



Buy/Sell Review

With so many components involved, it makes sense to periodically review your buy-sell agreement. This review tool will help you assess the viability of your current agreement and identify those areas that should be updated. It can also be used to ensure any new agreement you draft includes (or at least considers) the relevant points, provisions, and mechanisms.

CASH NEEDS	Yes	No	N/A
1. Did you include all owners, including spouses in community property states, and the business entity?			
2. Are there any provisions conditioning ownership/acquisition based on family relations, or other factors?			
3. Have the spouses agreed to accept the terms of the agreement with regard to community property/marital interest?			
METHOD OF VALUATION	Yes	No	N/A
1. If appraisal:			
a. Are appraiser qualifications specified?			
b. Is the appraiser selection method specified?			
• Mutual agreement.			
• Each party selects an appraiser and results are averaged.			
• Each party selects an appraiser, then the appraisers choose a third appraiser to do the work.			

2. If formula approach:
 - a. Is the formula method clearly explained in the agreement?
 - b. Using the capitalization method, is it appropriate to add back the owners' salary and benefits?
 - c. Does your agreement provide for arbitration to resolve disputes to avoid a costly litigation?

Yes	No	N/A

TRIGGERING BUY-SELL EVENTS

1. Bona Fide Third Party Offer
 - a. Does the other owner(s) retain first right of refusal?
 - b. If a right of refusal exists, can it be partially exercised, or does the selling owner's entire interest have to be acquired?
 - c. Must offer and exercise of first rights of refusal be in writing within a specified time limit?
2. Dissolution Due to Disagreement
 - a. Should you include a provision allowing an owner to offer to purchase the interest of another?
 - b. If so, should it be conditional, or a push-pull requiring the owner to sell or match the offer and purchase the other owner's interest?
3. Owner's Death
 - a. Does the agreement clearly state that the sale/purchase of an owner's interest is required or optional?

b. If optional:

(1) Who holds the option - the company or heirs?

(2) Does the agreement stipulate a deadline to exercise an option?

(3) The option is subject to what conditions?

c. Terms

(1) Is there a provision for funding options, life insurance, promissory notes, sinking fund, etc.; and does the provision include terms, conditions, and deadlines?

4. Owner's Disability

a. Have you adequately defined disability, or are you utilizing a common definition, such as Social Security; or contained in a disability Insurance policy?

b. Does the agreement clearly state that the sale/purchase of an owner's interest is required or optional?

c. If optional:

(1) Who holds the option - the company or heirs?

(2) Does the agreement stipulate a deadline to exercise an option?

(3) The option is subject to what conditions?

d. Terms

(1) Is there a provision for funding options – disability insurance, promissory notes, sinking fund, etc.; and does the provision include terms, conditions and deadlines?

5. Other Potential Buy/Sell Triggers for Discussion

- a. Termination of employment.
- b. Involuntary disposition (bankruptcy or insolvency of an owner).
- c. Divorce of non-owner spouse.

MISCELLANEOUS CONSIDERATIONS	Yes	No	N/A
1. Will the IRS accept the terms/conditions or your buy/sell agreement?			
2. Do your stock certificates reflect ownership/transfer restrictions?			
3. For S Corporation, does the agreement restrict ownership to eligible parties?			
4. Does your agreement contain a provision binding heirs and legal bequests to the conditions of the agreement?			
5. Does it include a covenant not to compete that applies to any departing owners?			

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