# The Buy-Sell Agreement

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Of all the contracts entered into by the owners of a business during the business's lifetime, few are more important than a buy-sell agreement. Quite simply, if a business entity has more than one owner, a buy-sell agreement must be given serious consideration. The buy-sell agreement is a contract that provides a roadmap for how the business' owners will interact with each other and the company. Often a buy-sell agreement will be incorporated into a member control agreement, limited liability company agreement, or a shareholder agreement, depending on the entity structure. It is also a document that protects the interests of the business' owners and the company.

A buy-sell agreement can be designed with a flexible structure to cover a variety of issues. At a minimum, the following areas should be included. The contract should have an "options" mechanism that allows for the entity and the other owners to purchase the shares or membership interests of an owner who wishes to sell (or whose ownership interests become subject to an involuntary transfer). The options structure should include provisions for giving and receiving notice of a transfer of shares or membership interests and a set period under which the entity and the other owners may exercise their option to purchase. The buy-sell agreement should comprehensively list the "triggering events" that give rise to the options. Examples of such events are death, disability, bankruptcy, or divorce of an owner, an owner's decision to leave the company, or a *bona fide* offer to purchase shares or membership interests made by a third party to an owner. Typically the agreement also contains provisions regarding valuation of the shares or membership interests, the role of buy-out life and disability insurance, non-disclosure of confidential information, non-competition, the handling of capital accounts, allocations and distributions to owners (for tax reasons and otherwise), deadlock provisions, and how the agreement itself is terminated.

Thoroughly discussing the various issues which are addressed in a buy-sell agreement is always a valuable exercise for the owners. Owners who are basically in agreement regarding the operation of their business are often surprised at how their views differ regarding ownership issues. The process of discussing and negotiating a buy-sell agreement opens the lines of communication on these issues. Such issues may not be important in the day-to-day operations of the business but can have a devastating effect on the business (and the owners) should a triggering event occur and there is no written agreement to provide for how everyone is to proceed.

A contract of such importance is generally not a form document simply downloaded from the web. Usually, an off-the-shelf agreement will not apply to specific needs of the company and its owners, and may have unintended consequences. A buy-sell agreement is only valuable if it is properly structured, fully discussed and negotiated, and clearly written. If your business does not have a buy-sell agreement, or is looking to update an existing agreement, please contact the attorneys at Morrison Sund PLLC at (952) 975-0050.