

OWNER AGREEMENT ESSENTIALS AND CAUTIONARY TALES

October 2025

I. INTRODUCTION

A. What is an Owner Agreement?

1. Hypothetical 1: Three friends decide to start a business, which they'll own 1/3 each. It is a bit of a whirlwind to start, so while they hop on to Legal Zoom to form an LLC and mention the business to their accountant, they dive into operations and live happily and profitably for 10 years.
 - (a) On the 10th anniversary of the business, Jim approaches Rick Mozenter and John Cohan to let them know that he is making an estate plan, and plans for his interest to pass to his wife upon his death.
 - (b) On the 11th anniversary of the business, Jim develops a serious medical condition, such that she can no longer functionally participate in decision-making processes for the company, but remains an owner of 1/3 of the company's voting power.
 - (c) On the 12th anniversary of the business, John sells his entire interest in the company to his sister-in-law (Donna Kay "Sunshine" Smith) who Jim and Rick have met, but don't always agree with.
 - (d) On the 13th anniversary of the business, Jim passes away. Pursuant to Jim's will, his interest passes equally to each of spouse and children: Jane lives out of state, Savannah lives out of the country, Cameron is only 14 years old, and Sarah has passion and drive...for anything but the business.
 - (e) On the 14th anniversary of the business, Sunshine Smith is convicted of a drug-related crime. She remains an owner of the business, but the community reacts negatively. Business starts to slow down, given the bad press.

On the 15th anniversary of the business, Rick personally files for bankruptcy, and Rick's 1/3 interest in the company is left to the discretion of the bankruptcy courts.

(f) On the 16th anniversary of the business, the owners can't agree on anything but the decision to liquidate and dissolve.

2. Life and business circumstances change. A well-developed owner agreement can provide guidance and specific standards for making difficult decisions to protect the company's future and each owner's financial future.
3. An owner agreement may take the form of a shareholder agreement, partnership agreement, buy-sell agreement, joint real estate ownership, or operating agreement.
4. The agreement should answer the following questions for owners (among many others):
 - (a) What happens to my business if my partners and I can't agree anymore?
 - (b) What are my options for getting out of the business, selling my interest, or selling the business in its entirety?
 - (c) What happens to my business if either my partner or I die?
 - (d) Who can I expect to be my future business partners, and how can I control or limit who I will need to work with?
 - (e) How might my business involve my family in the future?
 - (f) How will my business impact my estate planning, my financial future, and my family's financial future?

B. Why is this important to an advisor who is working with a business owner?

1. How much of a business owner's wealth is tied to their business? Understanding the provisions of an owner agreement will allow you to better understand your client, their financial position, and the ways in which you can provide valuable advice to them.
2. Owner agreements are a useful planning tool for business succession and an owner's financial future. As an advisor, understanding the key elements of an owner agreement will allow you to ensure that your client's financial plan is consistent with reality.

3. An owner agreement may contain various restrictions on the sale of an owner's interest, or may obligate an owner to participate in a transaction involving their interest based on certain triggering events.
4. Terms of an owner agreement may be critical for tax planning purposes on an annual basis, and upon the owner's transfer of their interest in the company.

C. When are owner agreements commonly drafted?

1. Owners may consider these terms upon the creation of the business, at the very least including transfer restrictions or buy-out terms in the initial governance documents for the company.
2. When deciding whether to admit a new member to the business (perhaps someone unfamiliar to the existing owners), owners may be more cautious about expressly defining their expectations by entering into an owner agreement.
3. Start of business owners' retirement planning, as an owner's agreement should contain key details relating to the transition.

D. What makes a good owner agreement?

1. Not all owner agreements are the same – some are very detailed and contemplate generations of ownership, while others leave much to interpretation, decision, and potential conflict in the future.
2. The Agreement should be comprehensive and catered to:
 - (a) The business
 - (b) The relationship between the owners
3. The process of drafting an owner agreement should facilitate difficult and sometimes uncomfortable conversation, where owners are forced to confront the possibility of disagreement, death, disability, and violations of trust. That being said, these conversations set expectations at a time when the emotions and tension of a situation are not actively weighing on the owners.
4. The Agreement should be the first thing that the owners turn to for help whenever the business goes through a “major life event.”
5. The Agreement should set expectations that will assist with difficult (and oftentimes, emotional) decisions.
 - (a) Transfer of ownership to family members

- (b) Employment of family members
 - (c) Termination of employment and/or ownership status due to conviction of crimes
- 6. The Agreement should be made to last throughout the business's lifespan, and not just for the next few years.
- 7. The Agreement should inform and should be consistent with the terms of each owner's financial planning, retirement planning, and estate planning.
- 8. The Agreement sets expectations for the unexpected—to protect the future of the business and the value that will be passed on to each owner's family.

II. RESTRICTIONS ON TRANSFER

- A. Not all owners have equal rights to control and profit from the company.
 - 1. A company may have separate equity vs. profits interests, or voting vs. non-voting interests.
 - (a) Equity Interests – An owner has an outright ownership interest in the company.
 - (b) Profits Interest – An owner only has a right to share in the company's future profit. Profits interests may be useful in the compensation context, as grants of profits interests do not immediately trigger income recognition, while the grant of an equity interest will.¹
 - (c) Voting Interests and Non-Voting Interests – Voting Interests are limited to the right to participate in voting matters pertaining to company governance. In some cases, having separate voting and non-voting interests may be helpful in transitioning the company to the next generation of ownership, as new owners have “skin in the game” through their right to earn as non-voting owners, and the retiring generation can still retain control over the company.
- B. What are transfer restrictions and why do they matter? Transfer restrictions protect the business owners' expectations and business value.

¹ See I.R.C. § 83, generally providing that property transferred in connection with the performance of services constitutes taxable income in the amount of the transferred property's fair market value. See also Rev. Proc. 93-27, as clarified by Rev. Proc. 2001-43, providing clarification on the heavily-litigated issue of whether profits interests constitute taxable income upon an grant to an employee due to the difficulty in ascertaining fair market value prior to a liquidation event.

1. According to the 2023 National State of Owner Readiness Report by the Exit Planning Institute: 80% of business owners have the majority of their wealth tied up in their business.²
2. Hypothetical Number 1: You've known your business partner, Monty Hall and have known his wife, Carol Marel since you were students at the University of Bourbon Street, but do you want to do business with him?
3. Hypothetical Number 2: After 25 years of business together, your business partner, Michael Taylor files for bankruptcy. Your 51% partner's entire interest becomes subject to the discretion of the court, and there are creditors demanding payment fast.

C. How can owner agreements restrict transfers?

1. Transfer restrictions must be reasonable, and will be void if construed as a "restraint on alienation contrary to public policy."³ Due to the property rights associated with entity ownership, courts will strictly construe any restrictions on transfer.⁴ Generally, conditions may be established for the sale of stock (described below), but outright prohibitions of transfer are not enforceable.⁵
2. Stock transfer restrictions are not valid unless clearly noted on the stock certificate.⁶ Restrictions on uncertificated interests however must be noted in the company's governing document (i.e. operating agreement or partnership agreement).⁷
3. Transfer restrictions will not apply where interests are involuntarily transferred, "by operation of law" to a trustee, receiver, or similar fiduciary.⁸
4. The agreement may impose conditions that must be met prior to transfers to third parties.
 - (a) An owner agreement may include restrictions on the ability of the owners to sell their interests to third-parties, or to allow the ownership and voting power to pass through their estate, by requiring interests to first be offered to the company or other owners.⁹

² <https://blog.exit-planning-institute.org/understanding-exit-planning-epi-and-maus-partnership>

³ Validity of Restrictions on Transferability of Shares of Stock," 66 US L Rev 455.

⁴ In re Trilling & Montague, 140 F. Supp. 260 (E.D. Pa. 1956)

⁵ Restrictions on Transfer of Stock in Closely Held Corporations: Planning and Drafting," 65 Harv L Rev 773.

⁶ Hayward v. Hayward, 618 So. 2d 1028 (La. Ct. App. 1st Cir. 1993).

⁷ 15 Pa.C.S. § 8851(a)

⁸ 15 Pa.C.S. § 2322 (b)(4).

⁹ Beggy v. Deike, 413 Pa. 74, 196 A.2d 179 (1963).

- (b) These rights may vary among owners—some owners may have restrictions on the ability to transfer their interest, while others may not.
 - (c) Why is this important to the advisor helping a client plan their financial future? These restrictions help to set expectations on how an owner may be able to divest their interests and can be determinative of the liquidity of the interests.
 - (d) The Agreement may also carve-out specific individuals that are “eligible” for a transfer.
5. The agreement may prohibit encumbrances by stating that an owner is not permitted to pledge their interest in the company as collateral in any lending arrangement, and certain events occurring that may put an interest at risk of encumbrance may trigger a sale of the interest to the other owners, or back to the company. There is disagreement in the courts however, on when an encumbrance on an owner’s interest may still be valid, despite the owners all agreeing to the restriction.¹⁰
- (a) In the case of certificated stock, the certificates must clearly state the interest shall not be pledged without obtaining applicable consents or approvals. The same is true of transfer restrictions, generally.¹¹
6. How do owner agreements distinguish between voluntary and involuntary transfers for purposes of imposing restrictions?
- (a) When communicating expectations on future transfers, owner agreements typically separate voluntary and involuntary transfers. What does this mean?
 - (b) Voluntary transfers include sale of an owner’s portion of the business, while involuntary transfers occur upon the death of a member, sometimes upon incapacity of a member (if agreed upon in the owner agreement), financial distress, and divorce of a member.

What happens to a client’s financial future if their business partner’s personal life causes an involuntary transfer? Third parties may step into a position of control or influence for a business, and these third parties may not share the goals of the remaining

¹⁰ See *Roof Depot, Inc. v. Ohman*, 638 N.W.2d 782 (Minn. Ct. App. 2002) where, as part of a divorce proceeding a former wife was granted a lien on the stock of her former husband, which was held to be ineffective due to the corporation not being given proper notice or opportunity to first exercise the right to buy the stock from the former husband.

¹¹ 15 Pa.C.S.A. § 1529

owners. Owner agreement provisions pertaining to transfer restrictions and valuation methods for stock will be considered by the court, but must be reasonable in order to be enforceable and are simply a factor that the court will consider when coming to a conclusion on the applicability of its valuations and restrictions.¹²

7. Rights of first refusal may be held by the company, the other owners, or both and provide the remaining owners to decide whether to purchase a selling partner's interest, or admit a new member.
8. Transfer restrictions may also serve to protect the S-Corporation status of a company, if applicable.

III. BUY-OUT PRICE AND TERMS

- A. Determine who the buyer will be, as there may be logistical and tax considerations.
 1. How will the purchase be funded?
 - (a) If money will be set aside to fund a buy-out by the company, the owners will need to consider potential tax on accumulated earnings.
 - (b) The company or owners may seek bank financing for a buy-out, however, if this is the case, the agreement should provide adequate time for the buyer to find a lender and comply with the lender's diligence process.
 - (c) The company or owners may purchase life insurance policies to fund a buy-out if necessitated due to the death of a member.
 2. What will the tax consequences of the buy-out be for the seller? An installment sale may occur where at least one payment toward purchase price is received after the tax year in which the sale occurs, however this treatment is not available when the sale results in a loss.¹³
 3. What will be the tax consequences of the buy-out for the buyer? Sometimes, the management and entity structure may create different tax implications among members. For example, in a limited partnership, general partners' basis may include both recourse and nonrecourse debt, whereas the limited partner's basis may only include nonrecourse debt.¹⁴ Due to limited liability of an LLC's members, they may only be able to

¹² See *Butler v. Butler*, 541 Pa. 364, 663 A.2d 148 (1995), in which valuation methodology as set forth in the event of a shareholder's death was not useful in providing value for equitable distribution in divorce proceeding. The court further noted that the fixed stock buy-out value failed to reflect fair market value at the time of a triggering event.

¹³ 26 U.S. Code § 453

¹⁴ 26 U.S. Code § 705

include nonrecourse debt in their basis to the extent that they bear an economic risk of loss (such as personally guarantying or pledging personal assets).¹⁵

B. What is the buy-out price?

1. Valuation/pricing methods

(a) Fixed price

(i) Pros: Simple and low-maintenance. Fixed prices are set by owners upon creation of the owner agreement and may (or may not) be updated periodically by amendment or separate agreement.

(ii) Cons: As was a point of discussion in the Butler case,¹⁶ fixed values often do not reflect current fair market value at the time of a sale/transfer event and present a weak argument in terms of enforceability when presented to a court as evidence of fair market value in cases dealing with involuntary transfer (i.e. bankruptcy, divorce).

(b) Agreement among parties subject to periodic revaluation (internal valuation)

(i) Pros: Flexible and allow parties to frequently revalue interests as agreed upon (typically at a specified frequency).

(ii) Cons: This may be administratively burdensome for business owners (especially if there are tensions or disagreement among owners), as they are required to meet and discuss a valuation.

(c) Formal valuation

(i) Pros: An independent third-party provides a credible valuation based on actual financial measures of business value, as opposed to the perception of the owners.

(ii) Cons: Typically, cost is what dissuades owners from prescribing in an agreement to obtain formal valuation.

¹⁵ Regs. Sec. 1.752-2(a).

¹⁶ Butler v. Butler, 541 Pa. 364, 663 A.2d 148 (1995).

- (d) Based on calculation associated with the company's financials at the time of the sale (book value, EBITDA, etc.)
 - (i) Pros: More so than agreement on a fixed price, owners may develop a calculation based on their collective knowledge of the business that is adaptable based on current business finances at the time of the triggering event.
 - (ii) Cons: This approach, while flexible based on the company's performance, may not accurately account for all variables that are determinative of business value as a formal valuation might.

2. Pricing considerations

- (a) Agreement among unrelated parties vs. related parties may present a risk of the IRS determining that the sale price constituted a part-gift arrangement. Additionally, losses are not allowed on transfers of interests between related parties.¹⁷
- (b) If the fair market value of transfer is higher than the transfer price, the IRS may consider the sale to be "part gift."¹⁸
- (c) The IRS requires that the buy-sell price reflect fair market value for estate tax and gift purposes, and courts may disregard a valuation that is stale or outdated. To avoid this, owners should ensure that whatever prescribed valuation method is feasible for the business, from both a cost perspective, and an administrative perspective. For example, if owners agree to determine fair market value on an annual basis, then the owners must be committed to meeting to discuss and update the agreed upon buy-sell value on an annual basis.

C. What are the terms of the buy-out?

- 1. The purchase price may be paid in cash at closing, or over a financing term.
 - (a) If payable over a term, the owner agreement should include payment provisions.
 - (i) What is the appropriate interest rate? Due to variation, a flexible rate (tied to prime or AFR) is often more appropriate than agreeing upon a fixed rate at the time the

¹⁷ IRC Sec. 267(a).

¹⁸ <https://www.irs.gov/businesses/small-businesses-self-employed/gift-tax#:~:text=The%20gift%20tax%20is%20a,may%20be%20making%20a%20gift.>

owner agreement is drafted. If no interest is charged on the loan, the IRS may impose imputed interest at the applicable federal rate.¹⁹ Tax implications will depend on the classification of the parties (who is the borrower, and who is the lender).²⁰

- a. Loan between company and owner: interest treated as dividend or distribution
 - b. Loan between company and employee: interest treated as compensation with income tax implications
- (ii) What is the appropriate duration for repayment? This depends on who the buyer of an interest may be (other owners or the company), and the degree of flexibility needed to cover the expense of the buy-out.

IV. HOW OFTEN SHOULD PAYMENTS BE MADE? AGAIN, THIS DEPENDS ON WHO THE BUYER IS, AND HOW MUCH FLEXIBILITY THEY WILL NEED TO MAKE TIMELY PAYMENTS.PLANNING FOR AN OWNER’S EXIT

A. The Planned Exit (Voluntary Transfers)

1. Connelly v. United States (2024)²¹

- (a) Two brothers were shareholders of a corporation, which held key-man life insurance policies on each brother for purposes of redeeming shares upon the death of a shareholder. Upon one brother’s death, IRS asserted that the fair market value of his shares included the life insurance proceeds for purposes of evaluating federal estate tax.
- (b) A corporation’s contractual obligation to redeem shares is not necessarily a liability that reduces a corporation’s value for purposes of the federal estate tax.
- (c) The deceased shareholder's shares must be valued just prior to death, before the buyback occurs, not after. At that point, the life insurance proceeds are still a company asset that increases share value.

¹⁹ IRC §7872

²⁰ <https://weaver.com/resources/how-related-party-transactions-and-loans-can-trigger-irs-scrutiny/#:~:text=When%20property%20is%20sold%20between,as%20a%20two%2Dpart%20transaction:>

²¹ Connelly v. United States, 602 U.S. 257, 144 S. Ct. 1406, 219 L. Ed. 2d 31 (2024)

- (d) These notes on valuation are only applicable to redemption, and can be avoided in a cross-purchase arrangement.

2. Puts and Calls

- (a) Put – Selling owner has the ability to obligate a buy-out of their interest.
 - (i) Useful for liquidity and tax planning purposes, as the owner has significant control over the timing of the sale.
- (b) Call – Other owners have the ability to force an owner to sell.
 - (i) Useful for retirement and succession planning purposes, to have a firm expectation or timeline for a generational ownership transition.

3. Purchase Options

4. Voluntary Withdrawal

B. The Unplanned Exit (Triggering Events for an Involuntary Transfers): An owner agreement may describe triggering events or circumstances under which an owner is obligated to sell their interest in the business to the other owners, or back to the company itself.

1. Death

- (a) Hypothetical 1: If an owner agreement does not specify that the decedent's interest will automatically transfer to the company or other members at closing, they will pass through the estate.
- (b) Hypothetical 2: Alternatively, an owner agreement may specify that the death of an owner is a trigger for a mandatory of an offer to sell decedent's interest to the company, the transition will be subject to terms agreed upon by the owners in advance.
- (c) Transfer on Death designation may be used to designate the subsequent owner of a company interest and must be established through a written form filed with the custodian of the interest. In order to make a TOD designation on an uncertificated interest, the operating agreement or partnership agreement must be amended to reflect the same.²²

²² PA ST 20 Pa.C.S.A. § 6401-6413.

2. Disability

- (a) The agreement should clearly define what constitutes disability, subject to medical determination or inactivity in the business management.

3. Divorce

- (a) To prevent involvement of the business' ownership in a proceeding, this is typically an automatic and mandatory transfer, such that the purchase price of an interest may be subject to the proceeding, but that the ownership interest itself is not at risk. The value of the transfer as provided in the shareholder agreement may advise the court, but is not determinative if the court finds that the transfer has not occurred for fair market value.
 - (i) *Butler v. Butler*²³: In this case involving a divorce proceeding, the court held “[f]or equitable distribution purposes, valuation of husband's share in accounting firm was not properly set by shareholder agreement, where shareholder agreement provided that withdrawing partner would receive a fixed amount, the amount for which the stock was purchased at inception of the accounting firm, an amount which had never been reevaluated to determine whether it reflected the company's current financial picture, even though the husband might not ever be able to realize a value based on the going concern value of the accounting firm.”

4. Bankruptcy

- (a) Again, to avoid involvement of the business in a bankruptcy proceeding, events relating to an owner's insolvency, and related financial events trigger an automatic sale to the other owners of a company or the company itself. Bankruptcy itself can not be a trigger for a company/owner option to buy stock at risk of becoming part of a bankruptcy estate.²⁴ Additionally, bankruptcy courts will consider the intent of the shareholder agreement in determining which provisions of the agreement may be considered when determining the rights of the debtor in a bankruptcy proceeding:
 - (i) *In re Popkin & Stern*²⁵: In a bankruptcy proceeding involving the issue of whether a Chapter 11 trustee who

²³ *Butler v. Butler*, 541 Pa. 364, 663 A.2d 148 (1995)

²⁴ 11 U.S.C. § 365(e).

²⁵ *In re Popkin & Stern*, 238 B.R. 146 (B.A.P. 8th Cir. 1999), *aff'd*, 242 F.3d 376 (8th Cir. 2000).

sought to collect a judgment could the debtor's stock, the court held that "a [r]equirement under shareholder agreements, that any shareholder whose stock was to be sold in any voluntary or involuntary sale had to give notice of such sale to corporation and other shareholders, was meant to protect other shareholders, and not seller, by ensuring that corporation and these other shareholders had opportunity to exercise their contractual rights of first refusal; accordingly, corporation and other shareholders could waive any deficiency in notice, which was given not by seller as specified under agreements but by judgment creditor executing on his stock, and seller lacked standing to raise any such defect as ground for avoiding execution sale."

5. Conviction of a crime
6. Termination of Employment
 - (a) If an owner-employee is terminated from their employment with the company, this may trigger a mandatory buy-out of their interest. This provides the company and employee with the opportunity to have a clean separation, and sets expectations regarding the terms of the buy-out as opposed to requiring negotiations in a time where tensions may be high.
 - (b) The owner agreement may prescribe different buy-out obligations and terms depending on whether the owner-employee was terminated with or without cause.
7. Owner Disagreements
 - (a) Owner agreements may require owners to mediate disagreements through the use of a neutral third-party.
 - (b) The agreement may also provide specific owners with put rights (which allow the owner to force a buy-out of their interest), or the agreement may provide the company with call rights (allowing the company to force an owner to sell their interest).
 - (c) If owners are unable to agree on governance matters, an owner agreement (as a last resort) may obligate the owners to proceed with dissolution of the company.
 - (d) Texas Shoot-Out/Slice of the Pie Provision – If owners are unable to work with one another, one possible resolution in an owner agreement (referred to as a "Texas Shoot-Out" or "Slice of the Pie") provision may permit one owner to name the price to buy-out

the other owner. The owner receiving the offer may either choose to accept it, or may utilize the offered price to require the offering partner to sell their interest in the company.

- (e) Dissolution and Texas Shoot-Out are often the “last resort.” While infrequently exercised, these provision serve to encourage dispute resolution among the owners of a business.
- (f) Owners should consider the effect of the “break-up” on the future of the business during the resolution period and beyond.

V. OTHER CONSIDERATIONS

A. Restrictive Covenants

1. Non-Competition

- (a) In order to be enforceable, a non-compete must be: (1) ancillary to an employment contract or to a contract for the sale of goodwill or other subject property (such as an owner agreement and sale of interests in a company), (2) supported by adequate consideration, (3) reasonably necessary to protect legitimate interests of the purchaser and (4) reasonable.²⁶
- (b) In order to be enforceable, the non-compete should contain limitations on the duration of the restrictive covenant, and the geographic scope.²⁷
- (c) Owners are held to a different standard than employees when evaluating whether the scope and duration of a non-compete is enforceable. Owners can expect longer terms for their non-compete than a typical employee would expect.
- (d) The enforceability of a non-compete will depend on whether the owner was adequately compensated for their agreement not to compete.

2. Non-Solicitation

²⁶ Prison Health Servs., Inc. v. Umar, No. CIV.A. 02-2642, 2002 WL 32254510, at *11 (E.D. Pa. July 2, 2002).

²⁷ See Prison Health Servs., Inc. v. Umar, stating “the reasonableness of a noncompetition agreement requires consideration of the following factors: (1) the types of activities embraced; (2) the geographical area; (3) the duration of the covenant (4) the hardship on the defendant; and (5) the public interest. Protocomm, 1995 WL 3671, *5 (citing Westec, 538 F.Supp. at 122); see also Harris Calorific Co. v. Marra, 345 Pa. 464, 29 A.2d 64, 67 (Pa.1942) (citing Restatement Contracts, § 515).”

- (a) Customers, clients, patients
 - (b) Employees
3. Non-Disclosure (financials, business plans and strategies, trade secrets, company records)

B. Amendment and Termination of Agreement

- 1. Owner agreements typically require unanimous consent among owners in order to amend the agreement. Owners may agree that the buy-sell can be amended with less than unanimous approval, however majority shareholders owe fiduciary duties to the company must protect the interests of minority shareholders, such that they are limited in their ability to amend the agreement to the detriment of the minority.²⁸
- 2. As the owner agreement is intended to survive through generations of ownership and beyond ownership transitions, the agreement will generally provided that it will not be terminated unless unanimously approved by the owners or upon dissolution of the company. Relatedly, new owners are typically required to sign a joinder to an existing owner agreement, to agree to be bound by its terms as a condition of the ownership transfer.

C. Sale of Business

- 1. Approval of Sale
 - (a) The owner agreement may specify approval processes and thresholds required for agreeing to a sale of the company (majority, unanimous).
- 2. Drag-Along Rights
 - (a) If a majority owner intends to sell the business or substantially all assets of the business, drag-along rights allow the owner to require the minority owners to participate in the sale.
- 3. Tag-Along Rights
 - (a) If a majority owner intends to sell their interest in the company, tag-along rights empower the minority shareholder to be included in the majority owner's sale.
- 4. Sale of Business Following and Owner's Exit

²⁸ Linde v. Linde, 2019 PA Super 305, 220 A.3d 1119 (2019).

- (a) Owners may agree in a buy-out to adjust the selling-owner's sale price based on a subsequent sale of the business occurring within a specified period of time following the sale of the owner's interest.

D. One Big Beautiful Bill Updates and Considerations

- 1. Starting January 1, 2026 the gift tax exclusion will be permanently increased to \$15M per individual, providing greater flexibility for gifting when transferring interests.
- 2. OBBB permanently extended many business-favorable provisions of the Tax Cuts and Jobs Act, including the qualified business income deduction, increased standard deduction and reduced top individual tax rate
- 3. The OBBB permits full expensing for R&D and bonus depreciation, raises reporting thresholds for independent contractors, and expands exclusions for qualified small business stock.

VI. THE ROLE OF THE ADVISOR

- A. 83% of businesses operate without a written transition plan.²⁹
- B. Pay attention to your client's plans for the future, and how they may differ from reality.
 - 1. Retirement planning and expectations
 - 2. Estate planning and expectations
 - 3. Business ownership, operations, and value
 - 4. Involving family in the business

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²⁹ <https://www.americanbusinessmag.com/blueprint-for-business-survival-when-estate-and-succession-planning-must-align/#:~:text=This%20time%20constraint%20helps%20explain,Consider%20these%20cautionary%20tales:>