

### Three Flavors

A BSA is commonly structured in one of three general formats: An *Entity BSA*, a *Cross-Purchase BSA*, and a *Wait-And-See BSA*. Under an Entity BSA, the business entity itself agrees to purchase the interest of a business owner. Conversely, under a Cross-Purchase BSA, the business owners agree to purchase one another's interests. The Wait-And-See BSA gives the entity a first option to purchase the interest before the remaining business owner(s). In addition to these three general formats, a *One-Way BSA* may be used when there is one business owner and the purchaser is a third party. The selection of the appropriate BSA format is critical for a variety of tax and non-tax reasons beyond the scope of this discussion. However, no BSA is complete without a proper funding plan. Like a beautiful automobile without fuel in the tank, a BSA without cash to fund the purchase is going nowhere.

### Funding Options

Some common options to fund the purchase obligation under a BSA include the use of personal funds, creating a sinking fund in the business itself, borrowing funds, installment payments and insurance. Of these options, only the insured option can guarantee complete financing of the purchase from the beginning. Accordingly, a proper BSA will include both disability buy-out insurance and life insurance. Since the health of the business owner determines their insurability, any delay in acquiring appropriate coverage could be fatal to the success of the BSA and with it the survival of the business.

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## BUSINESS OWNER BLUES



Being a business owner today is both rewarding and challenging, especially if your business is a family business.

For business owners facing the unique challenge of transferring ownership of the family business upon retirement, disability or death, a properly funded Buy-Sell Agreement may be the key to survival.

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Are you a business owner? If so, then you probably know what it's like to be the first one to arrive in the morning and the last one to leave in the evening. Over the years, you have no doubt worked through physical, mental and financial pain that would have caused other folks to close shop and look for a job elsewhere. No doubt, as a business owner you have survived untold challenges. If yours is a family business, then you face some unique challenges to protect and preserve your business ... and your family.

It would be an understatement to say that family businesses are the backbone of the American economy. Some 90 percent of all businesses in this country are either family-owned or family-controlled. They come in all shapes, sizes and colors, representing all sectors of our economy. From agriculture, to services, technology, and manufacturing, family businesses generate an estimated one-half of the U.S. Gross National Product and pay half of all wages earned in this country. Not all family businesses are traditional small businesses either. In fact, about one-third of all businesses included in the Fortune 500 are family businesses. But not all of the family business statistics are rosy.

### Tragic Transitions

Family businesses do not tend to outlive their founders. At any given moment, 40 percent of family businesses are in the process of transferring their ownership. Unfortunately, two-thirds of all initial transfers fail. Of the one-third that survives an initial transfer, only one-half will survive a second transfer. Why such a dismal success rate? The reasons are as varied and unique as the businesses and business owners themselves. Nevertheless, many of the failed transfers can be traced to three causes: people, taxes and cash.

### People Planning

The family element in every family business can mean the difference between its success or failure during the transfer process. Common

triggering events include the retirement, disability or death of the business owner. Tough questions must be asked and answered. Otherwise, a business that took you decades to build can be destroyed overnight.

For example, who will run the business after you? Will it be your spouse, one of your children or a non-family member key employee? What arrangements have you made for the inheritance of your business-inactive children? Have you in-law proofed your estate? Thinking ahead to the second-generation transfer of your business, what provisions have you made to encourage thrift and industry among your grandchildren?

### Tax Truths

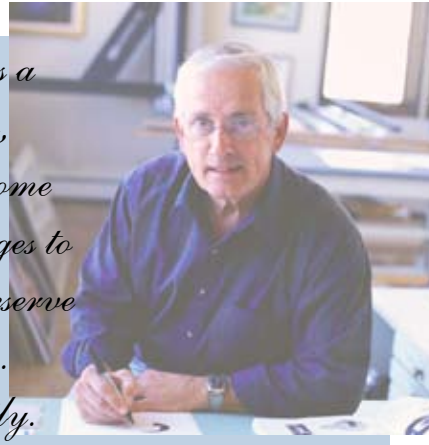
Will the federal estate tax be repealed or significantly reformed in the future? Perhaps. While the future of the federal estate tax is uncertain at best, many states are imposing or may impose their own estate taxes to make up revenue shortfalls, independent of any federal estate taxes.

Careful monitoring of the economic, political and legal climate is required. Why? Without proper planning, your family may have to sell the family business to meet an estate tax cash call. Will there be enough money to fuel the survival of your family business?

### Money Matters

Will there be enough money to fuel the survival of your family business? Unless you coordinate your financial plan with your Life & Estate

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Plan, there may not be enough cash to fund your ultimate objectives. For instance, an appropriately funded plan could provide financial security for your spouse, ensure that your preferred successor takes over the business, equalize the eventual inheritance among your children and protect their inheritance from future problems (e.g., divorces, lawsuits and bankruptcies). Life insurance is

typically used to fund such money matters when owned in the proper amount, type and manner.

### Buy-Sell Agreements

A Buy-Sell Agreement (BSA) is one fundamental key to the survival of a family business. A BSA is a lifetime contract providing for the transfer of a business interest upon the occurrence of one or more triggering events as defined in the contract itself. For example, common

triggering events include the retirement, disability or death of the business owner. An interest in any form of business entity can be transferred under a BSA, to include a corporation, a partnership or a limited liability company. Also, a BSA is effective whether the business has one owner or multiple owners. As a contract, a BSA is binding on third parties such as the estate representatives and heirs of the business owner. This feature can be invaluable when the business owner wants to ensure a smooth transition of complete control and ownership to the party that will keep the business going. Subject to certain Family Attribution Rules under Internal Revenue Code §318, a BSA can help establish a value for a business that is binding on the IRS for federal estate tax purposes as provided under Internal Revenue Code § 2703.

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