



**Buy / Sell Agreements
& Business Succession Planning**

Presenter:

Jon Parry, J.D., CExP

Jonathon D. Parry, P.C., Salt Lake City
Tel. 801.949.9202 jon@jonparrylaw.com

A Member of Business Enterprise Institute's International Network of Exit Planning Professionals™



Practice Profile

- 22 Years in practice
- Business Law & Estate Planning
- Certified Business Exit Planner
- *Purpose: To help business owners grow their companies, inspire and reward employees, and provide for their families.*



The Reality:

- Every owner will eventually leave the business (some even feet-first . . .) – transition is inevitable!
- All multi-owner businesses need a customized buy/sell agreement to provide the roadmap for a departing owner



What is a "Buy/Sell Agreement"?

- A contract detailing what happens when any owner decides to or is compelled to transfer ownership in the company
- May also be incorporated into a corporate shareholder agreement, an LLC operating agreement, or a partnership agreement



What is a "Buy/Sell Agreement"?

- Provides owners control and relative certainty as to what will happen if ownership is transferred due to several contingencies, including an owner's death
- If there is no such agreement, there is a good chance of dispute and even chaos



Great Opportunity:

- Majority of businesses don't have an up-to-date buy/sell agreement
- Many businesses have no such agreement
- Even startups need good buy/sell agreements at the inception of the business



Great Opportunity:

- Business owners need effective legal counseling to complete buy/sells
- Agreements should be customized for each business – never a cookie-cutter project
- Should be congruent to founding owner's estate planning



**Buy/Sell Agreements:
Main Elements**

1. Transfer restrictions

"TRIGGER EVENTS":

2. Options upon death
 - a. Mandatory or optional sale/purchase?
 - b. Redemption, cross-purchase, or other?
 - c. Life insurance funding?



**Buy/Sell Agreements:
Main Elements**

3. Options upon disability
 - a. How is "disability" defined?
 - b. Disability insurance?



**Buy/Sell Agreements:
Main Elements**

- 4. Options upon termination of employment
 - a. Retirement – age?
 - b. Voluntary or involuntary termination
 - c. Mandatory or optional sale of ownership?



**Buy/Sell Agreements:
Main Elements**

- 5. Involuntary transfers
 - a. Bankruptcy / insolvency
 - b. Divorce
 - c. Lawsuits



**Buy/Sell Agreements:
Main Elements**

- 6. Transfers/sales to third parties
 - a. Right of first refusal to Company/owners
 - b. Drag along / tag along rights



**Buy/Sell Agreements:
Main Elements**

- 7. Determination of purchase price
 - a. How to determine the value?
 - b. Who determines the value?
 - c. What level of value to apply?



**Buy/Sell Agreements:
Main Elements**

- 8. Determination of payment terms
 - a. Lump sum?
 - b. Paid over time via promissory note?
 - c. Other financing?
 - d. Penalty terms against Company or Seller?



**Buy/Sell Agreements:
Challenges**

- Business owners tend to procrastinate . . .
- Business owners tend to be busy . . .
- Typically, something substantial will happen to trigger urgency . . .



**Buy/Sell Agreement:
Business Continuity Planning**

Additional Considerations & Tools:

- Prepare Stay Bonus Plan for Employees Following Death or Disability of Owner.
- Draft Business Continuity Instructions (especially for sole-owned businesses). "If something happens to me, these are my instructions for managing the business . . ."



**Buy/Sell Agreements:
Resources**

- Mezzulo – *An Estate Planner's Guide to Buy-Sell Agreements for the Closely-Held Business* (ABA)
- Pratt & Niculita – *The Lawyer's Business Valuation Handbook* (ABA)
- Z. Christopher Mercer – *Buy-Sell Agreements for Closely Held and Family Business Owners* (focused strongly on valuation)
- NBI and other CLE presentations



Business Succession Planning Simple Tips:

Universal Objectives:

1. Approximately when do you want to leave the business?
2. How much cash do you need from the exit?
3. To whom do you want to transfer the business?



Business Succession Planning Simple Tips:

Quantify Business Value & Owner's Financial Resources:

- Obtain a baseline value of the business.
- Quantify personal financial resources.
- Determine future financial needs after transfer of business (after taxes) and into retirement.
- Draft a plan outlining steps to complete future transfer for achievement of financial and personal objectives


