

Partner Buy-Sell Agreements

by Quenda Behler Story

Business partners often ask me if they must have a buy-sell agreement. After all, they argue, neither one of us intends to sell. In fact, we're afraid that having a buy-sell arrangement will make it more likely to happen. Besides, if one of us ever does decide to sell, we'll work it out then.

Simply stated, a buy-sell agreement specifies in advance the terms under which assets will be distributed should the status of the partnership change. As to whether you need one or not, the short answer is "No," because there's no law that says you have to have a buy-sell arrangement as part of your partnership agreement. If you don't have a buy-sell agreement, however, the Uniform Partnership Act (UPA), which is in effect in almost every state, will control what happens to your business in one of those "what-if" situations that a buy-sell agreement would have solved. Let's take a look at a few of them.

A Partner Dies or Becomes Disabled

Without a buy-sell agreement, if one partner dies, the UPA says that the partnership is instantly over. That's true even if there were more than two partners.

Obviously, if one partner dies, it's too late for the partners to reach an agreement. But it may still be possible to save the business by working out a deal with the surviving heirs. You may discover, however, that the son of your now-deceased partner's son is no longer the cute little guy you remember from the days when the partnership was established. Now he's out in California trying to become a movie star. Still, he might like being your new partner, and he can help with the business when he's between roles.

Of course, you don't have to share the business with your partner's heirs. Unfortunately, the only solution the UPA offers is to sell off the business assets and close the doors.

A buy-sell agreement could have provided a much more practical solution. With a buy-sell agreement, the partners could have agreed in advance that if one of the partners dies, the surviving partners could buy his share of the business. That kind of agreement often includes arrangements for a life insurance policy to provide the money to pay off the heirs.

A Partner Gets Divorced

These days, a 50% divorce rate means there's a fairly good chance that your partner, Joe, and his wife could wind up in divorce court. If that happens, Joe's share of the partnership is a marital asset. If Joe and his wife can't agree on a settlement that protects the partnership — and if they could agree on things, they probably wouldn't be in divorce court — the judge and the lawyers will decide who owns Joe's share of your partnership. What usually happens is that Joe has to split his property with his divorcing spouse. To do that, he'll either have to give her the cash value of his share of the partnership, which he may not have the money to do, or he will have to try to sell his partnership share to somebody. Under the UPA, however, if any one of the partners sells his share to a non-partner, that terminates the partnership.

With a buy-sell agreement, the partners could require that a partner who gets into a divorce proceeding immediately offer the remaining partners the opportunity to buy him out. That allows those partners to keep the partnership

from being dissolved as a result of the divorce, or from winding up with the aggrieved spouse as their new partner.

To cover all the bases, the buy-sell agreement should provide a way of establishing what Joe's share is worth at the time of the sale. It should also specify how quickly the remaining partners must pay Joe off. These measures will prevent a situation where the divorcing spouse's lawyer is the one who decides the value and payment schedule.

Partners Have a Falling Out

In many ways, a business partnership is like a marriage — and we all know how chancy that can be. So business partners should not assume that they will always get along so well with each other that there's no possibility of any dispute.

If an irreconcilable dispute occurs, the UPA doesn't have a legal scalpel to carefully carve out a solution. Instead, it starts with the theory that you can't continue to have a partnership with someone who doesn't want to or can't be your partner anymore. If a partner dies, tries to sell, or resigns, and there's no agreement to the contrary, that ends the partnership. This is the rule even if only one of several partners no longer wishes to participate.


Setting up a buy-sell agreement before the trouble happens can avoid all kinds of grief. But a buy-sell agreement has its own built-in problem: How do you figure out, in advance, what a share of the partnership will be worth? Fortunately, it's a problem other people have had, and there are several different solutions.

Usually what happens is at the time they agree to the buy-sell agreement, the partners also agree on a formula to

use when the buy-sell is triggered. They're not agreeing how much the partnership share is worth — they're simply agreeing on how to decide what a partnership share is worth when it's sold. The value of a partner's share could, for example, be based on how much each partner has con-

tributed in capital and in labor. Or the partners could agree to have the partnership appraised and each partner is entitled to a specific percentage of the appraised value.

There are plenty of reasons to write up a buy-sell agreement for a partnership. There are also several ways of going

about it, so consult your attorney about the best one for your situation. 

Quenda Behler Story has practiced and taught law for 25 years. She and her husband are partners in a remodeling company in Okemos, Mich.