life insurance, the proceeds of which are payable to the firm or other partner(s), the disability insurance proceeds should be payable to the owner or partner subject of the buy-sell agreement. By adequately insuring against both death and disability, with the formulation of the buy-sell agreement, there is assurance that in the event of either calamity the business will be protected and family members can be secure in having an ongoing flow of funds to cover their needs.

Marty Abo, in presentations to the New Jersey Bar Association, the Pennsylvania Bar Institute, the New York City Bar Association and other venues, shared our firm's "122 Point Checklist on Shareholder Agreements". The checklist allows 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 hopefully identifies key areas of substantive business, tax and estate planning for all such closely held businesses.

Those wanting our 122 point checklist for reviewing buy-sell agreements, should request a copy by calling us at 856-222-4723 or visiting our website www.aboandcompany.com

We would be pleased to provide guidance in working with our lawyer colleagues in setting up a buy-sell agreement and ensuring that you don't forget to consider all of the options. We're available to confer with your attorney or, if need be, recommend one seasoned in this arena.

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