

# Maroko and Landau

A Professional Corporation

Attorneys and Counselors

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## ISSUES AND QUESTIONS REGARDING BUY-SELL AGREEMENTS

### Document

1. Upon your death, disability, or withdrawal, does your buy-sell agreement require the corporation to purchase your interest or does the corporation merely have an option to purchase?
2. If you are a minority shareholder, what provisions have you made to protect your employment?
3. Can you be terminated for any reason or only for cause?
4. Is there a covenant not to compete to protect your interest?
5. Does your buy-sell agreement provide that the purchase price for the minority shareholder's stock is reduced because of early termination?
6. If your corporation is owned 50% by each shareholder, what provisions have you made to resolve a deadlock?
7. Have you protected the purchase price in the event the corporation defaults? Is there a personal guarantee? Security interest? Cross Collateralization?
8. Do you consider your family at risk if the insurance proceeds are payable to the corporation and the corporation has other creditors that may attach the proceeds? Should you have the proceeds deposited into escrow or paid to a Trustee?
9. If your corporation is an S-Corporation, have you included specific provisions in your buy-sell regarding the timing of the sale and the transferring of the stock to a disqualified shareholder?

### Family Business

10. Your estate consists substantially of your business interest. What provisions have you made for your spouse and children?
11. If a child is gifted the business, should the value count against his share?
12. Should the child in the business own a minority interest in the business real estate?

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- Premiums**
13. Can the corporation pay part or all of the premium (Split Dollar)?
14. Should the corporation or the other shareholders purchase your interest?
- Disability**
15. In the event of your disability, what arrangements have you made to continue your salary?
- Tax**
16. If you own a family corporation, upon your death or withdrawal, are you aware that a distribution from the corporation could be included in your income and taxed at the highest marginal rate?
17. Have you made arrangements to withstand a contest by the Internal Revenue Service to increase the value of your business?
18. Is the price of the decedent shareholder's stock increased by the insurance proceeds or do the remaining shareholders share entirely in the insurance?
19. What part of your estate will bear the burden of estate taxes? Your residuary estate? A specific beneficiary?
20. Have you considered the tax consequences if a shareholder withdraws or dies and that shareholder owns the insurance on your life?
21. Have you addressed tax-deductible payments to the departing shareholder?
22. If the corporation defaults, can you protect the payment of your deferred compensation?
23. Can you reduce FICA taxes by reporting deferred compensation wages now?
24. Have you structured your estate to obtain a discounted value for your business; to qualify for installment payment of estate taxes?
- Estate Administration**
25. Should the business be allocated to the marital trust or family trust? If the business increases in value between the date of death and date of funding, does the family trust benefit from the increase?
- Choice of Entity**
26. Should your business be operated as a Limited Liability Company?

If you would like to discuss the items contained in this letter, please contact us to schedule a meeting.