Wait-and-See Buy-Sell Agreement

Problem.

Small business owners may wish to enter into agreements with each other—called buy-sell agreements—for the orderly sale of their business interests upon retirement, disability, or death. The two basic agreements are Cross Purchase Buy-Sell (the owners serve as buyers) and Entity Purchase Buy-Sell (the business serves as buyer). Choosing between a Cross-Purchase and Entity Purchase Buy-Sell Agreement may be difficult due to uncertainties about the owners, their business, or future tax laws.

Solution.

One possible solution may be the **Wait-and-See Buy-Sell Agreement**, which combines features of both Cross-Purchase and Entity Purchase Buy-Sell Agreements. Depending upon how the agreement is funded—and whether the entity or surviving owners ultimately purchase the deceased owner's interest—the arrangement can function as either an **Entity Purchase or Cross-Purchase Buy-Sell Arrangement, or combination of both.**

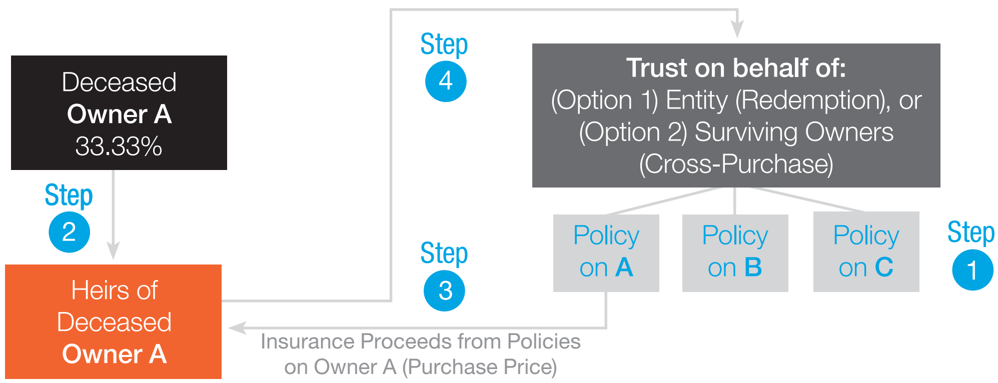
PLC.3099 (12.12)

How it Works.

Typically, the business entity is given a first option to buy all or any portion of the deceased owner's business interest within a specified time after the death. If the entity does not fully exercise its purchase option, the surviving owners may buy the rest. But if they fail to do so, the entity must then redeem the balance. Wait-and-See Buy-Sell Arrangements are often funded with life insurance policies, which can be owned by a Trustee on behalf of the entity or individual business owners.

WAIT-AND-SEE BUY-SELL ARRANGEMENT

Death of Owner A



Special considerations are involved to preserve the tax-free nature of the life insurance death proceeds when using a trust as owner of the policies in conjunction with a buy-sell agreement, particularly as it relates to corporations. The customer should consult with his or her tax advisors to fully address such considerations.

The chart above shows a Wait-And-See Buy-Sell Agreement between three equal business owners.

Step 1	The Trustee buys insurance policies on the lives of each owner
Step 2	Owner A dies, leaving his/her business interests to his/her heirs.
Step 3	The death benefit from the policy on A's life is received by the Trustee and paid to A's heirs
Step 4	The heirs complete the transaction by transferring the business interests of the deceased Owner A to the Trustee. The Trustee and surviving owners have two options. Option 1 (Entity Purchase) the Trustee acts on behalf of the business entity buying the business interests of the deceased owner. After the sale, the surviving owners would each own 50% of the business. Under Option 2 (Cross-Purchase), the Trustee acts on behalf of the surviving owners to buy the deceased owner's business interest in a cross-purchase type transaction. Again, each remaining owner ends up with a 50% ownership in the business.

Disadvantages of Wait-And-See Buy-Sell Arrangement

- *When life insurance is used to fund the Wait And-See Buy-Sell Agreement, the policies can be owned by the business entity or the individual owners. Deciding which is best can be a challenge.*
- *Care must be taken to avoid dividend treatment where a C corporation is given the right of first refusal. In some instances, the redemption may be taxable as a dividend to the surviving owners.*

For more information, contact
your Financial Representative.

In order to avoid adverse income tax consequences to the business, an Employer-Owned Life Insurance Notice and Consent must be completed before issuance of the policy pursuant to IRC Section 101(j), and the employer must file annually thereafter IRS Form 8925 with the Service.

Life insurance is issued by Protective Life Insurance Company (PLICO), 2801 Highway 280 South, Birmingham, AL 35223.

www.protective.com