

## Executive Benefits – Death, DISABILITY or Departure

I was working with a lawyer some years back who made a comment that changed the way I thought about things, “Buy-Sell Agreements are there for 3Ds: death, disability or departure”. He then proceeded to talk with the owners of the Trade Contractor we were working with through when each of them planned to retire and whether each of them expected the others’ answers. It was an excellent exercise for the owners, but it also prompted a real conversation about the fact that one of them was dealing with a health scare and some real family issues. It prompted a discussion that led to some great conclusions, especially about the non-death Ds of Disability and Departure. Below is a hypothetical case study about a "what if" for a business.

Ross, Joey and Chandler own a Management Consulting firm that works primarily on DoD contracts in Maryland at Ft. Meade. The Company is currently valued at \$12M and employs about 30 people. They started it when they all decided to leave Booz Allen together. They all spend time together professionally and socially, their wives and kids are close, they are not just Business Partners, they are Friends. The company, an LLC, owns \$4M of life insurance on each partner; their Buy/Sell Agreement has not been updated since their founding, but the life insurance was replaced twice as the company’s value grew.

Chandler, an accomplished triathlete, suffers a heart attack during the swim portion of Half Ironman. He survives. Joey and Ross are able to manage the enterprise well with the team in place. After 3 months of recovery from his triple bypass Chandler is back in the office. However, after about 1 year back he begins to miss out on at least 2 days of work a week often with little or no explanation. Chandler’s wife also begins to miss events that the families would attend together.

Joey and Ross begin to get very concerned when Chandler no-shows on the day the three of them are interviewing a potential game changing new hire and then he misses a dinner with an important DoD contact on the same night. Joey and Ross eventually decide they have no other choice; they head to Chandler’s house for a sit down. They find him in bed; his wife is leaving with the kids. She is headed to her parents to stay for a little while, and she lets them know he has not gotten up in about 2 days.

After a detox, it comes out that Chandler has been dealing with depression since the before heart attack, he was self medicating and was cheating on his wife. Chandler makes some strides in recovery, comes back to work, and falls back into self medication and rehab multiple times over the course of a few years. Joey and Ross realize that they can’t be in business with Chandler any longer as it the cycle begins to take its toll on company morale and their relationships at Ft. Meade.

A review of the Buy-Sell Agreement by the company’s current counsel shows a variety of issues with regard removing Chandler from the business because of the lack of updates over the years. Chandler contacts his own counsel and begins a lawsuit against Ross and Joey. Ross and Joey want to take care of Chandler, but they see no means out other than dismissal for cause. The situation ends up in a series of bitter lawsuits, decreased morale at work and at home, and decreased value in the business.

Is there a Silver Bullet I can recommend to fix this situation, no there is not; however, could some basic maintenance on the business and a bit of proper planning prevented this breakdown? Quite possibly, yes. With a regular review of the Buy-Sell Agreement, the three friends would have had to address some of the scary “what-ifs” head-on before they became major issues. Also making sure that the Disability portion of the Buy Sell was understood and either financed or funded could have let Joey and Ross legally and kindly deal with Chandler’s inability to do his job at a designated juncture laid out in the policy and agreement so Chandler could focus on recovering, the families could also remain close, grow and heal.

The Buy-Sell is there to protect the business, the people and the relationships that built the business.

