

## **Establishing the Buy-Sell Midstream**

January 01, 2006

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Few people think about how they are going to get out of a business relationship when they get into it, and at [Nevada Lighting](#), we were no different. My father started Nevada Lighting in 1977 and over the course of nearly three decades, the partnership would add shareholders four times.

But despite several transitions and few rules governing the buying and selling of company shares, Nevada Lighting's business partners (whom I would join a few years into the process when I purchased my father's portion of the business) operated without a buy-sell agreement. Having known each other for years, we relied on the notion that we could work out our differences, despite stories we had heard about caustic battles over control resulting in hurt feelings among partners.

Then, five years ago, we began planning the buyout of a senior partner. We spent weeks talking through the process and ironing out the details, but when we formally began the transaction, discrepancies surfaced. The conflict was over continued health care benefits for the leaving partner. When we suggested that partner look for coverage through COBRA, the deal fell through. We realized we needed a buy-sell agreement going forward.

I found a top-notch consultant to assist us. He asked thoughtful questions that made us focus not only on our future desires for our business, but also on our desires for ourselves beyond this partnership. "What do you want to do with your life?" "Do you think about opportunities other than this one?" "If you were given the right deal for your share of the business today, would you sell?" When each of us answered the latter question, one partner was shocked to learn that the remaining three of us would indeed seize the opportunity! No doubt, these tough questions made some partners uneasy, but each of us understood that the discussion was critical to plan the future of the business.

When the consultant revealed his \$10,000 fee, my partners balked. While they valued his expertise, they felt his cost was out of our reach, so we decided together to see if our attorney could help us craft this important document. So with the best of intentions, we declined the consultant's help and agreed to work to get the agreement in place within the next

twelve months. Unfortunately, the challenges of handling daily business operations took our eyes off the ball, and eighteen months later, we were still without a written document.

But during those eighteen months, we intermittently continued the discussion the consultant had initiated and realized that we had a fairly complex set of wants and desires. Interwoven into nearly every discussion were some basic principles that would serve as a foundation of our formal agreement. We knew we wanted a deal that was fair to all. We knew we wanted to be able to pass shares along to respective heirs. We also knew that we wanted to keep shares out of the hands of our competition. But because of how we are structured, our toughest challenge was agreeing on what formula we would use to value the business.

About eight weeks ago, we scheduled a meeting with our attorney and the real work began. The process moved quickly because we had identified many issues in the prior eighteen months. First, with our attorney's help, the critical issue regarding valuing the business was worked out through a formula that considers prior year earnings and the percent of shares owned by each partner.

Second, with legacy important to each of us, our buy-sell agreement requires any family member purchasing shares to have worked for the company a minimum of three years. This provides partners with the assurance that the potential new partner has experience with the organization and a good comfort level with regard to this individual's performance and work ethic.

Third, to protect the future of the business, our agreement gives us control over who is allowed to buy in, eliminating the concern about shares being sold to competitors.

Finally, should a partner want to sell shares outside of the partnership, remaining partners have "preferred buyer status," giving them the first opportunity to purchase the shares at the rate established by the formula.

With this work done, we believe we have the basis of a buy-sell agreement that can be reviewed and refined as the needs of our partnership and the growth of our business warrant. And because we engaged our attorney with a firm grasp of our issues (even if we needed his help with the developing solutions), we were able to act quickly to develop the agreement and begin the process of putting it in place. And that is information that all four partners of Nevada Lighting agree is good news.

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**Category:** Exit Strategies

**Subcategory:** Overviews

**Keywords:** Buy-Sell Agreement, Exit Strategy, Partnership, Planning

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