



COMMON SHAREHOLDER/MEMBER AGREEMENT ISSUES CHECKLIST

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When there are two or more equity holders, a Shareholders' Agreement or Operating Agreement, sometimes referred to as a Buy-Sell Agreement, is a powerful tool to help control a company's future. Contractually determining what happens to the company equity after a triggering event (termination of employment, disability, death, third party offers) can avoid holder disputes and can also solve some of the owners' estate planning problems. While no single, sure-fire method of determining the issues most likely to come into play or the fair price exists, having a well thought out contractual obligation and an applicable formula to regularly update the valuation of the stock price is essential.

Antheil Maslow & MacMinn will assist you in your efforts to come to agreement (and memorialize that agreement) on the following topics:

I. MANAGEMENT ISSUES

A. What will be your Board make-up?

1. Disproportionate Voting Rights for Founder(s)
2. Outsiders
3. Tie Breaker/Advisor

B. What vote will be required for corporate actions: majority, supra-majority or unanimous approval?

1. Daily Operations
2. Fundamental Corporate Events (Sale, Merger, Consolidation, Exit Plan)

C. Common Decisions

1. Hiring and firing of personnel
2. Amending fee schedule
3. Purchase of fixed assets in excess of \$ _____
4. Any expenditure in excess of \$ _____
5. Adopting or amending retirement plan
6. Designating or changing signatories on corporate bank accounts
7. Borrowing money
8. Entering into lease contracts
9. Offering ownership
10. Terminating a Shareholder/Member
11. Withdrawals from corporate bank accounts

12. Determining which expenses of the individual Shareholder/Member should be paid for by the corporation
13. Dissolution of the entity
14. Purchase of insurance
15. Sale of corporate assets
 - a. Substantially all
 - b. Less than substantially all
16. Other
 - a.
 - b.

II. TRANSFER ISSUES

A. What events will trigger a buy out of an owner?

1. Events requiring a buy-out
 - a. Death
 - b. Disability
 - (1) Corp Option (Price)
 - (2) Sher Put (Discounted Price)
 - c. Retirement (Age Specific)
 - d. Withdrawal from the corporation (In Whole; In Part)
 - (1) Voluntary (Discounted Price)
 - (2) Involuntary (Price or Bonus Price)
[Negotiation Disclosure/Tail Provisions]
 - e. Reduction in Responsibilities
 - f. Bankruptcy/Divorce
2. How will ownership interest be valued? (This should be industry and biz specific)
 - a. Will you need an appraisal?
 - b. Can you use a fixed formula? (Must update formula as biz changes)
 - c. Will a goodwill calculation be required?
 - d. Negation/Reference to Discounts
 - (1) Lack of Marketability
 - (2) Minority
 - e. Do you want Salary Continuation/Death Benefit Agreements?
3. How will you pay out determined Sale Price?
 - a. Death
 - (1) Insurance proceeds
 - (2) How much insurance to obtain
 - (3) Proper structure for "key man" insurance
 - b. Disability, retirement, withdrawal, bankruptcy, divorce
 - (1) Installment payments over time or lump sum
 - (2) Interest rate for installment payments
 - (3) When will installment payments begin
 - c. Should there be collateral security for seller?
4. Restrictive Covenant/Non-Disclosure/Corporate Asset Ownership (including name)

B. What should be required for admission of a new owner?

1. Pre-emptive rights/dilution
2. Required vote
3. How to value buy-in amount
 - a. Appraisal
 - b. Fixed formula
 - c. Good will

AMM attempts to provide a broad frame-work for shareholder and member relations. Should majority rule always prevail or are there situations that may require a super-majority vote? How should irreconcilable differences be resolved without destruction of the company? All of these issues and more can be addressed by what is often referred to mistakenly as a simple "Buy-Sell Agreement". Antheil Maslow & MacMinn will help craft a document that fits all of its client's specific needs.

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