IS IT A GOOD IDEA TO HAVE A BUY-SELL AGREEMENT WITH THE PEOPLE I AM STARTING MY NEW BUSINESS WITH?

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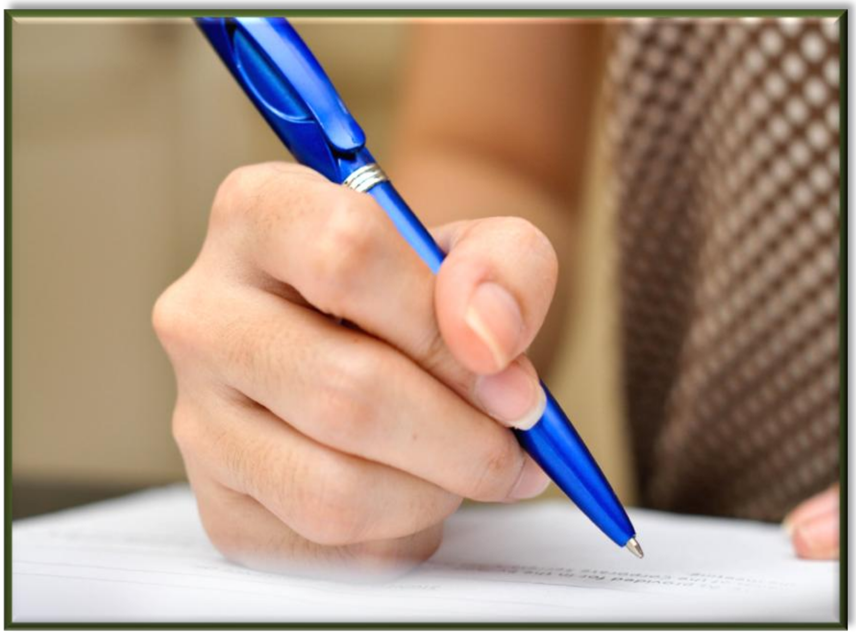
When starting a new business, a variety of legal documents should be prepared to comply with state requirements and to protect the interests of business owners and shareholders. An experienced corporate law attorney should be consulted for assistance with the creation of required forms and documents as well as to draft contracts and operating agreements that can set the business on the path to future success.

One of the most important documents that should be created at the start of a new organization is a buy-sell agreement. A buy-sell agreement is a legally binding contract that co-owners of a business should negotiate and sign. The purpose is to ensure that if any business owner needs to leave the organization for any reason, his own financial interests as well as the financial interests of the other owners are protected.

WHY IT IS IMPORTANT TO HAVE A BUY-SELL AGREEMENT

A buy-sell agreement can allow a business to continue to operate even if an individual owner or group of owners decides to no longer be a part of the organization. It can apply in the event of departure, death, disability or divorce and set the terms both for what a departing owner is entitled to and what the rights of the remaining owners are.

A buy-sell agreement may establish how a departing owner's shares or ownership interest should be valued. In smaller or privately-held companies, determining the value of ownership shares is often difficult or impossible. A professional business valuation could be costly and accuracy is not guaranteed. When a buy-sell agreement establishes the value of an ownership interest, an investor in an organization knows that he or she has the option to leave the organization with some degree of certainty regarding the value of his shares.



Business owners who wish to continue operations also benefit from a buy-sell agreement. Without the agreement in place, the departing owner could sell his shares or give them away to whomever he chooses without input from the remaining shareholders. In a divorce situation, shares of a business could also be transferred to an ex-spouse.

The result is that the owners of the organization who wish to continue to remain involved with operations could end up working with someone who they don't like and who they don't want to run the business with. This could undermine the ability of the company to operate effectively and could result in the business suffering as a result. It could also make work very unpleasant for owners as they operate their own business but with a person they dislike.

CREATING A BUY-SELL AGREEMENT

A buy-sell agreement should be carefully drafted to plan for any potential future contingencies that could occur and impact the business organization. The terms of the agreement should be negotiated among business owners and all parties should have the opportunity to voice their opinions during negotiations.

An attorney should be consulted in the creation of the buy-sell agreement in order to ensure that the negotiation and drafting process follows rules for contract formation and to advise business owners about their legal rights. In most cases, each individual who will be a co-owner of the new organization should be represented by his or her own legal advocate.

A corporate law professional can explain the types of clauses that should be included in the agreement to protect owners' rights. For example, a cross-purchase clause is generally included in most effective buy-sell agreements. A cross-purchase agreement gives the other owners the right of first refusal on purchasing a business when a co-owner leaves.

For example, if Ann and Tim start a business together and create a buy-sell agreement with a cross-purchase clause, Tim will need to give Ann the opportunity to buy the business first when he leaves the organization. Likewise, if Ann left the organization, Tim would get the chance to buy Ann's share of the business.

Because a business owner's death often results in difficulties continuing the business, the buy-sell agreement should also specify what happens if a business owner passes away.

A business law attorney should be consulted to help with the creation of a buy-sell agreement when an organization is starting. If your organization does not already have a buy-sell agreement in place, it is not too late to create this type of contract to protect your financial interests in your business.

About the Author

Lotzar Law Firm, P.C. was founded in 2005, and serves clients throughout the U.S. We pride ourselves on the level of service we provide our clients and are determined to see each project through to positive results.

In addition to bringing a legal expertise to the table, we offer clients sound ideas and invaluable advice that enhances their business. One of our greatest attributes is our ability to approach projects from a business-owner perspective. Rather than narrowing in on the setbacks of a challenge and informing clients of what stands in the way, we prefer to seek innovative ways to transcend issues and create a better path for clients. With an unparalleled savvy in developing modern methods of financing, we can present you with viable and efficient options.

Our diversified portfolio of clients is comprised of entrepreneurs, real estate developers, contractors and property managers. We also do business with numerous nonprofit clients including Chicanos Por La Causa, Inc.; Tiempo, Inc.; and The Industrial Development Authority of the City of Tucson, Arizona.

We work in a team-based environment, supported by a skilled and caring staff, eager to answer your questions and provide you with consistent access to your team. Whether your needs are small or large in scope, we look forward to working with you.

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