

Winter 2018

Buy-Sell Agreements: An Introduction

Buy-Sell agreements are common in family-owned and closely-held businesses. When they are well-planned and well-drafted, they can provide a means to resolve disputes, transition ownership and facilitate retirement, among other matters. When they are poorly-planned or poorly-drafted, they can be a never-ending source of irritation, expense and inefficiency; and can even contribute to the break-up or failure of a business in extreme cases.

In this and the next few newsletters I will share some information about Buy-Sell agreements. Much of the information can be found in a text written by Z. Christopher Mercer titled, *Buy-Sell Agreements for Closely Held and Family Business Owners*. Chris Mercer has taken a leadership role in the valuation profession with Buy-Sell agreements, and his book is widely used by attorneys, accountants and valuation analysts. If you have a Buy-Sell agreement or if you are considering putting one in place, I recommend that you get his book.

Problems

While they have been around for many years, it has only been in the last 15 years or so that attorneys, accountants and valuation analysts have devoted any meaningful attention to Buy-Sell agreements before problems arise. Professionals have always been involved with them, but most of their attention generally comes after an argument has

broken-out and everyone is trying to figure out what to do with the agreement. The problem has long been that Buy-Sell agreements are often incomplete and, from a valuation perspective, improperly specified.

By incomplete, I mean that the agreements often don't cover matters that are fairly common when there is a dispute among shareholders. The idea behind a Buy-Sell agreement is to lay-out a plan to help resolve an ownership dispute before relationships deteriorate. It's much easier to reach an agreement when everyone is getting along than when they are upset with each other. And while a Buy-Sell agreement sounds like an easy concept to turn into a legal document, there is actually a good bit of detail to cover to make sure the agreement will function correctly if the time comes. Many Buy-Sell agreements

simply do not cover all the details necessary to ensure a smooth resolution to issues that may arise in the future.

By improperly specified, I mean the agreement may cover necessary issues, but the language used is either unclear or incorrect from a valuation perspective. Buy-Sell agreements are often invoked years after they are written, and at a time when the shareholders are not on friendly terms. If the agreement includes definitions that are incorrectly used (or missing), or certain key considerations are not properly described, it is unlikely that the Buy-Sell agreement will be of much help in resolving



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the shareholders' differences. In the midst of a dispute, any weaknesses in a Buy-Sell agreement become very evident and can be next to impossible to correct.

Best Practices

A best practice with Buy-Sell agreements is to have them drafted early-on, when everyone is getting along and working well with one another. Take time with the agreement and make sure to get an experienced attorney and valuation analyst involved early on. Go through the details, because details always matter – all the more so when a situation has taken a

turn for the worse. Work through scenarios and think about the changes in life that are ahead of all of us. Then make sure that the Buy-Sell agreement fully and faithfully captures the details of the agreement between the shareholders.

Even though things may be moving along smoothly now, life always intervenes. It is hard to tell what twists and turns our companies will follow, and what our life situation will be in the future. A well-drafted Buy-Sell agreement can help to address difficult business problems and preserve important relationships, both of which are worthwhile goals.

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Please contact Ronald DiMattia at Corporate Value Partners at (216) 741-1330 or ron@corporatevaluepartners.com with any questions or if you need help with a valuation or corporate finance matter.

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