

good to know

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Developing a buy/sell agreement today can prevent heartache tomorrow.

If you already own or are starting a business with more than one owner, a buy/sell agreement is an important tool that can help protect the health and wellbeing of your business by spelling out the details of what would happen in the event of an owner's death, the transfer of ownership of the business or the sale of the business.

Taking time now to create your own buy/sell agreement can reap big savings in time, energy and emotional strain that could come down the road.

What a buy/sell agreement is and how it can protect your business.

Simply put, a buy/sell agreement is an arrangement between owners of a business through which the surviving owners (or the business entity itself) agree to purchase the interest of a withdrawing or deceased owner. There are many purposes and uses for buy/sell agreements, including:

- imposing restrictions on the transfer of individual ownership interests in a business entity to maintain a balance of control and prevent participation by third parties who may not be acceptable to existing owners.
- to serve as an estate planning tool.
- to lessen the likelihood that internal disputes among the owners will cause irreparable damage to the business or its operations.

While the term buy/sell agreement is sometimes used vary narrowly to refer only to the actual purchase of ownership interests between owners, we recommend that business owners consider having their buy/sell agreement address additional matters. Other issues that may be included in a buy/sell agreement are:

- management of the business and the owners' respective roles as officers, directors, managers and employees of the business.
- ownership interest transfer restrictions.
- instructions on what happens to each owner's interest in the business in the event of his or her death or disability.
- the involuntary transfer of an owner's interest (due to a divorce or personal bankruptcy, for example).
- termination of an owner's employment.
- what happens if an owner wishes to voluntarily transfer the ownership interest to a third party (if such voluntary transfers are to be permitted at all).

Management-related buy/sell agreement provisions will often also address matters such as:

- shareholder voting.
- creation and operation of a board of directors or managers.
- voting by the board of directors or managers, including voting that selected individuals are elected to particular offices.
- the establishment of salaries and bonuses.
- limitations upon powers of directors, managers, officers and owners.
- tax elections.
- other matters of particular importance to the owners of the business.

In some cases, confidentiality and non-competition provisions are also included in buy/sell agreements. These provisions can be used to restrict the ability of a selling owner to act in a way that will negatively impact the goodwill and going concern value of the business after the sale of his or her interest. These provisions will often address:

- general obligations of confidentiality and non-disclosure with regard to proprietary and trade secret information.
- prohibitions against competition.
- prohibitions upon the solicitation of employees of the business.

These provisions may be especially critical in situations where one or more business owner(s) has substantial financial strength compared to another, but the less financially secure owner brings the business certain expertise or contacts.

Why you need a buy/sell agreement.

The reason for a buy/sell agreement is simple: at some point in the life of your business one or more of the issues described earlier are going to arise. When that happens you and your fellow owners may not be able to agree on how to proceed. Your relationship with your co-owners may have changed for the worse since the business started or, if one of your co-owners has died, become disabled or suffered a divorce or personal bankruptcy, you may find yourself dealing with a personal representative, guardian, ex-spouse or bankruptcy trustee instead of the co-owner.

By considering these issues now and putting a buy/sell agreement in place you and your fellow owners will have agreed how these issues are to be dealt with. What's more, you will have made the agreement with the benefit of good relationships and time to reflect on the appropriate balance of your respective interests, rather than being forced in the future to try to resolve issues during a point of crisis or personal distress. Furthermore, you will have documented your agreements in a way that will be binding on not just the current owners, but also on the hypothetical third parties mentioned earlier.

Please note that this overview is intended only as a summary. The drafting of an appropriate buy/sell agreement involves a careful consideration and balancing of various potentially conflicting interests of the business and its owners, and each buy/sell agreement should be carefully tailored to the individual facts and circumstances of that business and its owners.

If you have questions about how to get started on developing a buy/sell agreement for your business call **Tuesley Hall Konopa at 574-232-3538.**

Disclaimer

This article is for informational purposes only and should not be relied upon as legal advice. If you are considering the preparation of a buy/sell agreement you should seek the advice of a legal professional.