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CERTIFIED PUBLIC ACCOUNTANTS

Time for a Buy- Sell Check- Up

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Check Those Buy-Sell Terms Everyone puts off check-ups. Next month always seems the ideal time for them. Yet sometimes delaying them can come back and bite us big-time. For instance, when's the last time you checked your buy-sell agreement terms? You've worked hard to bring your staffing firm to where it is today. All the sweat and tears you put in over the years can result in someone else's family enjoying the fruits of your labor. That can happen if one isn't careful about his buy-sell agreement terms.

How Much Will Your Share Be Worth? When drawing up a buyout clause it is critical to specify, in no uncertain terms, the value to be applied to the partner's share. There will often be a significant disparity between book value and current market value, as many years may have transpired by the time the triggering event takes place. If book value is chosen, it can result in someone else reaping the fruits of the bought-out partner's labor. In *Estate of Claudia L. Cohen v. Booth Computers and James S. Cohen*, a NJ appellate case, the enforceability of such a buyout was questioned.

Estate of Claudia: Is That Fair? Claudia and her brother James were partners of Booth Computers, a family partnership set up by their father. A buyout provision stated that upon the death of a partner the remaining partner/s could buy the share at book value. Book value was \$50,000. Claudia died in 2007, triggering the buyout. The executor of Claudia's estate, appealed that the buyout was unconscionable, as the fair market value of Booth Computers was over 11 million dollars!

Appeal Denied The judge ruled against the appeal, concluding that disparity between book and market value does not render a buy-sale agreement unconscionable.

An Ounce of Prevention..... Even if your share won't grow by 11 million dollars, it is critical to set the buyout value of your business share as the fair value at the time of a triggering event. You should talk to your CPA about the method by which the fair value is to be determined. An agreement between you and your business partner about the valuation method can avoid unnecessary litigation down the road. Review those buy-sell agreement terms with your CPA today. Your children deserve no less.

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