

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 Member¹:

- a. _____
- b. _____
- c. _____
- d. _____

2. Name of LLC: _____

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

¹ 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?

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?

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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