

Enacting the Buy-Sell Agreement

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Unlike many people, I did not have a long-term relationship with the person with whom I went into business. I met my prior business partner at a women's conference in the February 1995. We started talking about what each of us did and quickly found we had something in common – a business concept that provided customers with an opportunity to custom design pottery. She had been impressed by a similar business she had seen in Los Angeles, and I myself had researched the concept a few months earlier for the Phoenix area.

Based on that chance meeting, in June of 1995, we became partners and incorporated the business, [As You Wish Pottery](#). We began our planning, with our first store marked to open its doors in September, a short four months later.

At the time this was happening, I was a practicing attorney, and my initial intention was to continue in my profession. My partner and I had a fabulous concept and we appeared at the outset to be perfect partners. I would bring my business background and attorney's skills to the table, and my new partner, with her warm personality and creativity, would focus on running the day-to-day operations. As an attorney, I knew the importance of a buy-sell agreement, so I put a draft together for my partner's review. She approved and signed it, and it was in place nearly from the outset of our venture.

It was a basic "shotgun" agreement, which I suggested because it fit the simplicity of the partnership and was fair to both parties. It worked like this:

- Partner A could make a purchase offer to Partner B.
- Partner B could either accept the offer as is, or flip the offer by agreeing to buy out Partner A for the same terms.
- Any changes to the offer by Partner B allowed Partner A to either accept the new offer as presented or flip the offer again.

The outcome is that once someone initiates the buyout process, it continues until one partner buys out the other with terms that satisfy both.

The protection inherent in it is that it causes partners to think twice about making a low-ball offer, because the same offer could be flipped right back at him or her.

In addition to financial terms, our agreement also included the ability to exercise non-compete language as well as language addressing the mileage radius in which a competitive store could be located.

Not long into our relationship, my goals and ideas for the business began to change, and I realized that my partner and I had different aspirations. I didn't just want a lifestyle business; I wanted a growth business with multiple locations. I left my position with the law firm and began participating in the daily operations to ensure my interests were met.

With the gap in our business growth philosophies widening, I initiated the buyout process four months later, in January 1996. I had to craft an offer that I could accept myself knowing that my business partner could turn it back around on me. And my offer was very fair. My partner had come into the business with a minimal investment, and my buyout offer provided for a nearly 40 percent return on her investment. While our buy-sell agreement allowed us to exercise a non-compete, I decided to forego that option. If she decided to open her own studio, I knew that my store would have had six months or more to establish itself in the marketplace.

I also knew that if she pursued her own shop, she would make a smart business decision and not open it too close to mine. But most importantly, I made this decision because if the offer were flipped on me, I did not want non-compete language prohibiting my future plans with regard to this business concept.

Despite our differing opinions, my initiating the buyout took my partner very much by surprise. She took a few days to consider the offer and decided to accept it. Twenty days later, I presented her with her check, which represented a very fair return on her investment given that the business had opened a short four months earlier.

Today, I am the sole owner of As You Wish Pottery, which generated nearly two million dollars in gross sales last year and now has four locations in the Phoenix area. I just signed a lease for a fifth location and am in negotiations for locations six and seven.

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