

Checklist for Buy-Sell Agreement

Event	Operating Business Entity	Real Estate Entity
Permitted Transfers – Transfer of interest, without triggering other owner’s rights to purchase, under the following circumstances:		
Revocable Trust (estate planning technique to avoid probate)		
Children		
Other Members as selected by the Transferring Member		
A Family Limited Partnership (or similar entity) owned only by members of that Transferring Owner’s immediate family		
Spouse		
Other		
Triggering Events – Which events result in a: mandatory buy-out (“Put”), or give other owners an option to purchase (“Call”)		
First Right of Refusal		
Death		
Disability		
Pledge		
Declaration of Incompetence		
Attempted Transfer to Non-owners/Third Party Offer		
Breach of this Buy/Sell Agreement		
Bankruptcy		
Creditor Enforcement [i.e. levy, garnishment]		
Divorce		
Retirement		
Involuntary Termination of Employment for Cause		
Involuntary Termination of Employment		
Valuation of Ownership Interest:		
Book Value (adjusted)		
Appraised Value		
Formula (Describe)		
Agreed Value		
Should there be an Early Departure Penalty?		
Should Minority/Lack of Marketability Issues be considered or ignored?		

Event	Operating Business Entity	Real Estate Entity
Funding		
Cash		
Cash and unsecured note/secured note		
Life Insurance		
Payment Terms – Do you think the transferring owners should have to finance the transaction for purchaser [i.e., allowing payments to be made over 5 or 10 years] when the triggering event is:		
First Right of Refusal		
Death		
Disability		
Declaration of Incompetence		
Attempted Transfer to Non-owners/Third Party Offer		
Breach of this Buy/Sell Agreement		
Bankruptcy		
Creditor Enforcement [i.e. levy, garnishment]		
Divorce		
Retirement		
Involuntary Termination of Employment for cause		
Involuntary Termination of Employment without Cause		
Voluntary Termination of Employment		
Fixed retirement age?		
Payment Terms - Percentage down if no life insurance		
If the triggering event is an offer to purchase, should the owner acquiring the transferring owner's interest be required to match the offer or the buy sell price, whichever is lower?		
Term of Notes:		
5 years		
10 years		
15 years		
If more than one shareholder triggers a purchase of his shares at or near the same time, do you want altered or lengthened buyout provisions?		

Event	Operating Business Entity	Real Estate Entity
Other Covenants – Do you want the buy/sell agreement to cover other issues such as?		
Non-Compete		
Non-Solicit Customers		
Confidentiality		
Non-Hire of Employees		
Maintain Integrity of S corporation		
Distributions to Cover Taxes		
Require Arbitration of any business dispute prior to the initiation of litigation		
Tag-Along clause		
Drag-Along clause		
Failure to close provision		
Guarantee/Release of Business Debt		
Agreement to guarantee business debt		
Possession of Certificates		
Employee-at-Will		
Shareholder Expectations		
Amendments (100% --75%--51%)		
Type of Shareholder Agreements		
Cross Purchase		
Entity Purchase		
Hybrid Purchase		
Tax Issues to Consider		
IRC § 2031(b) and 2703		
IRC § 6166 Installments		
IRC § 101(j)		
AMT		
Potential Stock Basis Issues		