

## ***Tips for Buy/Sell Agreements***

### ***By Chris Burand***

I am ecstatic to report more and more agencies are signing Buy/Sell Agreements. Congratulations to these agencies! If your agency is considering instituting a buy/sell, I emphatically recommend the following steps:

1. Include a precise definition of “value.” When a buy/sell agreement is triggered, a value of the agency will need to be determined and at least five major definitions of value exist. Several of these definitions even have sub-definitions. Different definitions require different assumptions, different formulas, and possibly different time horizons. Therefore, the same agency could have very different values depending on the definition used for the appraisal. For example, the use of “Fair Value” will probably result in a much higher value than the use of “Fair Market Value” (especially in many states’ divorce courts).

If the Buy/Sell Agreement does not contain a precise definition of “value,” different shareholders and different appraisers can easily arrive at different values. Obviously, whenever large sums of money are changing hands, the opportunity for disputes are high, even when everything is spelled out. What might happen when “value” is not adequately defined or not defined at all?

A precise definition also minimizes the chance, and magnitude, of the appraiser making errors, especially if the appraiser does not specialize in valuing independent insurance agencies. A precise definition is therefore very important, especially if the value is being litigated due to a shareholder dispute or even more common, a divorce.

2. Include a clause defining whether the agency as a whole will be valued and the shareholder’s ownership percentage will be applied to that total value or if the shareholder’s specific shares will be valued. While it may seem as though the result would be the same, it most definitely is not. This is because valuing specific shares requires entering the “grey-world” of minority discounts and majority premiums. I call this a “grey-world” because in my studies of valuations and valuation court cases, no one can agree upon the applicable premiums and discounts.

3. PLEASE understand that most attorneys, even the ones that can write the most iron clad buy/sell agreements, usually do not specialize in independent insurance agencies and they do not know enough about agency values to write a buy/sell contract unassisted. Unfortunately, most attorneys do not know they do not know enough about agencies. And, most agency owners do not know the attorneys do not know.

Overcome this huge knowledge gap by hiring a valuation expert to work with the attorney and the agency to write the buy/sell agreement. Usually the cost is minimal and my experience has been that settling these issues well before any money changes hands is much less troublesome and cheaper than doing so once the buy/sell is triggered.

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