Business Financial Planning

Wait and See Buy/Sell Agreement

A wait and see buy/sell agreement is a hybrid arrangement, being a mix between an entity purchase buy/sell plan and a cross purchase buy/sell plan. A wait and see buy/sell agreement allows the business owners to wait until one of the owner's death to see if it would be better to purchase the deceased owner's business interest under the entity purchase agreement, or for the surviving owners to purchase the deceased owner's business interest under the cross purchase agreement. In other words, the wait and see buy/sell agreement allows the deceased business partner's business interest to be purchased by the surviving owners, the business entity itself, or both.

Typically, the life insurance policies would be owned as they would be in a traditional cross purchase buy/sell agreement. When the first business owner dies, the business is given the option to purchase any or all of the deceased business owner's business interest at the price or formula set out in the agreement. If the business entity does not buy any or all of the business interest, the surviving business owners have the ability to buy any or all of the deceased business owner's business interest. If the surviving business owners do not buy the entire or remaining business interest, the buy/sell agreement then contractually obligates the business entity to purchase any remaining interest from the deceased business owner's estate.

The key advantage to the wait and see buy/sell agreement is the flexibility that it allows to the surviving business owners, while still assuring the heirs of the deceased business owner a fair price for the business interest. The surviving business owners will receive the life insurance proceeds upon the death of the deceased owner, since it is typically funded as a traditional cross purchase buy/sell agreement, which will allow them to purchase the deceased business owner's business interest if they so choose. If it is decided that the business entity should purchase the deceased owner's business interest, then the surviving owners can either lend the life insurance proceeds to the business to fund the buyout or they could contribute the life insurance proceeds to the business as a capital contribution.

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