# BUSINESS BREAKUPS – WHY BUY-SELL AGREEMENTS ARE CRITICAL TO A SUCCESSFUL SPLIT

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The story is familiar, and most always unfortunate. Two friends come up with a can't-miss business idea. The friends supply equal capital to get the venture up and running, and both individuals commit to managing the business. They agree to split any profits that they make in their venture equally. Three years later, business is great, and their idea has blossomed into an operation that is returning net profits far in excess of what the two owners initially thought possible.

At the same time, the stress of getting a business off the ground and then putting in the time and effort to make it sustainable has taken its toll. The owners are hardly on speaking terms any more, and one of them decides that they want out of the business altogether. At this point, a bevy of uncertainties arise. How much will it cost the remaining owner to buy the departing owner's interest? How should the interest be valued? Could the business itself buy back (redeem) the interest? Can a third party buy the departing owner's interest? If a third party purchases the interest, does the new owner have any say in the management and day-to-day operations of the business? And the list goes on.

These types of issues commonly arise when business owners decide to part, and sometimes even when they don't. An owner's bankruptcy, divorce or death could result in that owner's interest in the business being transferred to such owner's spouse, or even worse, an unknown third party, leaving the remaining owner now in business with a non-working ex-spouse, a stranger, or a creditor.

At Braun Siler Kruzel PC, we have seen a myriad of instances in which an already difficult "breakup" between two business owners is exacerbated by a lack of preparation as to how the owners will agree to facilitate the split. Fortunately, many of these issues can be resolved before they become a problem by entering into a buy-sell agreement.

A buy-sell agreement is an agreement entered into among business owners which outlines the rules for the various instances in which one of the owners, either voluntarily or involuntarily, departs the business. It is essentially a detailed game plan as to the buyout process, and covers the critical details of the buy-out transaction, such as:

(1) What events trigger the occasion in which an owner may be bought out;
(2) Who votes if the business has an option to purchase the interest;
(3) What method will be used to establish the value of the interest that is being purchased;
(4) Whether the buy-out will be funded by life insurance;
(5) Whether the purchase price can be financed through the company or an outside lender;
(6) Who can purchase the interest and under what conditions; and
(7) The timeline in which the transaction must be completed.

With the foregoing considerations in mind, the question becomes who should have a buy-sell agreement? The answer is: everyone who owns a business interest which has more than one owner. Every day that a business grows in value without having a plan for a possible transition increases each owner's financial risk. Whether you are an owner in a partnership, limited liability company, or corporation, it is critical to adopt an agreement that governs what happens when an owner is departing.

If you are in a business and are operating without a buy-sell agreement, or if you are unsure if an agreement you are currently using is sufficient, we encourage you to schedule a time to speak with one of our experienced business planning attorneys in the near future. We can help you resolve many of the issues that can make a business breakup difficult before they arise.