

# 25 Point Buy-Sell Agreement Checklist

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This checklist is designed to help LLC owners create a Buy-Sell Agreement. The BSA is an agreement between owners of a business that lays out the terms and conditions for the transfer of ownership interest. There are many factors to consider in this planning process, as this document only becomes effective upon some “triggering event.” That triggering event could be the death or disability of an owner, a falling out between owners, or some other issue not currently apparent. The checklist is not exhaustive, it is not intended nor should it be considered legal advice, and it is in no way a substitute for speaking with an attorney. As such, it is my recommendation that you use this checklist as a guide and a discovery tool to help you when speaking with an attorney.

## General Information:

1. Name, phone, email, and Address for each Member<sup>1</sup>:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

2. Name of LLC: \_\_\_\_\_

3. Do you currently have an Operating Agreement? Yes  No

<sup>1</sup> Member: a person, or entity (another LLC, trust, etc.), that owns an interest in the LLC. The information contained in this paper is for general information purposes only. It is not legal advice, nor does your viewing it create an attorney-client relationship with Scott Welch or Welch Law LLC. The choice of a lawyer is an important decision and should not be based solely upon advertisements.

4. Are there multiple classes of interests? (Typically No) Yes  No
5. Is this an S-Corp? Yes  No
6. Should all Members be subject to the BSA? Yes  No
7. If more than 2 Members, should Company act as purchaser? Yes  No
8. What are the ages of each Member?
- a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  - d. \_\_\_\_\_
9. Should the purchase of a departing Member's interests be on a pro rata basis?  
Yes  No
10. If one or more remaining Members decline to purchase shares, will other Members be permitted to purchase more in a pro rata basis? Yes  No
11. Are there restrictions on other agreements, i.e. loans, that would affect the BSA?  
Yes  No
12. Should the BSA incorporate a right of first refusal (ROFR)? Yes  No
- a. How many days should the company have after a bona fide offer, in writing, is made to make a decision? 30  60  90  Longer
  - b. Should the company have the same terms and conditions as the bona fide offer?  
Yes  No
  - c. If the company does not elect to purchase, should offer be extended to remaining members? Yes  No
  - d. How many days should the remaining members have after a bona fide offer, in writing, is made to make a decision? 30  60  90  Longer
13. Triggering Events:
- a. Quits

- b. Fired
- c. Retires
- d. Disability
- e. Death
- f. Divorce
- g. Default
- h. Bankruptcy
- i. Disagreement

14. Should there be drag-along rights? Yes  No

15. Should there be tag-along rights? Yes  No

16. Will there be differential pricing applied for different triggering events?

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17. Is there a do not compete agreement? Yes  No

18. How should the value of the interest(s) be calculated?

a. Fixed Price: Yes  No

i. Initial? \_\_\_\_\_

ii. How is it updated? \_\_\_\_\_

iii. What if not updated for 1+ years and then there is a triggering event?

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b. Formula Agreement: Yes  No

i. Will all terms be specified? Yes  No

ii. If so, algebraically? Yes  No

iii. If so, what will the terms look like? \_\_\_\_\_

iv. Will there be a provision for appraisal if disputed? Yes  No

c. Valuation Agreement: (typically recommended) Yes  No

i. Standard of Value: FMV  Fair Value  Accounting  Investment   
Going concern  Other

19. What should the "As of" date be for calculating value?

a. Date of triggering event: Yes  No

b. Date determined by appraisal: Yes  No

c. Other Date: Yes  No

20. Appraiser Qualifications: \_\_\_\_\_

21. Appraisal Standards:

a. Uniform Standards of Professional Appraisal Practice: Yes  No

b. ASA Business Valuation Standards: Yes  No

c. AICPA Statement on Standards for Valuation Services: Yes  No

22. Funding Mechanism:

a. Life Insurance: Yes  No

b. Disability Insurance: Yes  No

c. Corporate Assets: Yes  No

d. Sale of Shareholder Notes: Yes  No

e. Promissory Notes: Yes  No

i. Terms? Length? \_\_\_\_\_

23. Appraiser Options:

- a. Single Appraiser, Select Now Value now: Yes  No
- b. Single Appraiser, select at trigger: Yes  No
- c. Single Appraiser, Select Now and Value at Trigger: Yes  No
- d. Two Appraisers, with option for third on deadlock: Yes  No 
  - i. What percentage difference for deadlock: \_\_\_\_\_%

24. Who pays for appraisal? \_\_\_\_\_

25. What rights does the triggering event of BSA create?

- a. Continuing ownership interest: Yes  No
- b. Interest: Yes  No
- c. Vote: Yes  No
- d. Dividends: Yes  No

Remember, this checklist is not exhaustive and is a starting point for the conversation you will have with your attorney. If you are not sure about an answer, circle it and make it a topic of conversation with your advisors. Congratulations on taking an important first step in protecting your ownership interest and family.

Respectfully,

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