

Buy-Sell Agreements Among Business Owners

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This presentation should be viewed only as a summary of the law and not as a substitute for tax or legal consultation in a particular case. Your comments and questions are always welcome.

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Why Bother?

- Set a fair way to cash out
- Limit owners to those creating value
- Preserve ownership ratios if one owner sells
- Keep shares from a divorced spouse or an heir

Why Bother?

- Preserve S corporation status
- Keep ownership in the family
- Provide for spouse of deceased owner
- Pay estate tax
- Keep former owners from competing with the business

When to Bother?

- New business has proved viable
- S corporation election
- Change in business capital structure
- Estate planning
- Succession planning

Who Should Buy?

- Entity purchase
 - Easiest
- Cross purchase
 - Other owners buy
 - Better tax-wise for remaining owners – when they sell or give away their shares
- ESOP
 - Best tax goodies for seller and buyer

Gotta Buy or Option to Buy?

- If funded by insurance, usually gotta buy
- Otherwise, entity usually has an option to buy
 - Then remaining shareholders have options to buy
 - Sometimes, the departing shareholder or his heirs have a **put option** if their shares are not purchased

How to Value the Business?

- Appraisal
- Book Value
- Formula Value
- Agreed Value (with a back up)
- Other ways
 - Shoot Out
 - Baseball Appraisal

How to Pay for the Shares?

- Cash on the Barrelhead
- Installment payments
- Disability insurance
- Life insurance
- Funded reserve
- ESOP

Other Issues

- Community property interests in shares
- Related businesses
- Competing with the business
- Are other agreements affected?
- Preserving S corporation election

Other Issues

- Separate “buy-back” agreements for employees
- Periodic review of the agreement
 - They need tune-ups, like a car
- Buy-sell agreements get better in later versions

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Thank you

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