

BUY/SELL AGREEMENTS CHECKLIST

INFORMATION ABOUT OWNERS

Owner #1: _____

If married, spouse name: _____

Address: _____

Phone: _____

E-mail: _____

Ownership interest held: _____ %

Voting interest held (if different): _____ %

Time to be devoted to the business: _____ %

Management function: _____

Salary from business: _____

Taxable year, if different from calendar: _____

Guaranteed minimum return (if any): _____

Family and/or prior business relationship to other participants: _____

Owner #3: _____

If married, spouse name: _____

Address: _____

Phone: _____

E-mail: _____

Ownership interest held: _____ %

Voting interest held (if different): _____ %

Time to be devoted to the business: _____ %

Management function: _____

Salary from business: _____

Taxable year, if different from calendar: _____

Guaranteed minimum return (if any): _____

Family and/or prior business relationship to other participants: _____

Owner #2: _____

If married, spouse name: _____

Address: _____

Phone: _____

E-mail: _____

Ownership interest held: _____ %

Voting interest held (if different): _____ %

Time to be devoted to the business: _____ %

Management function: _____

Salary from business: _____

Taxable year, if different from calendar: _____

Guaranteed minimum return (if any): _____

Family and/or prior business relationship to other participants: _____

Owner #4: _____

If married, spouse name: _____

Address: _____

Phone: _____

E-mail: _____

Ownership interest held: _____ %

Voting interest held (if different): _____ %

Time to be devoted to the business: _____ %

Management function: _____

Salary from business: _____

Taxable year, if different from calendar: _____

Guaranteed minimum return (if any): _____

Family and/or prior business relationship to other participants: _____

Please attach additional sheets if there are more than four owners.

PURPOSE: To provide an orderly transfer from one shareholder to another of economic and control interest in a close corporation in the event of death or disability of a shareholder.

Name of Corporation: _____

President of Corporation: _____

1. Type of Agreement?

1.1. Entity agreement

Stock redemption agreement between shareholders and corporation.

Corporation buys stock.

Note: Ensure that income tax rules are reviewed so that redemption is not treated as a dividend because of retained holdings by family members, continued employment, etc.

1.2. Shareholder agreement

Cross-purchase agreement.

X buys Y's Stock

Y buys X's Stock

Purchasing shareholder receives a basis step-up in stock purchased.

1.3. Combination of an entity and shareholder agreement

1.3.1. _____

2. ELEMENTS OF AGREEMENT

2.1. Who Will Purchase Stock?

- Corporation - stock redemption agreement Y/N
- Shareholders - cross-purchase agreement Y/N

2.2. What Is Trigger Event?

- Death of Stockholder Y/N
- Disability of Stockholder Y/N
- Proposed sale to third party Y/N
- Termination of employment Y/N
- Deadlock between shareholders Y/N

2.3. Price of Shares

- Book Value Y/N
- Third Party Appraisal Y/N
- Fixed Price Y/N
- Fixed Price, adjusted Annually Y/N

(N.B. May have problems from an estate tax perspective unless agreement is a bona fide business agreement, does not transfer interest to a family member of deceased for less than fair market value, is mandatory that offer be made and the agreement is similar to one made in arms length transaction.)

2.4. Payment Provisions

- Deferred payments Y/N
- Reasonable interest rates (IRC sec. 7278) Y/N
- Collateral for promise to pay Y/N
- Describe: _____

- Tie Redemption payments to cash flow/profits Y/N

- Personal guarantee of redemption payments from remaining shareholders Y/N
- Date upon which obligation to pay starts:
 - a) thirty days:
 - b) sixty days:
 - c) Other:

2.5. Source of Payments

- Life insurance Y/N
 - a) Held by Corporation: Y/N
 - b) Held by Trust Y/N
- Lump Sum Disability Insurance Y/N
- Funded Reserves Y/N
(N.B. allows corporate accumulation w/o sec 531 penalty)

2.6. Protect Minority shareholders.

- "Take along " requirements Y/N
- Preemptive rights on later sales Y/N
- Establish Voting Agreement Y/N
- Establish Voting Trust Y/N
- Establish Director/shareholder controls Y/N

2.7. Where There Are, or Will Be, Family Members As Parties to This Agreement, Consider IRC Sec. 2703

- Is agreement a "devise to pass wealth" Y/N
- Is Price a fair market value Y/N
- Is agreement free of exotic provisions Y/N
- Was agreement in existence prior to 10/8/90 Y/N

2.8. Trustee/Escrow Agent to hold shares or insurance policies

- Insurance Policies Y/N
- Shares Y/N

2.9. Notation made on certificates of restrictions _____

- 2.10. Professional Corporations, special considerations
- Ch 156A sec 12 required restrictions Y/N
 - Provide for Corp. to use principal's name Y/N
 - Allocation of professional responsibility Y/N
 - Limit competition, as far as possible Y/N
- 2.11. Agreement supersedes all prior agreements Y/N
- 2.12. Agreement may be terminated upon the occurrence of
- Execution of new agreement Y/N
 - Insolvency or bankruptcy Y/N
 - Dissolution of corporation Y/N
- 2.13. Limitation on dividends/management compensation if debt of stock redemption is still outstanding. Y/N
- 2.14. Additional document list needed for this agreement
- Stock redemption agreement Y/N
 - Cross purchase agreement Y/N
 - Insurance Trust Y/N
 - Stock escrow agreement Y/N
 - Voting agreement Y/N
 - Voting Trust Y/N

3. Applicability?

- 3.1. Should the agreement apply only to the current shareholders, or is it binding on all new shareholders throughout the life of the corporation? Y/N
- 3.2. Should the agreement supersede all other agreements to redeem stock or to purchase stock executed by the shareholders? Y/N
- 3.3. Should the agreement be reviewed annually? Y/N
- 3.4. Should changes to price or terms require a unanimous vote? Y/N

4. Buyout Price and Time for Payout (“Triggers”)

- 4.1. Has a buyout price and the timing of payment been established in the event of:
- 4.1.1. **Death?** Should death of a shareholder cause an automatic buyout of his/her stock interest or does his/her spouse remain in the corporation as a shareholder? Y/N
- 4.1.2. **Disability?** Should disability of a shareholder cause an automatic buyout of his/her stock interest? Y/N
- What is definition of disability?
 - Time frame??

- | | |
|----------------------------------------------------------------|-----|
| 4.1.3. Retirement, Resignation, or Dismissal? | Y/N |
| 4.1.4. Bankruptcy (voluntary or involuntary) of a shareholder? | Y/N |
| 4.1.5. Divorce? | Y/N |
| 4.1.6. Proposed Sale to a Third Party By Shareholder? | Y/N |

5. Funding

- 5.1.1. Is the buyout funded with life insurance?
- 5.1.2. If yes:
 - a. What type of life insurance will be used (*e.g.*, term life, whole life, paid-up life, variable life, universal life, endowment policy, or combination)?
 - b. Will an irrevocable life insurance trust be used?
 - c. Will all of the policy proceeds be used to redeem the stock or will part of the proceeds be used to help the corporation recover from the loss?
 - d. Will whole life policies with cash values be transferred to the shareholders at termination or retirement?
- 5.1.3. If no, will the beneficiaries be paid by:
 - a. A distribution from earnings and profits?
 - b. A distribution of corporate assets followed by a leaseback?
 - c. A private annuity?
 - d. An installment sale?
- 5.1.4. What is the security for the purchase agreement?
 - a. Pledge of stock?
 - b. Security interest in assets of corporation?
- 5.1.5. Are there restrictions on salaries and distributions during the buyout period?

6. Agreement Terms

- 6.1.1. Does the agreement:
 - a. Require the seller to sell and buyer to buy?
 - b. Give the buyer an option to require the seller to sell (call)?
 - c. Give the seller an option to require the buyer to buy (put)?
 - d. Give a right of first refusal to the buyer?
 - e. Require the corporation to buy?
 - f. A combination of the above?

6.1.2. What is state of incorporation if other than Colorado? _____

7. Member/Shareholder Loans

7.1.1. What will be the disposition of shareholder loans, whether receivables or payables, in the event of death of the shareholder?

7.1.2. What will be the disposition of shareholder loans, whether receivables or payables, in the event of a termination other than because of death?

8. Covenant Not to Compete and Non-Disclosure

8.1.1. Will there be a covenant not to compete and non-disclosure?

8.1.2. If yes, what will be the geographic and time limitations?

9. Other

9.1.1. Will there be a period of disability before the other shareholders or the corporation has the right to buy out a disabled shareholder?

9.1.2. Will the shareholder have the right to transfer or assign to a trust, for estate tax planning purposes, his/her rights and interests in the corporation?

9.1.3. Will the spouses of the shareholders sign the buy-sell agreement?

10. Valuation

10.1.1. Will the value be established periodically (e.g., annually) by the parties?

10.1.2. If the periodic revaluation does not occur when specified, will one of the following be used:

- a. Latest agreed value adjusted for profit or loss realized since last valuation date?
- b. Latest agreed value adjusted by an index (e.g., consumer price index)?
- c. Latest agreed value if acceptable to all parties to the agreement or an independent valuation if not?
- d. Reversion to an established formula if the value has not been updated within a specified period?

10.1.3. Will an independent appraisal be used?

10.1.4. Is the valuator or procedure to determine the valuator specified?

10.1.5. Will a valuation formula be used?

10.1.5.1. If yes:

- a. Is the formula appropriate for this entity?
- b. Has the formula been accurately and adequately described (in appropriate accounting and valuation terminology)?

10.1.6. Has consideration been give to the following:

- a. Specifying the assets to be appraised in determining adjusted net asset values?
- b. Providing guidelines for selecting industry-comparable companies?
- c. Establishing the representative period over which earnings will be computed?
- d. Establishing whether a simple average or weighted average will be used in determining average earnings? (Use of a weighted average can be highly distortive in a cyclical industry.)
- e. Defining “earnings” for purposes of the agreement (*e.g.*, tax-basis earnings or GAAP earnings)?
- f. Specifying extraordinary and nonrecurring events to be excluded from the historical earnings trends?
- g. Specifying how key-man life insurance is to be valued in a date-of-death valuation?
- h. Defining how identifiable intangible assets (*e.g.*, patents, trademarks, licensing agreements, copyrights, leasehold rights, franchise rights, etc.) are to be valued?
- i. Defining whether goodwill or going-concern value is to be considered?
- j. Specifying whether valuation discounts are to be considered and, if so, which ones?
- k. Providing guidelines for establishing discount rates to be utilized in the discounted future earnings or discounted cash flow valuations?
- l. Specifying whether estimated taxes on the excess of the fair value of assets over their tax bases will be considered?

11. Specific Provisions for S Corporations

11.1.1. Does a proposed transfer to a non-qualifying person trigger a buyout?

11.1.2. Are quarterly minimum distributions required equal to the amount of the income tax at the highest marginal income tax bracket to allow shareholders to make estimated tax payments on the S Corporation income?

11.1.3. Does the agreement include a provision to allocate tax items?

Example: *Each shareholder agrees that, in the event of the termination of the Corporation's status as an S corporation or the complete termination of any Shareholder's interest in the Corporation, if requested by the Board of Directors of the Corporation, all Shareholders, or their successors in interest, shall consent and agree to the allocation of tax items of the Corporation in accordance with Section 1362(e)(3), Section 1377(a)(2), or any successor provision(s) of the Internal Revenue Code, and will take such actions as are necessary to evidence and give effect to such consent under applicable tax law.*

11.1.4. Does the agreement include a provision to adjust the purchase price to reflect tax allocations?

Example: *The purchase price of the deceased Shareholder's Shares shall be increased or decreased, as the case may be, by the difference between the sum of the taxable income and gains allocated to the seller of such shares (and the deceased Shareholder) and the sum of the taxable deductions and losses allocated to such seller (and the deceased Shareholder) for the year of sale.*

12. Termination of Agreement

12.1.1. Written consent of the shareholders

12.1.2. Merger, dissolution, liquidation, or bankruptcy of corporation

12.1.3. Public offering

13. Enforcement

13.1.1. Arbitration or specific performance?

Notes:

Z:\Forms - Corporate Business\buy sell stuff\Checklist for Buy Sell Agreements.doc