Buy-Sell Agreements
What You Need to Know

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What is a Buy-Sell Agreement

- Just an agreement about how to deal with stock ownership in certain circumstances.
- Can cover certain governance matters too, similar to a voting trust.
I will use the term shares, company, and corporation. These principles generally apply to any business entity, including LLCs, with some limited nuances for taxes.
What Will We Cover?

- Goals
- Triggering Events
- Authorized Buyers
- Valuation
- Payment Terms / Financing
- Tax Issues
Goals

- Everyone: Communicating and protecting reasonable expectations, the minimization of conflict.
- Multi-Generational Transfers
- Internal Sales
- Protecting Company Viability
- Estate Planning
- Incentive Compensation
- Control
Triggering Events

- Voluntary Transfers
- Involuntary Transfers
- Death
- Disability
- Termination of Employment
- Retirement (age requirements, voluntary?)
- Put-Call Options
- Drag and Tag Along Rights
Triggering Events – Cont.

- Which triggering events create an obligation to sell/purchase, versus an option to sell/purchase.
- What is “fair” to everyone?
Authorized Buyers

- Cross-Purchase vs. Redemption
- All Shareholders, or Just Certain Shareholders?
- Exceptions – Permitted Transfers
Valuation

- Certificate of Agreed Value
- Appraisal (marketability and minority discounts)
- Free Cash Flow / EBITDA Multiple
- Book Value / Accounting Measures
- Impact of Third Party Offer
- Clawbacks, Other Special Provisions

Key is finding a method everyone can agree on while they are not sure if they are buying or selling.
Payment and Financing

- Down Payment
- Timing of Balance on Note
- Security – Pledge
- Protections for Working Capital
- Life and Disability Insurance
Taxes

- Redemption by Corporation
  - Generally Capital Gain
  - Certain limitations for LLCs/Partnerships
  - No Stepped Up Basis in Stock
  - Proportionate Sharing of Cost/Risk by Other Shareholders.

- Cross-Purchase
  - Purchasing Shareholder Gets Basis in Stock
  - Gets Complicated Fast

- Installment Treatment
Questions?
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