

BUY-SELL AGREEMENTS

Does your business
have a Will?

A person's business interest is an important element in their wealth profile. To know that value can be unlocked in the event of an untimely death or serious injury is of great importance to a business owner and their family.

Likewise, if death or serious injury was to occur to a business owner, the remaining business owners would like certainty that they could purchase, and pay for, the business interest of the outgoing business owner.

What is a Buy-Sell Agreement?

In the event of death or serious injury, a business owner would expect that their remaining business owners would purchase their business interest. However, there is no guarantee that this will be the case, and it is possible that the remaining business owners will not have the necessary capital to do so.

A Buy-Sell Agreement is a document entered into by business-owners which sets out the terms and funding mechanism for the disposal of a business owner's interest where that person unexpectedly dies or suffers a serious injury. It is the "business" equivalent of an individual's Will.

An effective Buy-Sell Agreement provides certainty to all parties by ensuring that the outgoing business owner (or their family) receives the agreed value for the business interest, and that the business interest passes smoothly and without dispute to the remaining business owners.

What is the effect of an unexpected exit from the business without a buy-sell agreement being in place?

Without an effective Buy-Sell Agreement, a business owner's untimely exit from a business could carry with it a host of problems which affect the parties involved as well as the business itself:

- disputes could arise between the outgoing business owner (or their family) and the remaining business owner as to what the business is really worth;
- the remaining business owners may be unwilling or unable to raise the necessary capital to pay the outgoing business owner (or their family);

- the outgoing business owner (or their family) may refuse to relinquish their interest in the business, leading to them having continued ownership without any day-to-day input or involvement;
- the outgoing business owner's family may choose to become involved in the business, when that may not be what the remaining business owners want;
- there may be an ongoing legal battle, preventing both the outgoing business owner (or their family) and the remaining business owners from moving forward, negatively impacting the business.

What are the features of Buy-Sell Agreements?

- Mechanisms which compel the transfer of the outgoing business owner's interest to the remaining business owners;
- Insurance funding, tied into the agreement itself, which enables the payment for the outgoing business owner's interest;
- Tax effective outcomes for the outgoing business owner (or their family) and the remaining business owners;
- An agreed process for dealing with the repayment of any outstanding shareholder loan accounts or vendor finance arrangements;
- An agreed methodology for valuing the business and the flexibility to update this value without disturbing the Buy-Sell Agreement itself;
- An agreed process for dealing with any insurance shortfalls;
- Mechanisms to deal with the simultaneous demise of more than one business owner.

What is the role of PT Partners?

Through a deep understanding of the business structure, its tax issues, and the personal profiles of the business owners, PT Partners is perfectly positioned to bring about a Buy-Sell Agreement that is effective and tailored to the specific requirements at hand.

We co-ordinate and facilitate the entire process, drawing on the expertise of trusted legal and insurance contacts at the relevant stages. Please read our separate Fact Sheet titled "Business Succession Planning Process" for a clear outline of the steps.