



## COMMON SHAREHOLDER/MEMBER AGREEMENT ISSUES CHECKLIST

By Susan A. Maslow, Esq., Antheil Maslow & MacMinn, LLP

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.

Susan A. Maslow, a Partner with the Doylestown law firm of Antheil Maslow & MacMinn, LLP, concentrates her practice in corporate transactional work and commercial transactions, including buy-sell agreements. She can be reached at [smaslow@ammlaw.com](mailto:smaslow@ammlaw.com) or (215) 230-7500, x19.

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