



# PLOTTING THE COURSE...

TO COMPLETE INSURANCE PROTECTION

## Buy Sell Planning For: Business Owner



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# **Odds Of A Death Or Disability**

## Odds of Dying

### What Are the Odds of an Owner Dying Prior to Age 65?

Here are the statistical chances of death prior to age 65 of owners in a business. Column one shows the chances if there is just one owner; column two shows the chance of one death when there are two owners; column three shows the chance of one death when there are three owners.

Column One			Column Two			Column Three													
If the owner's age is:			Then the chance of death by age 65 is:			If ages of the two owners are:			Then the chance that one of them will die prior to age 65 is:			With three owners, here are the chances that one owner will die prior to age 65:							
30	28	%	30	30	48	%	30	30	30	63	%	35	45	60	51	%			
35	27		30	40	47		30	30	40	62		35	50	55	54				
40	26		30	50	44		30	30	50	60		35	55	55	51				
45	24		30	60	36		30	30	60	54		35	60	60	43				
50	22		35	40	46		30	35	40	61		40	40	45	59				
55	18		35	50	43		30	35	50	59		40	40	55	55				
60	17		35	60	35		30	35	60	54		40	45	45	58				
			40	45	44		30	40	45	60		40	45	55	54				
			40	55	39		30	40	55	56		40	50	50	55				
			45	45	43		30	45	45	59		40	50	60	49				
			45	55	38		30	45	55	56		40	55	60	46				
			50	50	39		30	50	50	56		45	45	45	57				
			50	60	31		30	50	60	50		45	45	55	53				
			55	60	27		30	55	60	48		45	50	50	54				
			60	60	22		35	35	35	61		45	50	60	48				
							35	35	45	60		45	55	60	45				
							35	35	55	57		50	50	50	53				
							35	40	40	60		50	50	60	46				
							35	40	50	58		50	55	60	44				
							35	40	60	52		55	55	55	45				
							35	45	50	57		55	60	60	36				

Source: Commissioners Standard Mortality Table

**A few hours spent in business continuation planning can turn uncertainty into certainty...  
for you, your family and your employees.**

## Odds of Becoming Disabled

### Are you willing to gamble your financial security and that of your family on these odds?

Consider the Odds of a Business Owner Becoming Disabled for  
90 Days or Longer Prior to Age 65:

Age	Number of Business Owners				
	1	2	3	4	5
30	54%	79%	90%	96%	98%
35	50%	75%	88%	94%	97%
40	45%	70%	84%	91%	95%
45	40%	64%	78%	87%	92%
50	33%	55%	70%	80%	86%
55	25%	43%	57%	68%	76%

**Source:** Commissioners Individual Disability Table A (NOTE: The 1985 CIDA is the most current morbidity table available for individual disability claim experience and is in use by many State Insurance Departments.)

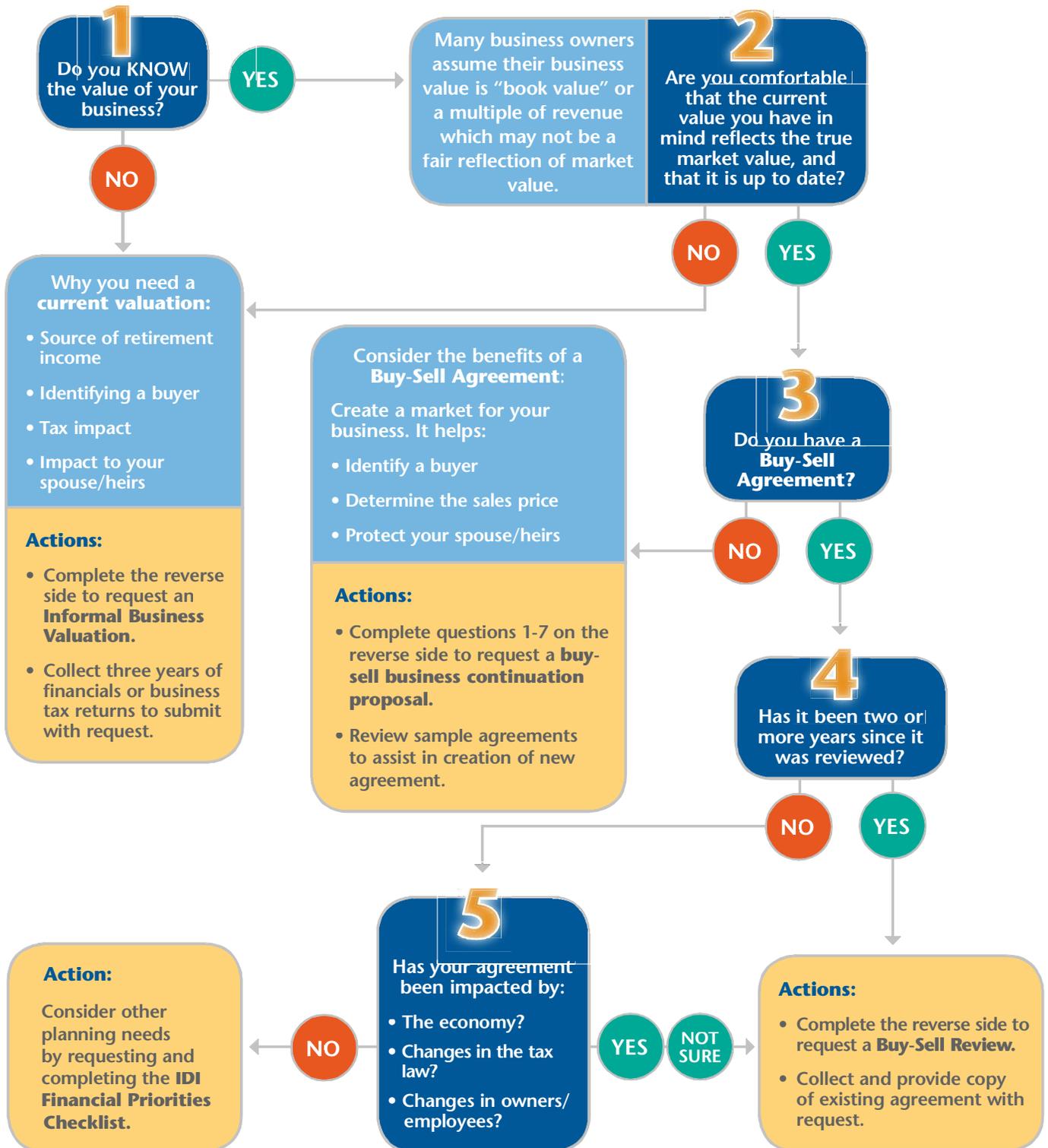
It's also important to know that a disability lasting for  
more than 90 days is likely to continue for:

Age When Disabled	Average Duration of Disability
30	2.2 years
35	2.5 years
40	2.7 years
45	2.9 years
50	2.8 years
55	2.5 years

**Source:** Commissioners Individual Disability Table A (NOTE: The 1985 CIDA is the most current morbidity table available for individual disability claim experience and is in use by many State Insurance Departments.)

# Protect Your Business. Help Secure Your Future.

Your business is your future. Principal Life Insurance Company offers complimentary business planning services that can help you protect your business and secure your future. By answering a few key questions, we can help you start the business planning process.



# Individual Disability Insurance

Which proposal(s) are you requesting?  Informal Business Valuation  Buy-Sell Review  Business Continuation Proposal

## Complete the following:

1. Business name: \_\_\_\_\_
- 1a. Owner(s) name: \_\_\_\_\_
- 1b. City, state of company headquarters: \_\_\_\_\_
- 1c. Nature of your business: \_\_\_\_\_
- 1d. Years of business operation? \_\_\_\_\_
- 1e. Issue state: \_\_\_\_\_
2. Type of business entity:  
 C corporation  S corporation  Other \_\_\_\_\_  
 Sole proprietorship\*  Partnership \_\_\_\_\_
3. Number of business owners:  1  2  3  4+
4. Total number of employees:  
 1-9  10-50  51-200  201-500  501+
5. Number of key employees (those critical to the success of the business): \_\_\_\_\_
6. Annual growth rate: \_\_\_\_\_%
7. Business tax rate (Enter owner's tax rate if business is taxed as a flow-through organization.): \_\_\_\_\_%
8. Do you have a buy-sell agreement?  Yes  No  
If yes, provide a copy of the agreement.
9. To whom do you intend to sell?  
 Family  Key employee  
 Third party  Co-owner
10. Number of children: \_\_\_\_ in business; \_\_\_\_ out of business
11. Names and contact information for the following:  
Attorney: \_\_\_\_\_  
Accountant: \_\_\_\_\_  
Banker: \_\_\_\_\_
12.  Three full years of the most recent income statements and balance sheets\*, or  
 Three full years of the most recent company tax returns (included with RFP)

\* Sole proprietorships: In addition to providing three years of Schedule Cs, also submit an informal balance sheet of business assets and

*For financial professional use only. This section must be completed for processing to begin.*

*Proposals are NOT provided without a valid Principal Agency, Brokerage General Agency (BGA) and/or bank/wire relationship.*

### PRODUCER INFORMATION

Advisor name: \_\_\_\_\_

CFP  CLU®  ChFC®  CEBS  LUTCF  Other: \_\_\_\_\_

Bank/wire relationship: \_\_\_\_\_

Principal Agency/BGA office: \_\_\_\_\_

IDI wholesaler: \_\_\_\_\_

### PROPOSAL DELIVERY

Phone number: \_\_\_\_\_

Email address: \_\_\_\_\_

*Should anyone else (Producer or BGA) receive this proposal?*

Name: \_\_\_\_\_

Email address: \_\_\_\_\_

### SUBMIT RFP

Email to [newrfps@exchange.principal.com](mailto:newrfps@exchange.principal.com) or fax to 866-946-3209.  
(Include necessary documentation with submission; see question 12)

**Timing:** Allow 7-10 business days for turnaround time from receipt of RFP on all proposals (up to 15 days for a Buy-Sell review).

**Questions?** Contact your disability wholesaling team or the DI National Sales Desk at 800-654-4278, options 2, 2.



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# **Disability Buy Sell Key Points**

# Buy-Sell DI – Key Points

- Total Disability Only – (No Partial) – No W/P
- Max Limit - \$1,000,000 – Traditional
- Policy Quits When Owner Quits
- Must Be At Least A 10% Owner & Actively Employed
- After Age 60 – Reduces 20% /yr
- Max 10 Year Age Disparity With Partners
- Agreement Required Within 1 Year Of Issue
- Language Of Agreement Must Match Policy
- Own Occ Definition – Important
- 3 Pay Methods- Lump / Lump & Payment / Payment
- Options- FIO & Presumptive – Pays Even After Recovery – Once Payments Begin
- (Life) Ownership Subject To 06 Pension Act- Requires Ann Reporting If Corp. Owned



# **How Does A Buy Sell Agreement Work ?**

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# BUY/SELL DISABILITY FINANCIAL PLANNING

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*Presented by:*



**PETERSEN**  
International Underwriters  
*A Lloyd's Coverholder*

## Advantages to Active Partners

1. Guarantee that the business interest of a disabled partner can be obtained in the event of his disability at a definite price.
2. Guarantee that the active partner(s) can keep voting control of the business.
3. Guarantee that the active partner(s) can keep the disabled partner's family out of the business.

## Advantages to Disabled Partner

1. A definite market for his or her business interest at a fair price.
2. Family members do not need to become involved in the business to protect their interest.
3. Money received for shares can be protected by investing it:
  - In conservative income producing investments.
  - In several different investments instead of just one.

### Probability of Disability

(Long term disability is defined as disability that lasts at least 90 days.)

Age	Years to Age 65	Number of Persons in the Group					
		1	2	3	4	5	6
25	40	53.7%	78.6%	90.1%	95.4%	97.9%	99.0%
30	35	52.2%	77.1%	89.1%	94.8%	97.5%	98.8%
35	30	50.3%	75.3%	87.7%	93.9%	97.0%	98.5%
40	25	47.7%	72.7%	85.7%	92.5%	96.1%	98.0%
45	20	44.3%	69.0%	82.7%	90.4%	94.6%	97.0%
50	15	39.4%	63.2%	77.7%	86.5%	91.8%	95.0%
55	10	32.1%	53.8%	68.6%	78.7%	85.8%	90.2%
60	5	20.4%	36.6%	49.5%	59.8%	68.0%	74.5%

Average duration of a disability that lasts 3 months or longer:

Age	Duration	Age	Duration	Age	Duration	Age	Duration
25	4.3 Years	35	5.1 Years	45	5.8 Years	55	6.6 Years
30	4.7 Years	40	5.5 Years	50	6.2 Years		

# DISABILITY BUY/SELL AGREEMENTS

## OVERVIEW OF THE NEEDS

Small businesses and large businesses are affected by the loss of a business owner's expertise, talents, prestige, and leadership. The loss may come as a result of withdrawal from the firm due to retirement or personal reasons, or due to death or disablement. Whatever the cause of the withdrawal, the survivors in the firm will face financial and emotional consequences of substantial proportions.

The U.S. Chamber of Commerce and the U.S. Department of Labor advise us that small businesses in total exceed the labor force of big business. Small business is big business because there are so many of them! In appraising the size of the small business market as to the use of Buy/Sell Disability Insurance, our reliable sources estimated that fewer than fifteen percent have equipped themselves to adequately handle the challenge of a forced buy-out due to disability.

Large business is not to be ignored. The owners of large businesses face problems similar to those of the owners of small businesses. The size of the firm and its financial capability may require much greater sums; percentage wise, the loss may be little different than to a small firm.

Do large companies buy disability buy/sell insurance? Yes! Premiums of \$200,000 - \$800,000 are not uncommon because amounts of \$10,000,000 - \$20,000,000 or more are needed to maintain financial stability in the firm.

## THE EMOTIONAL FACTOR - A PRIMARY CONCERN

Mr. Outside, the world's greatest salesperson, and Ms. Inside, a superb administrator, have teamed up to build a business. It is working. Business is fine until Mr. Outside is disabled in an auto accident, or Ms. Inside suffers a brain tumor. Can either adequately carry the load of their duties and also the duties of the disabled business owner? NO! And it could be worse; both owners could be disabled simultaneously. Statistically, when two owners aged 40-45 are involved in a business, there is a 72.7% chance that, before age 65, one of them will sustain a disability that will last at least ninety days. If it lasts longer than 90 days, the chances are that it will last 5.8 years before death claims the disabled partner.

Can adequate "temporary help" be employed as a substitute for the disabled owner? NO! Can permanent help be found and justified? Perhaps. The most likely thing to happen will be a weakening of the firm, whether it is through loss of sales or loss of administrative effectiveness.

The disabled owner expects his or her salary and all benefits to continue at the same level as prior to the disability, even though the company's financial strength is weakening. The non-disabled owner, frustrated and frightened, rapidly develops a huge anger block because of the disabled owner's demands for equal pay and lack of understanding of the horrendous work and worry heaped upon him/her. The non-disabled owner no longer sees the disabled partner as a human being deserving of sympathy, but as an enemy due to the costly impairment of the firm. He/She is siphoning off reserves and assets while not contributing to the firm's well-being.

In such a case the non-disabled owner may have a desire to “crush the enemy,” but murder is illegal! As long as the disabled person is alive, his or her full voice is legal in all decisions and must be heard.

The only solution to saving the firm is to quiet the voice of the enemy. Quieting the disabled owner’s voice must be agreed to in advance of the disability. A modern Buy/Sell Agreement funded with an adequate amount of disability insurance to fulfill the terms of the agreement is the simple and affordable solution to this very difficult situation.

## **THE AGREEMENT – THE FIRM’S STABILIZER**

The broker may become a Hero to the business owners by guiding them and their advisors in the creation of a comprehensive and a modern agreement that takes into consideration the devilish problems that can develop due to the withdrawal of an owner from a firm for any reason, but particularly on the solutions to the difficult matter of disability.

Voluntary withdrawal and retirement withdrawal are usually known in advance so the financial aspects can be contemplated and negotiated. Withdrawal by death is absolute and quick unless it is preceded by a lengthy disability. A quick solution to an immediate, forced buy-out because of a disability is unfair to the disabled partner, for he/she should be given time to recover and maintain business ownership. A prolonged disability can destroy the firm unless there is a reasonable buy/sell trigger date. Studies over many years indicate a 12-month buy/sell waiting period or trigger date is reasonable to all parties. Longer trigger dates are available and may be agreed to, requiring reduced premiums.

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# THE PERIL AND THE ODDS

## The Problem

A major hazard facing a business firm is the emotional and financial impact of a disabled owner on the non-disabled owners. When an active owner suffers a long-term disability, without advanced planning, the business faces these difficult alternatives:

## Continuation

Continuing the disabled owner's income would be a serious financial drain on the business. Because the disabled owner is no longer making a significant contribution to the business the business profits suffer. In addition, it may be necessary to hire a replacement for the disabled owner, adding to the ever-weakening conditions of the firm.

## Liquidation

Liquidation means selling the business because it is failing and must be sold. Overhead continues because the owners want to maintain the firm's intent of selling it as a viable business. Creditors must be paid and employees must be paid. The value of business goodwill may be lost due to diminished service, lack of customer contact and slow payment of obligations

## Reorganization

The disabled owner may sell to an outsider or to active owners. Generally, active owners prefer purchasing the disabled owner's business interest to avoid potential conflicts with a new owner. The remaining owners may not have the funds necessary to buy at an acceptable price. The best hope for saving the firm is a Buy/Sell Agreement appropriately funded by disability insurance.

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# FUNDING THE BUSINESS DISABILITY BUY/SELL AGREEMENT

Intelligently planned business buy/sell agreements anticipate the contingencies of the voluntary withdrawal, death, or disablement of a business owner.

In the case of voluntary withdrawal, the buy-out procedure is usually set out in the buy/sell agreement. If it is not, then the matter has to be negotiated at the time of decision. It is not uncommon for the buy-out, on a withdrawal basis, to be on a structured installment basis.

Death is certain, but the time of the death is uncertain. Therefore, it could happen while the agreement is in force and has to be contemplated. The solution to the funding of the buy-sell agreement is simple with the purchase of life insurance on the parties to the agreement. A lump sum settlement is the usual funding design.

Disability presents different considerations. Typically, a buy-sell agreement contains an elimination period of twelve months or longer, to give the disabled person time to recover and return to work and not be forced to prematurely sell his/her business interest. Once the elimination period has been completed the funding by disability insurance can be handled on an installment basis or on a lump sum basis.

The Installment Sales basis is frequently chosen as the plan design for a disability funding plan. There are some disadvantages to this design which should be weighed carefully. Among them is the requirement that a reasonable interest rate be charged on any installment sale. If interest is not charged, the IRS will impute a rate of interest as high as 10% compounded and the recipient of the interest will be required to declare this as taxable income.

Monthly Benefit Disability Plans typically pay an amount equal to the principal payment, but not the interest. Simple interest of 6% of a million dollars is \$60,000 per year, which is uninsured and requires cash to cover the cost.

A Lump Sum Benefit eliminates the interest cost. A further advantage of the Lump Sum Benefit is that it eliminates the need to continue life insurance on the disabled business owner. The Monthly Benefit Installment purchase basis needs ongoing life insurance to protect against the disabled owner dying during the buy-out period.

If for some reason the seller wants an installment buy-out basis, the Lump Sum Benefit can be paid to a trustee to hold and then to release the funds on an installment basis. This eliminates the tax on interest received and the need for continuing the life insurance.

When all factors are combined, the Lump Sum Benefit is as economical, or perhaps more so, than the Monthly Benefit plan design.

## Other Factors

Recovery – Installment buy-out policies may not guarantee continuation of the monthly benefits should the Insured recover. Because the buy-sell agreement is usually binding and final on the trigger date, this could leave the purchaser with the obligation to pay for his acquired share, but with no funds available to make the payments, if the disabled partner recovers.

Death – Installment buy-out policies will typically not continue the benefit payments if the Insured dies within the installment period. This means that the life insurance policy purchased to fund the death portion of the buy-sell agreement cannot be transferred to the disabled owner, or dropped, until the end of the installment period, because the death benefit will be needed to complete the transaction in the event of death during the buy-out period.

With the Lump Sum plan, the life insurance policy can safely be transferred, or dropped. With this approach, the disabled business owner not only receives a fair market value for the business, but the buyer(s) may transfer or drop the life insurance policy that was put in force to provide buy-sell funding in the event of death.

## PROTOTYPE OF A MODERN DISABILITY BUY/SELL AGREEMENT

Buy/Sell Disability Insurance is a mover and a shaker when it comes to generating very big premiums and big commissions. Frequently, the by-product sales or tangential sales generate more commissions than the disability buy/sell plan!

The disability buy/sell spotlights the need for Salary Continuation, Key Person, and Bank Loan Disability, as well as an increase in the Buy/Sell Life Insurance, which in a successful company falls to an inadequate level each year.

If there is a Buy/Sell Agreement in existence, it is typically funded for the contingency of death with life insurance. It is axiomatic. In most cases, there is a missing page in the agreement; the page that contemplates the aspects of disability, a more likely peril the firm will encounter and one that is fraught with unrealistic emotions of the disabled owner.

We were reminded of this fact by a brochure mailed to us by a large, old CPA firm. In the brochure entitled “An Introduction to Business Valuation Services,” an impressive digest of services and credentials of the firm are listed. This is followed by a statement of the firm’s high expertise which reads, “to determine the adequacy of LIFE INSURANCE, for the value of a company, a shareholder’s interest in the company, or loss of a key person.” No mention is made about disability insurance. Astute brokers have an excellent opportunity to introduce the peril of disability and demonstrate their knowledge about the comprehensive approach to Buy/Sell funding.

A modern Buy/Sell Agreement between business owners must include the aspects of a long-term disability of a business owner. Disability statistically is the most likely factor that will disrupt a business. Disability is the most devilish contingency business owners will face.

Many businesses do not have Buy/Sell Agreements in force, and of those that do, the page on disability contingencies is missing on 85% of them. Many business owners' consultants have overlooked the peril of disability because the subject has only received modest promotion. Insurance professionals provide a great service to their clients in helping create a modern Buy/Sell Agreement that includes the importance and value of dealing with disability in the Buy/Sell Agreement.

Our prototype Disability Buy/Sell Agreement is available to help prospective insureds and their advisors create a modern and comprehensive agreement that integrates a disability Buy/Sell with their life insurance Buy/Sell plan. Attorneys will be happy to have this instrument, for they can quietly and easily develop a good agreement by following this prototype. They are not left out and they will earn their customary fee while producing a better agreement.

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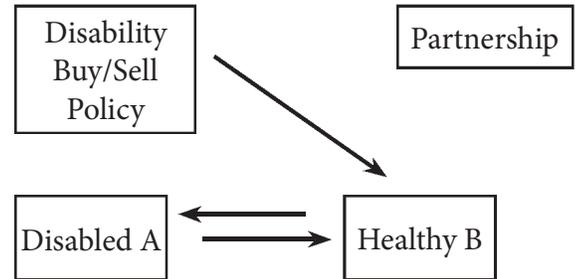
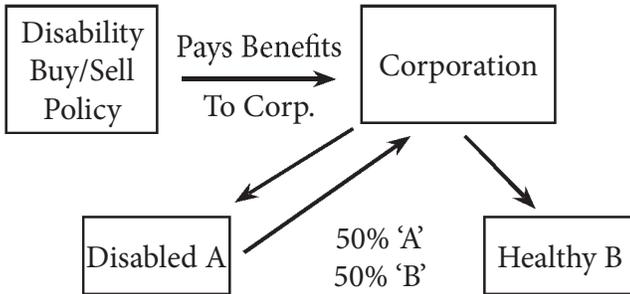
*Subjects to be addressed:*

- Owners and percentage of interest in the firm
  - Types of business
  - Business valuation
  - Disability definition and trigger date
  - Transfer of interest
  - Delivery of payment
  - Disposition of life insurance policies
  - Death during installment period
  - Control of business organization during disability
  - Fringe benefit of a disabled owner
  - Termination or amendment of agreement
-

## Stock Redemption

or

## Cross Purchase



After one year of disability, the disabled stockholder is obligated to sell this stock at the current value of the corporation, and the corporation is obligated to buy it and redeem the stock.

After one year of disability, the disabled partner is obligated to sell his interest to his partner and his partner is obligated to buy this interest at current value of the corporation.

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## Buy-Out/ Tax Facts

1. Corporation purchases a disability income policy for an employee with benefits payable to corporation. (rev. rul. 66-262, 1966-2 CB 105)

- Premiums are not deductible by the corporation. (IRC 265 (1)).
- Premiums are not taxable to the employee. (IRC 106).
- Benefits are tax exempt to the corporation. (IRC104 (1) (3)).

2. An owner's interest is a capital asset. Hence, whether purchased by the business or by a third-party, the purchaser of the interest cannot deduct his payment for Federal Income Tax purposes.

3. Where there is a total redemption of a shareholder's shares, the payment he or she receives will be treated as a capital gain or loss. If the redemption value is less than total, the payments may be deemed to be dividends and hence ordinary income to the shareholders even though they are not deductible by the corporation. (IRC 302)

4. Installment Buy-Out when at least one payment of the purchase price is paid after the close of a taxable year, the gain on the sale will be taxed only as it is received. (IRC 453 as amended by the installment Sales Revision Act of 1980) Where an installment buy-out takes more than one year, interest must be paid by the purchaser on the declining balance of the payments or interest will be imputed. (IRC 483)

# Buy Sell Planning

## Cross-Purchase or Stock Redemption: What You Don't Know Can Hurt Your Client

By : [Adam Cavalier](#) on 2/5/2014

On the surface, **Buy-Sell planning** is rather straightforward: Place insurance on all the owners so that their interest in the business can be bought out upon their death or disability. If there are more than two owners, set it up with the business as the owner and beneficiary of the policies to avoid having to purchase and manage an unwieldy number of policies. If only it were that simple.

Surviving owners may be letting a significant opportunity slip through their hands all for the sake of perceived complexity. Shortsighted to say the least. There is much more to the story than ownership and beneficiary designations. That one seemingly basic decision has **potential tax ramifications** for any surviving owner of the business.

### understanding the tax implications of buy-sell agreements

When an owner dies, the probability that a business is going to be sold at some point in the future increases. One or more of the surviving owners is likely to want to walk away. When that happens, **cost basis will become a major factor in their eventual payoff**. How does the type of agreement come in to play?

#### Consider the following business:

- i Owned equally by two partners
- i The business was capitalized by a \$100,000 investment from each owner
- i The business is currently worth \$2,000,000
- i There is a fully-funded buy-sell agreement in place
- i Owner A dies

*One of two scenarios play out.*

#### scenario 1 – stock redemption agreement

Under a **Stock Redemption agreement**, the company is the owner and beneficiary of the life insurance policies funding the agreement.

At Owner A's death, the company collects the proceeds and "redeems" the shares of stock by cutting Owner A's estate a check for \$1MM. Owner A received a step-up in basis at his death, and his heirs receive a net of \$1MM. Owner B elects to sell the business, is fortunate enough to find a full-price buyer and collects a check for \$2MM.

**Of that \$2MM, \$1.9MM is taxable based on his cost basis of \$100,000.** That is a hefty tax bill to say the least, and his net is reduced by \$532,000 based on today's Capital Gain rates.

## scenario 2 – cross-purchase agreement

Under a Cross-Purchase agreement, Owner B is the owner and beneficiary of the life insurance policy on Owner A's life funding the agreement and vice-versa. At Owner A's death, Owner B collects the proceeds and purchases Owner A's shares of stock by cutting Owner A's estate a check for \$1MM. Owner A received a step-up in basis at his death, and his heirs receive a net of \$1MM. Owner B elects to sell the business, is fortunate enough to find a full-price buyer and collects a check for \$2MM. **Of that \$2MM, \$900K is taxable based on his cost basis of \$1.1MM.** How did his cost basis go up?

Owner B actually **paid fair market value for the other half of the business** when he executed on the Buy-Sell agreement. While the taxes due of \$252,000 is a hefty tax bill, Owner B is \$280,000 to the good simply based on the type of Buy-Sell agreement they elected years ago. So what about more than two owners? Normally, the exponential increase in the number of policies required with more than two owners sends advisors straight to the Stock Redemption Plan. Based on the above, that can have unintended consequences in the future. So how to maintain the tax advantages of a Cross-Purchase structure while achieving the simplicity of a Stock Redemption plan?

### buy-sell plan designs using an LLC

By utilizing a Manager Managed LLC to own the policies that fund the agreement, **the tax treatment of the Cross-Purchase can be achieved while limiting the number of policies required to one per owner.** While not as simple as the Stock Redemption plan, the potential upside for the surviving owners is more than worth the cost of a bit of legal work at plan inception.

### the rest of the LLC story

As important as the taxation advantages are, they may not be the most important advantage of this approach. The issues of control and future planning flexibility are vital concerns.

#### Consider the following:

**Control:** Upon the sale of the business, what happens to the remaining contracts? In the case of a traditional Cross-Purchase agreement, the other owners are under no obligation to maintain the policies, nor is there a straightforward way to transfer them from one owner to another.

**Future Flexibility:** Given the challenges presented by transfers to other owners, the opportunity to re-purpose any life insurance may slip through the hands of the surviving owners. Personal protection or estate planning considerations that could be addressed with these contracts now require the purchase of new insurance contracts at attained age and current health. Transfers from the LLC to the owners of the business will likely qualify for one of the exclusions to the transfer for value rules from IRC Section 101.

**Inclusion of Policies for Estate Tax Purposes:** Personally owned contracts are usually included in the taxable estate when an owner passes away. If owned by a Manager Managed LLC, policies owned by the LLC should be excluded from the taxable estate of the insured.

**Asset Protection:** Policies owned in an LLC would also be afforded a level of creditor protection that is not possible with personal ownership.

Clearly, for the high net worth business owner, the advantages of this type of plan design are significant. If most plan design decisions are based on near-term convenience, there's a major opportunity for the thoughtful advisor to add value by exposing the risks inherent in the traditional Cross-Purchase design as well as the potential taxation issues at time of sale in an Stock Redemption design

### PROTECTING BUSINESS OWNERS AND PRESERVING BUSINESSES FOR FUTURE GENERATIONS

#### Buy-Sell Planning

A Buy-Sell Agreement is an arrangement for the disposition of a business interest upon a specific triggering event such as a business owner's death, disability, retirement or other termination. The benefits of a fully funded Buy-Sell agreement are well documented and range from issues as straight forward as providing needed liquidity to issues as complicated as family dynamics.

On the surface, Buy-Sell planning in the event of a business owner's death is rather straightforward: Place life insurance on all the owners so that their interest in the business can be bought out upon their death or disability. If there are more than two owners, set up the arrangement with the business as the owner and beneficiary of the policies to avoid having to purchase and manage

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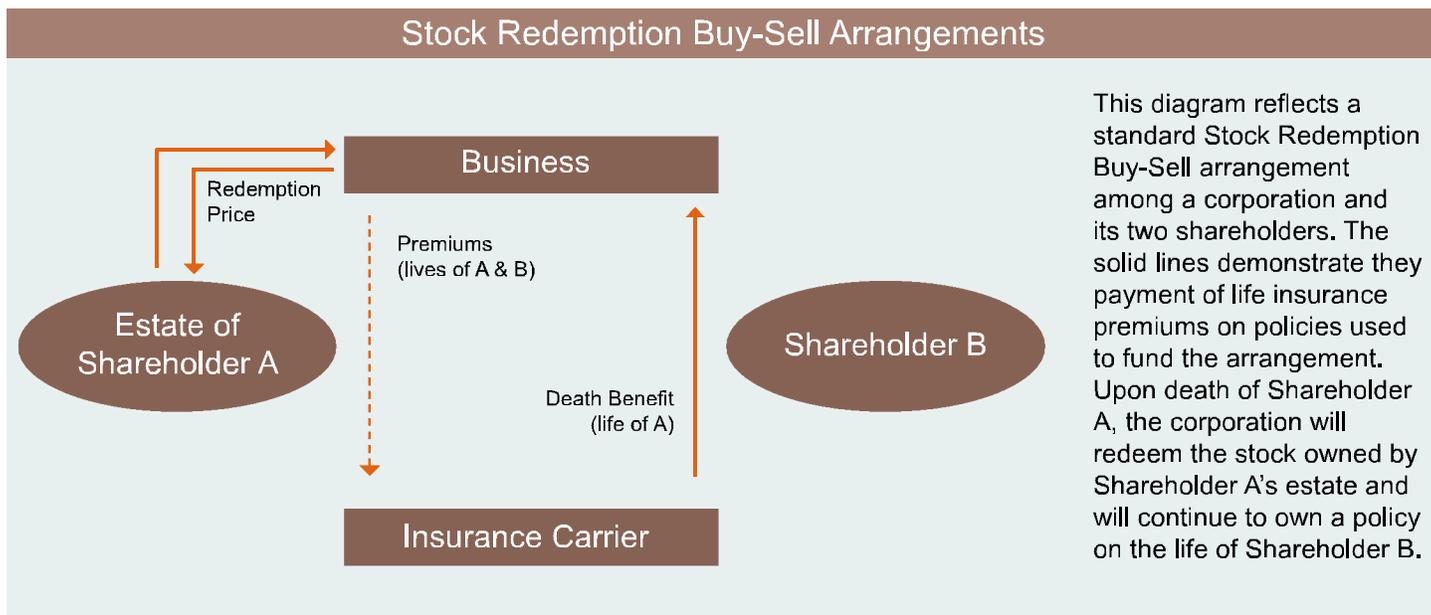
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Surviving owners may be letting a significant opportunity slip through their hands all for the sake of perceived complexity. There is much more to the story than ownership and beneficiary designations. That one seemingly basic decision has potential tax ramifications for any surviving owner of the business.

This *Buy-Sell Planning Guide* will describe the benefits of Buy-Sell arrangements, compare the differences between a Stock Redemption Agreement and a Cross-Purchase Agreement and examine the benefits of using a Manager Managed Limited Liability Company to fund a Buy-Sell agreement.

## Stock Redemption Arrangement vs. Cross-Purchase Arrangement

A **Stock Redemption arrangement** is an arrangement among the owners and the entity. The entity agrees to purchase (or redeem) all of the interest of a deceased owner and the owners agree to sell their interests to the entity. This type of agreement requires only one policy per owner, with the company in question serving as both owner and beneficiary. At the death of an owner, the agreement would be executed as follows:



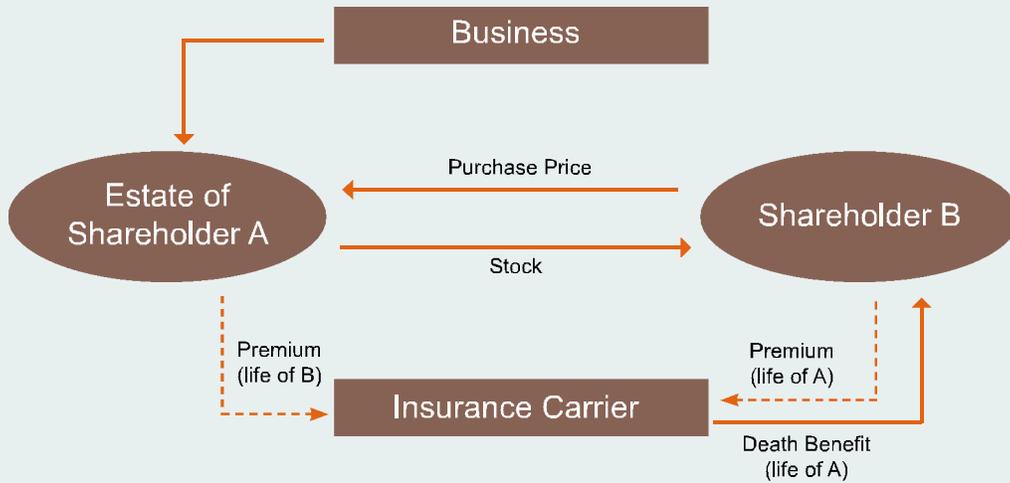
In a **Cross-Purchase arrangement**, the owners (or their estates) are obligated to sell their interests to each other. The entity is not a party to the arrangement. In this structure, each owner serves as the owner and beneficiary of a policy on the life of each of the other owners of the business. As a result, this type of agreement requires a potentially exponential number of policies according to the following formula:

$$[(n-1)*n]$$

*"n" is the number of owners*

Clearly, this presents a challenge when there are more than two owners. Management of the policies funding the agreement becomes burdensome, and the individual ownership presents a number of risks. At the death of an owner, the agreement would be executed as follows:

## Cross-Purchase Buy-Sell Arrangements



This diagram reflects a standard Cross-Purchase Buy-Sell arrangement between two shareholders. The solid lines demonstrate the events upon the death of Shareholder A. The dotted lines demonstrate the payment of life insurance premium on the policies used to fund the arrangement. Upon the death of Shareholder A, Shareholder B will buy out Shareholder A's stock. Shareholder A's estate will continue to own a policy on the life of Shareholder B. This policy can be sold to the corporation or to Shareholder B.

Beyond the administrative issues, there are a number of consequences for both the corporate entity and the individual shareholder based on the election of one type of agreement over another.

The following two charts summarize the fundamental consequences of these agreements:

Shareholder Consequences	
<p><b>Stock Redemption Arrangement</b></p> <ul style="list-style-type: none"> <li>No basis increase</li> <li>Possible ordinary income treatment</li> <li>Risk of corporate creditors</li> </ul>	<p><b>Cross-Purchase Arrangement</b></p> <ul style="list-style-type: none"> <li>Basis increase</li> <li>Capital gain treatment</li> <li>Transfer for value</li> </ul>

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## The Conflict of Convenience and Long-Term Flexibility and Efficiency

The challenge is clear: How to maximize the planning flexibility and tax efficiency of the agreement without being saddled with a significant administrative burden or taking on additional risk exposure?

### The Manager Managed Limited Liability Company

The Manager Managed Limited Liability Company (MMLLC) is a separate entity that operates independently from the underlying business and is specifically designed to own insurance contracts on the lives of the business owners. The owners who are the parties to the Buy-Sell agreement are also the Members of the MMLLC.

The MMLLC works best for a business with more than two owners. Normally, the exponential increase in the number of policies required with more than two owners sends advisors straight to the Stock Redemption Plan. But, that can have unintended consequences in the future. So how can advisors help their clients maintain the tax advantages of a Cross-Purchase arrangement while achieving the simplicity of a Stock Redemption arrangement?

By utilizing an MMLLC to own the policies that fund the Buy-Sell agreement, the tax treatment of the Cross-Purchase can be achieved while limiting the number of policies required to one per owner. While not as simple as the Stock Redemption arrangement, the potential upside for the surviving owners is more than worth the cost of a bit of legal work at plan inception.

### 10 Benefits of MMLLC

1. The use of an MMLLC reduces the number of insurance contracts needed to fund Cross-Purchase Buy-Sell arrangements between business owners. Whereas four (4) owners will need twelve (12) policies under a traditional Cross-Purchase plan, the use of the MMLLC requires only four (4) policies.
2. Common ownership of the policies makes premium payments simpler because fewer policies are required.
3. MMLLC ownership ensures all policies are kept in force and avoids the possibility of one business owner dropping coverage on another owner. There is more assured stability with regard to the funding of the Buy-Sell arrangement where there is one owner (the MMLLC) in charge of maintaining all of the policies.

4. Control of the policies by the MMLLC ensures administration of policies in an organized manner and facilitates use of death benefits by surviving business owners/ Members for purchase of the decedent's interest in the underlying business pursuant to the terms of the Buy-Sell agreement.
5. The MMLLC also maintains control over the remaining policies when a business owner/Member dies. Policies are controlled by the MMLLC at all times, including upon the death of a business owner/Member. Because of this continuity of ownership, the remaining policies' death benefits are always available to the remaining business owners to continue the Buy-Sell arrangement.
6. A similar benefit is achieved if the death benefits are never needed to fund the Buy-Sell agreement. For example, if the underlying business itself was sold, the MMLLC arrangement would allow for the distribution of the policies to each insured business owner/Member for use in his/her own individual wealth management and estate plan. Without this unified ownership of the policies within an MMLLC, the business owners will have no obligation to transfer the policies that they own to one another.
7. The benefits of unified insurance ownership within the MMLLC can also be seen if we consider the rise of the life settlement industry. Many individuals are selling life insurance policies for amounts far in excess of their traditional value. Suppose in our example, that while the business was being sold to a third party, one of the business owners developed significant health problems. The policy insuring that owner's life may now have economic value far in excess of the cash value of that policy which in turn may make the owner of that policy reluctant to give up ownership.
8. Moreover, even if the owners were amenable to an open exchange of the policies amongst themselves, such exchanges would constitute taxable events for income tax purposes, as they do not qualify for tax-free treatment as IRC 1035 exchanges. Such non-excludable exchanges are taxable under IRC 1001 to the extent of any excess in the value of the contract being received over the adjusted basis of the contract being given. This excess amount is taxed as ordinary income, not capital gain.
9. In a traditional Cross-Purchase Buy-Sell arrangement, the policies held by a deceased owner on the lives of the other business owners are included in the deceased owner's estate for estate tax purposes. This inclusion is avoided through use of the MMLLC, as the MMLLC itself owns all of the policies.
10. The transfer of policies from the business owners to the MMLLC (in the event the policies are issued prior to creation of the MMLLC) and the distribution of those policies to the insured business owners upon termination of the MMLLC are permissible exceptions to the transfer for value rules set forth under Section 101 of the Internal Revenue Code.

## MMLLC Administrative Matters

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Each Member is required to make capital contributions so that the MMLLC can make premium payments on the insurance contracts. Capital contributions made by a Member are credited to that Member's Capital Account.

Capital contributions do not have to be equal between the Members. The contribution amount required from each Member may be determined by the amount of death benefit required by each Member to satisfy their purchase obligations under the Buy-Sell agreement.

The Members' underlying operating business can make these capital contributions payments directly to the MMLLC and allocate the contributions to each business owner as income as the business owners themselves determine.

The MMLLC will not have any income tax liability if all contributions are used to make premium payments on the contracts because any income earned inside the contracts is non-taxable.

The MMLLC may own other assets. It is not restricted to ownership of just life insurance policies.

Upon the death of a Member, the death benefit paid from the contract insuring that Member's life is allocated to the Capital Accounts of the surviving Members in the proportions necessary to allow each Member to fulfill his/her purchase obligation under the terms of the Buy-Sell agreement.

The MMLLC provides asset protection planning benefits, as a creditor of one of the Members cannot get at the assets of the MMLLC. Policies owned directly by the business owners on the lives of one another are probably not protected from creditors' claims. This means that creditors in a judicial proceeding can attach those policies.



# **Supporting Articles**

FOCUS ADVANCED MARKETS: SMALL BUSINESS PLANNING

# Advantages Of S Corp. Stock Redemption In Business Continuation Planning

BY CLAY BRISTOW

**M**ANY CLOSELY-HELD COMPANIES conduct business as an S Corporation because of the numerous tax advantages this structure affords. Less well known, however, is the S Corp. advantage in business continuation planning: the ability to use the corporate redemption to get for surviving shareholders a full increase in basis. This article attempts to explain this concept with a hypothetical case study illustration.

## BEST PRACTICES OF A BUY-SELL AGREEMENT

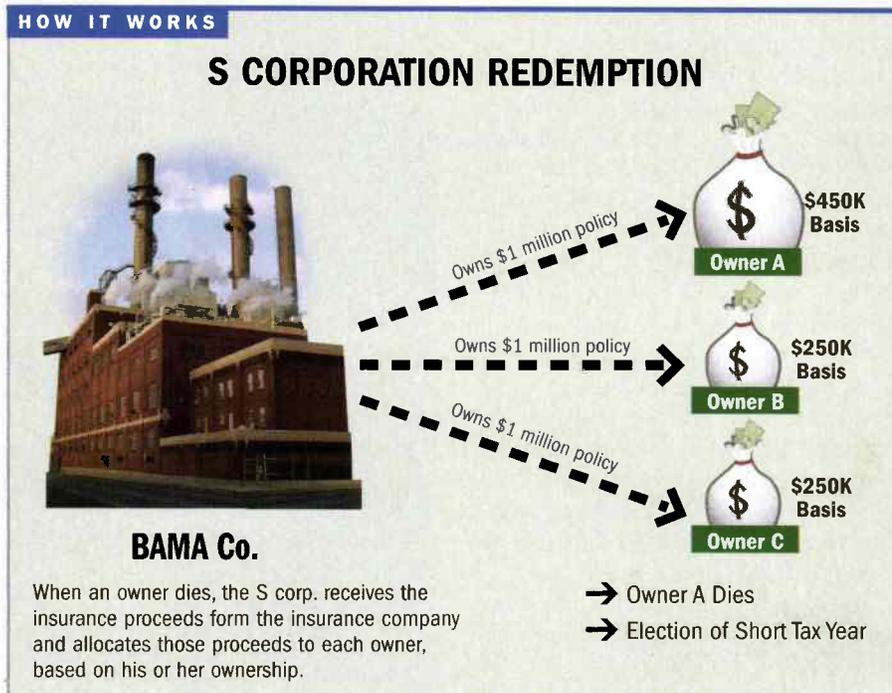
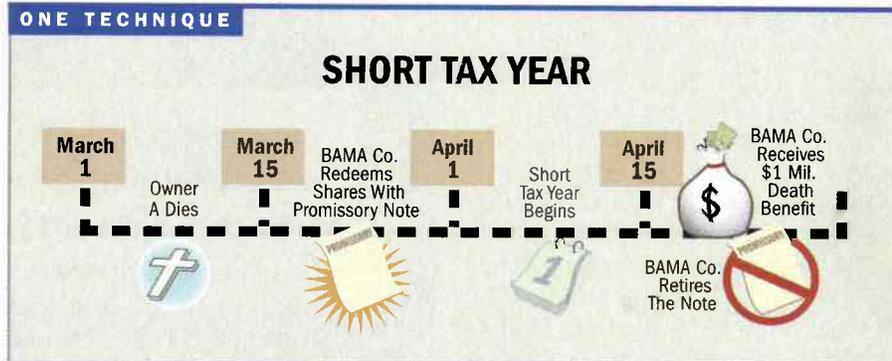
First, let's look at a key component in business continuation planning, the buy-sell agreement. There are two major types of buy-sell agreements: the entity redemption plan and the cross-purchase plan. With a redemption plan, the business enters into a contract with the owners to purchase each owner's interest, at a specified time. In the cross-purchase arrangement, the owners establish an agreement among themselves to buy and sell the stock. The business entity is not a party to the arrangement.

Each type of buy-sell agreement holds advantages and disadvantages, depending on the goals and objectives of the business owners. Typically, however, most owners look for a buy-sell agreement that:

- ▶ Is easy to understand and administer.
- ▶ Affords the surviving owners with a greater percentage ownership in the business.
- ▶ Increases the basis in the business for the surviving owners.
- ▶ Does not encounter a problem with the transfer for value rule, which converts life insurance proceeds into taxable income.



▶ **Clay Bristow, J.D., LL.M.**, is senior case design specialist in the Advanced Markets unit of AXA Equitable Life Insurance Co., New York, N.Y. You can email him at [Clay.Bristow@axa-equitable.com](mailto:Clay.Bristow@axa-equitable.com).



In addition, if the buy-sell agreement is funded with life insurance, it is typically desirable to acquire one policy per owner.

### PROS AND CONS

A cross-purchase agreement with 3 owners or more will typically be subject to the transfer for value rule. An entity purchase may present a problem in that the arrangement increases the basis of the surviving business owners.

A "C corporation," as a stand-alone entity, is independent of its shareholders. It is a separate taxpayer, as are its shareholders.

Therefore, life insurance proceeds that a C Corp. receives to fund an entity redemption stay with the corporation and do not increase the surviving shareholders' basis in the business.

The treatment of life insurance proceeds by an S corporation is handled differently. Because the S Corp.'s is not considered a separate taxable entity apart from its shareholders, income and deductions "pass through" to the shareholders. Life insurance proceeds received by an S Corp. increase the basis of all shareholders.

▶ continued on page 31

# Buy Sell Planning

## Cross-Purchase or Stock Redemption: What You Don't Know Can Hurt Your Client

By : [Adam Cavalier](#) on 2/5/2014

On the surface, **Buy-Sell planning** is rather straightforward: Place insurance on all the owners so that their interest in the business can be bought out upon their death or disability. If there are more than two owners, set it up with the business as the owner and beneficiary of the policies to avoid having to purchase and manage an unwieldy number of policies. If only it were that simple.

Surviving owners may be letting a significant opportunity slip through their hands all for the sake of perceived complexity. Shortsighted to say the least. There is much more to the story than ownership and beneficiary designations. That one seemingly basic decision has **potential tax ramifications** for any surviving owner of the business.

### understanding the tax implications of buy-sell agreements

When an owner dies, the probability that a business is going to be sold at some point in the future increases. One or more of the surviving owners is likely to want to walk away. When that happens, **cost basis will become a major factor in their eventual payoff**. How does the type of agreement come in to play?

#### Consider the following business:

- i Owned equally by two partners
- i The business was capitalized by a \$100,000 investment from each owner
- i The business is currently worth \$2,000,000
- i There is a fully-funded buy-sell agreement in place
- i Owner A dies

*One of two scenarios play out.*

#### scenario 1 – stock redemption agreement

Under a **Stock Redemption agreement**, the company is the owner and beneficiary of the life insurance policies funding the agreement.

At Owner A's death, the company collects the proceeds and "redeems" the shares of stock by cutting Owner A's estate a check for \$1MM. Owner A received a step-up in basis at his death, and his heirs receive a net of \$1MM. Owner B elects to sell the business, is fortunate enough to find a full-price buyer and collects a check for \$2MM. **Of that \$2MM, \$1.9MM is taxable based on his cost basis of \$100,000.** That is a hefty tax bill to say the least, and his net is reduced by \$532,000 based on today's Capital Gain rates.

## scenario 2 – cross-purchase agreement

Under a Cross-Purchase agreement, Owner B is the owner and beneficiary of the life insurance policy on Owner A's life funding the agreement and vice-versa. At Owner A's death, Owner B collects the proceeds and purchases Owner A's shares of stock by cutting Owner A's estate a check for \$1MM. Owner A received a step-up in basis at his death, and his heirs receive a net of \$1MM. Owner B elects to sell the business, is fortunate enough to find a full-price buyer and collects a check for \$2MM. Of that \$2MM, **\$900K is taxable based on his cost basis of \$1.1MM**. How did his cost basis go up?

Owner B actually **paid fair market value for the other half of the business** when he executed on the Buy-Sell agreement. While the taxes due of \$252,000 is a hefty tax bill, Owner B is \$280,000 to the good simply based on the type of Buy-Sell agreement they elected years ago. So what about more than two owners? Normally, the exponential increase in the number of policies required with more than two owners sends advisors straight to the Stock Redemption Plan. Based on the above, that can have unintended consequences in the future. So how to maintain the tax advantages of a Cross-Purchase structure while achieving the simplicity of a Stock Redemption plan?

## buy-sell plan designs using an LLC

By utilizing a Manager Managed LLC to own the policies that fund the agreement, **the tax treatment of the Cross-Purchase can be achieved while limiting the number of policies required to one per owner**. While not as simple as the Stock Redemption plan, the potential upside for the surviving owners is more than worth the cost of a bit of legal work at plan inception.

## the rest of the LLC story

As important as the taxation advantages are, they may not be the most important advantage of this approach. The issues of control and future planning flexibility are vital concerns.

### Consider the following:

**Control:** Upon the sale of the business, what happens to the remaining contracts? In the case of a traditional Cross-Purchase agreement, the other owners are under no obligation to maintain the policies, nor is there a straightforward way to transfer them from one owner to another.

**Future Flexibility:** Given the challenges presented by transfers to other owners, the opportunity to re-purpose any life insurance may slip through the hands of the surviving owners. Personal protection or estate planning considerations that could be addressed with these contracts now require the purchase of new insurance contracts at attained age and current health. Transfers from the LLC to the owners of the business will likely qualify for one of the exclusions to the transfer for value rules from IRC Section 101.

**Inclusion of Policies for Estate Tax Purposes:** Personally owned contracts are usually included in the taxable estate when an owner passes away. If owned by a Manager Managed LLC, policies owned by the LLC should be excluded from the taxable estate of the insured.

**Asset Protection:** Policies owned in an LLC would also be afforded a level of creditor protection that is not possible with personal ownership.

Clearly, for the high net worth business owner, the advantages of this type of plan design are significant. If most plan design decisions are based on near-term convenience, there's a major opportunity for the thoughtful advisor to add value by exposing the risks inherent in the traditional Cross-Purchase design as well as the potential taxation issues at time of sale in an Stock Redemption design

### PROTECTING BUSINESS OWNERS AND PRESERVING BUSINESSES FOR FUTURE GENERATIONS

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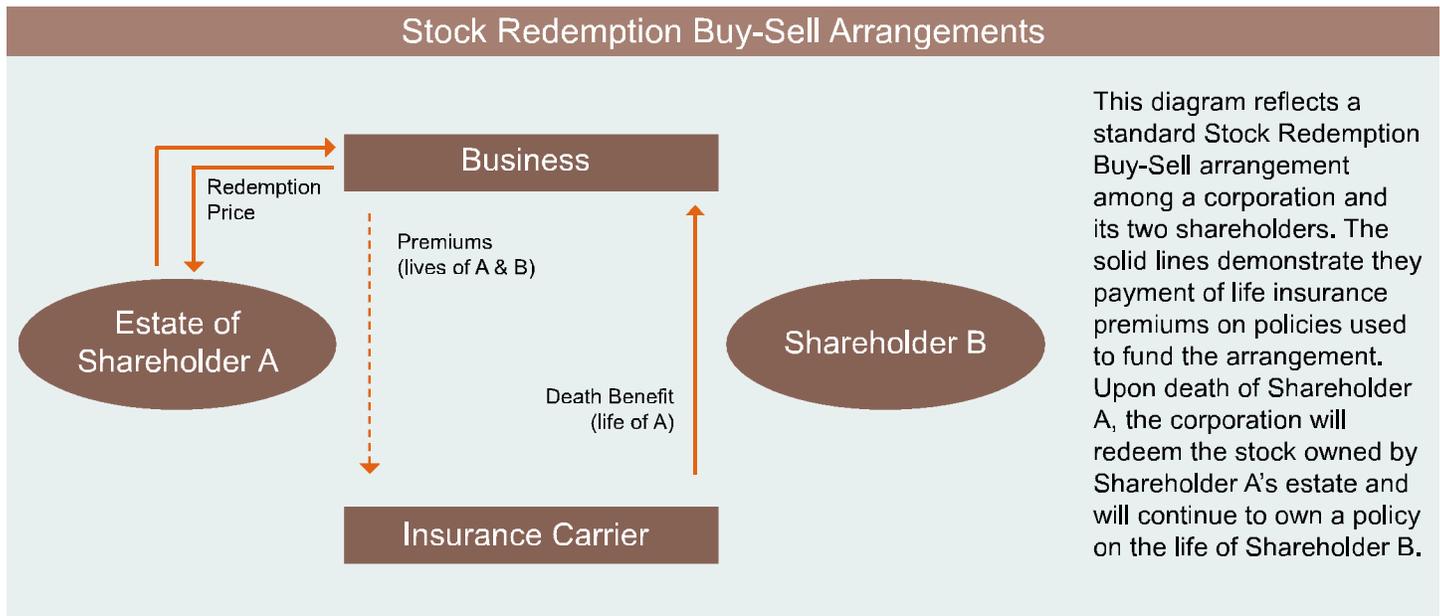
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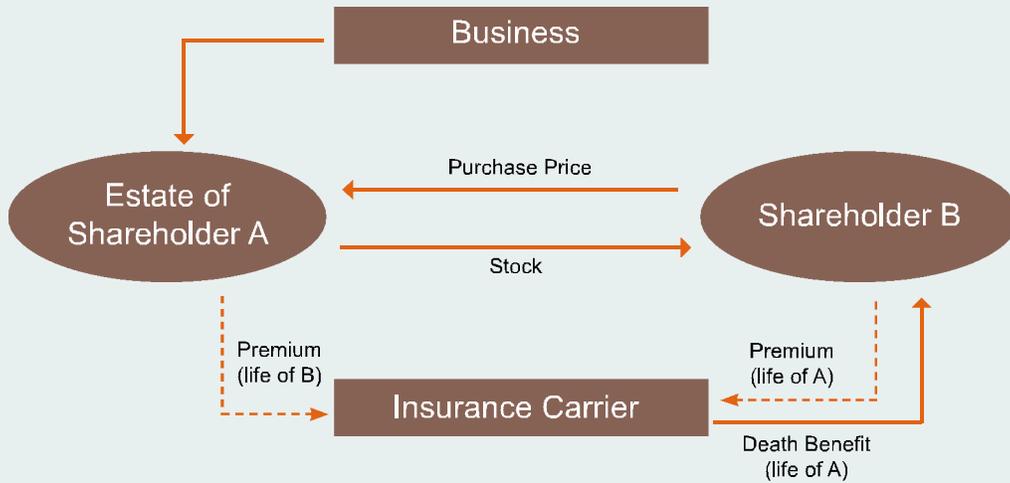
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# **Sample Buy-Sell Agreements**

# Sample Corporate Stock Redemption Agreement

## SPECIMEN NON-TRUSTEED CORPORATE STOCK REDEMPTION BUY-SELL AGREEMENT

**AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between (name of shareholder), (name of shareholder) and (name of shareholder) (hereinafter called the "Shareholders"), and (name of corporation) (hereinafter called the "Corporation"), created and existing under the laws of the State of \_\_\_\_\_.

**WHEREAS**, the Shareholders own the following percentage of shares in the Corporation:

_____ <u>(name of shareholder)</u>	_____ % of shares
_____ <u>(name of shareholder)</u>	_____ % of shares
_____ <u>(name of shareholder)</u>	_____ % of shares; and

**WHEREAS**, the parties to this Agreement believe that it is to their mutual best interests to provide for continuity and harmony in management and the policies of the Corporation; and

**WHEREAS**, the purposes of the Agreement are (1) to provide for the purchase by the Corporation of the shares of any Shareholder in the event of his/her death or disability, (2) to provide for the purchase of the shares of a Shareholder who during his/her lifetime desires to dispose of any of his/her stock, and (3) to provide the funds necessary to carry out such purchases;

**NOW, THEREFORE**, in consideration of the mutual covenants to buy and sell and the performance thereof expressed herein by the parties, each of the Shareholders does hereby bind himself/herself, his/her heirs, executors, administrators and assigns, and the Corporation does hereby bind itself and its successors, and all hereto agree as follows:

**Sample Document Only - See Your Attorney  
To Provide A Specific Document For You**



## **ARTICLE 1 - Disposal of Stock During Lifetime**

During his/her lifetime, no Shareholder shall transfer, encumber or dispose of any portion or all of his/her stock interest in the Corporation except that if a Shareholder should desire to dispose of any of his/her stock in the Corporation during his/her lifetime, he/she shall first offer such stock to the Corporation at a price determined in accordance with the provisions of Article 2. Any shares not purchased by the Corporation within 30 days after receipt of such offer in writing shall be offered at the same price to other Shareholders, each of whom shall have the right to purchase such portion of the remaining stock offered for sale as the number of shares owned by all the other Shareholders, excluding the selling Shareholder. Provided, however, that if any Shareholder does not purchase his/her full proportionate share of the stock, the balance of the stock may be purchased by the other Shareholders equally. If the stock is not purchased by the remaining Shareholders within 30 days of the receipt of the offer to them, the Shareholder desiring to sell may sell it to any other person, but shall not sell it without giving the Corporation and remaining Shareholders the right to purchase such remaining stock at the price and on the terms offered to such other person.

## **ARTICLE 2 - Valuation**

Unless and until changed as hereinafter provided, the value of each share of stock of the Corporation shall be \$ \_\_\_\_\_. This price has been agreed upon by the Shareholders and the Corporation as representing the fair value of the interest of each Shareholder. Each of the Shareholders hereby mutually agrees to sell the stock subject to this Agreement at the value herein stipulated, or at the value stipulated in any proper amendment of this Agreement. The Shareholders and the Corporation agree to redetermine the value of the Corporation and their respective interests therein within \_\_\_\_\_ days following the end of each fiscal year. The value so agreed upon shall be endorsed on Schedule B attached hereto and made a part of this Agreement.

If the Shareholders and the Corporation fail to make a redetermination of value for a particular year, the last previously stipulated value shall control, except that if the Shareholders and the Corporation have not so redetermined the value within the 24 months immediately preceding the death of a Shareholder, then the value of the Shareholder's interest shall be agreed upon by the representative of the deceased Shareholder and the Corporation through its surviving Shareholders. If they do not agree upon a valuation within 120 days after the death of a Shareholder, the value of the deceased Shareholder's interest shall be determined by arbitration as follows: the Corporation through the surviving Shareholders shall name one arbitrator and the representatives of the estate of the deceased Shareholder shall name one arbitrator, if the two arbitrators cannot agree upon a value within 30 days, they shall appoint a third arbitrator and the decision of the majority shall be binding upon all parties.

### ARTICLE 3 - Death of a Shareholder

Upon the death of any Shareholder, the Corporation shall purchase, and the estate of the decedent shall sell, all of the decedent's stock in the Corporation now owned or hereafter acquired. The purchase price of such stock shall be computed in accordance with the provisions of Article 2 of this Agreement.

If the purchase price exceeds the proceeds of the life insurance, the balance of the purchase price shall be payable in *(number of installments)* consecutive *(monthly or annual)* payments beginning \_\_\_\_\_ months after the date of the Shareholder's death. Such unpaid balance of the purchase price shall be evidenced by a series of negotiable promissory notes executed by the Corporation to the order of the estate of the deceased with interest at \_\_\_\_\_ % per annum. Such notes shall provide for the acceleration of the due date of all unpaid notes in the series on default in the payment of any note or interest thereon and shall provide that upon the default in the payment of interest or principal, all notes shall become due and payable immediately and shall give the Corporation the option of prepayment in whole or in part at any time.

### ARTICLE 4 - Total and Permanent Disability of a Shareholder

Upon the total and permanent disability of any Shareholder for a period of twelve (12) continuous months, the Corporation shall purchase and the disabled Shareholder shall sell, all the shares of the disabled Shareholder for the purchase price specified in Article 2. The purchase price shall be paid to the selling Shareholder in equal monthly installments over a period of *(number)* months, the first installment to be paid on the first day of the month in which the said one-year period of disability ends. To secure the payment of such equal monthly installments, the Corporation shall execute and deliver to the selling Shareholder, a series of promissory notes payable to the selling Shareholder, each such note to be of a face amount equal to each such installment, and each such note to be payable on the due date of each successive installment. The notes shall bear interest equal to \_\_\_\_\_ percent (\_\_\_\_\_% ) per year on the declining balance of such purchase price.

For purposes of this Agreement, a Shareholder shall be considered totally and permanently disabled if said Shareholder meets the terms and conditions of total and permanent disability as set forth in the disability insurance policy purchased on said disabled Shareholder and listed in Schedule A.

**Be Sure The Definition Of Disability In Contract Match Language In Policy To Avoid Non-Payment Of Policy Should Agreement Declare Partner Disabled While Policy Does Not**

## ARTICLE 5 - Insurance Policies

The Corporation, in order to help fund its obligations under this Agreement, has procured and made subject hereto insurance on the lives of the Shareholders as listed in Schedule A. The Corporation agrees to pay premiums on the insurance policies taken out pursuant to this Agreement and shall give proof of payment of premiums to the Shareholders whenever any one of them shall so request such proof. If the premium is not paid within \_\_\_\_\_ days after its due date, the insured shall have the right to pay such premium and be promptly reimbursed therefor by the Corporation. The Corporation shall have the right to purchase additional insurance on the lives of any or all of its Shareholders; such additional policies shall be listed on Schedule A, attached hereto and made a part of this Agreement, along with any substitution or withdrawal of life insurance policies subject to this Agreement. In the event that the Corporation decides to purchase additional life insurance on any Shareholder, each Shareholder hereby agrees to cooperate fully by performing all the requirements of the life insurer which are necessary conditions to the issuance of life insurance policies. The Corporation shall be the sole owner of the policies issued to it.

## ARTICLE 6 - Purchase of Insurance Policies by Insured

If any Shareholder withdraws from the Corporation during his/her lifetime or if the Agreement terminates before the death of a Shareholder, then such Shareholder shall have the right to purchase the policy or policies on his/her life owned by the Corporation by paying an amount equal to the cash surrender value as of the date of transfer, less any existing indebtedness charged against the policy or policies. This right shall lapse if not exercised within sixty (60) days after such withdrawal or termination.

## ARTICLE 7 - Endorsement of Stock Certificates

The Shareholders agree to endorse the certificates of stock held by them as follows:

“The sale or transfer of this certificate is subject to an agreement between *(name of corporation)* and *(name of shareholder)*, *(name of shareholder)* and *(name of shareholder)*, its Shareholders, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, A copy of this agreement is on file in the office of the Secretary of said Corporation.”

## **ARTICLE 8 - Supplemental Instruments**

A duly authorized officer of the Corporation and the executor or administrator of the deceased Shareholder shall make, execute and deliver any documents necessary to carry out this Agreement. This Agreement shall be binding upon the Corporation and the Shareholders, their heirs, legal representatives, successors and assigns.

## **ARTICLE 9 - Amendment**

This Agreement may be altered, amended or terminated by a writing signed by the Corporation and all Shareholders.

## **ARTICLE 10 - Termination of Agreement**

This Agreement shall terminate on the occurrence of any of the following events:

1. The written agreement of the Shareholders to that effect;
2. Bankruptcy, receivership or dissolution of the Corporation;
3. Death of two or more Shareholders simultaneously or within a period of 30 days; or
4. When there remains only one Shareholder as a party to the Agreement.

## **ARTICLE 11 - Liability of Insurer**

No insurance company which has issued or shall issue a policy or policies subject to this Agreement shall be under any obligation with respect to the performance of the terms and conditions of this Agreement. Any such company shall be bound only by the terms of the policy or policies which it has issued or shall hereafter issue and shall have no liability except as set forth in its policies.

## **ARTICLE 12 - Governing Law**

This Agreement shall be subject to and governed by the law of the State of \_\_\_\_\_, irrespective of the fact that one or more of the parties now is or may become a resident of a different state.

IN WITNESS WHEREOF, the parties hereunto have executed this agreement at \_\_\_\_\_, in the County of \_\_\_\_\_, State of \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Name of Corporation)

By \_\_\_\_\_

\_\_\_\_\_  
(Signature of Shareholder)

Attest:

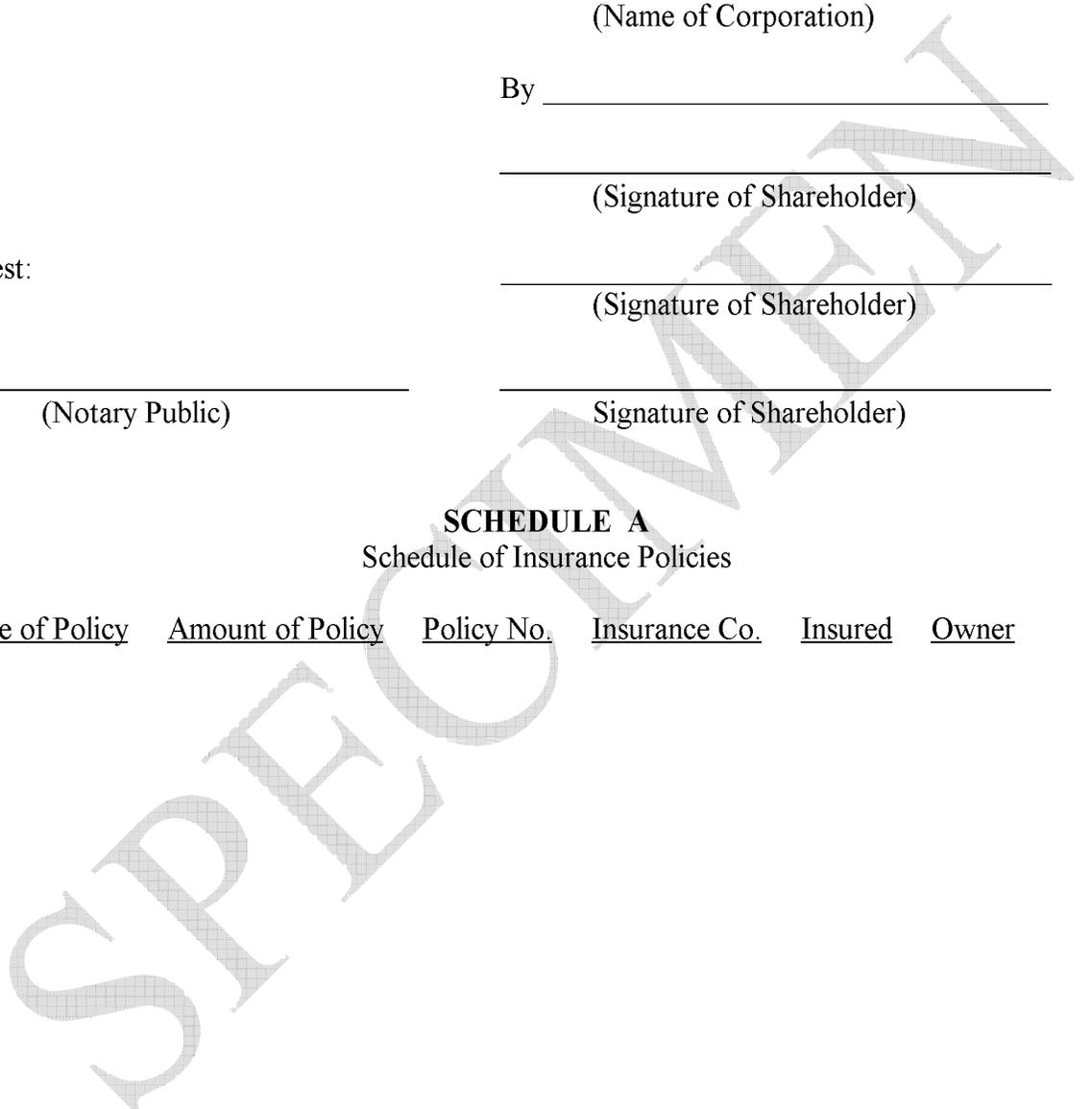
\_\_\_\_\_  
(Signature of Shareholder)

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
Signature of Shareholder)

**SCHEDULE A**  
Schedule of Insurance Policies

Type of Policy    Amount of Policy    Policy No.    Insurance Co.    Insured    Owner



**SCHEDULE B**  
Record of Valuation

It is agreed by the Shareholders that the value of each Shareholder's interest in the Corporation for the purposes of the foregoing Agreement, for the fiscal year of the Corporation shown is as follows:

_____ (Name of Shareholder) _____	\$ _____ (value) _____
_____ (Name of Shareholder) _____	\$ _____ (value) _____
_____ (Name of Shareholder) _____	\$ _____ (value) _____

The above valuations are for the fiscal year 20\_\_\_\_\_.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Signature of Shareholder)

\_\_\_\_\_  
(Signature of Shareholder)

\_\_\_\_\_  
(Signature of Shareholder)