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WHY EVERY BUSINESS OWNER NEEDS A BUY-AND-SELL AGREEMENT

The Most Important Business Document You Hope You'll Never Need

PROTECT YOUR BUSINESS

PROTECT YOUR FAMILY

ENSURE BUSINESS CONTINUITY

PRESERVE VALUE. REDUCE RISK.

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Why Every Business Owner Needs a Buy-and-Sell Agreement

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Imagine the following scenario:

You own a successful business with one or more business partners. Over the years, you have worked hard together, built a strong client base, employed staff, and created a valuable company.

Then one day, the unexpected happens, nne of the shareholders passes away.

Suddenly, questions arise:

- Who inherits the shares?
- Who controls the business?
- How will the deceased shareholder's family be compensated?
- Can the surviving shareholders afford to buy the shares?
- What happens if the family wants to be involved in the business?
- What happens if nobody has the money to fund the buy-out?

Unfortunately, these situations occur more often than most business owners realise.

Without proper planning, the consequences can be financially and emotionally devastating, this is precisely why every business with multiple owners should have a buy-and-sell agreement.

What Is a Buy-and-Sell Agreement?

A buy-and-sell agreement is a legally binding arrangement between business owners that determines what will happen to a shareholder's interest if certain events occur.

These events typically include:

- Death.
- Permanent disability.
- Serious illness.
- Retirement.
- Resignation.
- Divorce.
- Insolvency.

The agreement creates certainty by specifying who can acquire the shares, how the value will be determined, and how the transaction will be funded.

In simple terms, it provides a roadmap for ownership succession.

Why Is a Buy-and-Sell Agreement Important?

Most business owners spend considerable time planning how to grow their businesses.

Very few spend enough time planning what happens if one of the owners can no longer participate.

Without a buy-and-sell agreement, a business may face:

- Ownership disputes.
- Family conflicts.
- Cash flow challenges.
- Business disruption.
- Loss of control.
- Litigation.

A properly structured agreement helps avoid these risks.

What Happens Without a Buy-and-Sell Agreement?

Consider a simple example.

John and Peter each own 50% of a business, the business is worth R10 million.

John unexpectedly passes away.

His shares now form part of his deceased estate and ultimately pass to his beneficiaries.

The surviving shareholder may suddenly find himself in business with:

- A surviving spouse.
- Adult children.
- A family trust.
- Beneficiaries who have no experience in the business.

While these beneficiaries may be entitled to inherit the value of the shares, they may not be suitable business partners.

At the same time, the family may need immediate access to money, but the business may not have sufficient liquidity to purchase the shares.

This often creates tension between the surviving owners and the deceased shareholder's family.

How a Buy-and-Sell Agreement Solves the Problem

A properly structured buy-and-sell agreement generally provides that:

- The deceased shareholder's interest must be sold.
- The surviving shareholders have the right or obligation to purchase the shares.
- The deceased shareholder's family receives fair value.
- Ownership remains with the active business owners.

This creates certainty for everyone involved.

The family receives cash.

The business retains continuity.

The remaining shareholders retain control.

The Funding Challenge

One of the biggest questions is: **Where does the money come from?**

Using the previous example, if the deceased shareholder's interest is worth R5 million, the surviving shareholder may not have R5 million available to complete the purchase.

This is where business assurance becomes important, many buy-and-sell agreements are funded through life insurance policies.

The arrangement typically works as follows:

- The shareholders enter into a buy-and-sell agreement.
- Life insurance is arranged on the lives of the shareholders.
- Upon death, the policy proceeds provide the funds needed to purchase the shares.
- The deceased shareholder's family receives the purchase price.
- The surviving shareholders acquire ownership of the business.

This creates liquidity exactly when it is needed most.

Business Valuations Are Essential

A buy-and-sell agreement is only effective if the business value can be determined fairly.

One of the most common causes of disputes is disagreement regarding the value of a shareholder's interest.

For this reason, many agreements specify:

- A fixed business value.
- A valuation formula.
- A requirement for periodic professional valuations.

Regular valuations help ensure that insurance cover remains appropriate and that shareholders are treated fairly.

Death Is Not the Only Risk

Many business owners assume buy-and-sell agreements only apply when a shareholder dies.

In reality, permanent disability can create an even greater challenge.

If a shareholder becomes permanently disabled:

- They may no longer be able to contribute to the business.
- The business may still require compensation for their shareholding.
- The disabled shareholder may require capital to support themselves and their family.

A properly structured agreement can provide solutions for these situations as well.

Buy-and-Sell Agreements and Estate Planning

Many business owners do not realise that their business interests often form one of the largest assets within their estates.

Without proper planning, a business interest can create significant challenges for executors and beneficiaries.

A buy-and-sell agreement works alongside an estate plan by:

- Providing liquidity.
- Simplifying estate administration.
- Reducing uncertainty.
- Protecting family members.
- Preserving business continuity.

It is often one of the most important estate planning tools available to a business owner.

Signs You Need a Buy-and-Sell Agreement

If any of the following apply, you should consider reviewing your arrangements:

- You have one or more business partners.
- You have never had your business professionally valued.
- You do not know what would happen if a shareholder dies.
- There is no formal shareholder agreement.
- The business represents a significant portion of your wealth.
- The shareholders have families who may inherit their interests.

If you answered "yes" to any of the above, now may be the time to take action.

The Cost of Doing Nothing

Most business owners insure their vehicles, premises, equipment, and stock, yet many fail to protect the ownership structure of the business itself.

Ironically, the ownership structure is often the most valuable asset requiring protection.

A buy-and-sell agreement is not simply a legal document, it is a business continuity plan.

It protects shareholders, families, employees, and the future of the business.

Final Thoughts

No business owner likes to think about death, disability, or unexpected events.

However, responsible business ownership requires planning for possibilities, not just probabilities.

A buy-and-sell agreement ensures that when the unexpected occurs, there is a clear and agreed process for protecting both the business and the people who depend on it.

It provides certainty during uncertain times, and that certainty can be invaluable.

FinEd Tip: A buy-and-sell agreement is only as effective as the valuation and funding behind it. Reviewing your business value and insurance arrangements regularly can help ensure that your succession plan remains relevant as your business grows.

This article creates an excellent transition into another highly relevant topic for business owners:

"What Would Happen t o Your Business if You Died Tomorrow?"