



BUY-SELL AGREEMENTS – EVERY DENTAL GROUP PRACTICE SHOULD HAVE ONE



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When Do You Need an Agreement?

When you start practicing dentistry, you are faced with making your first major business decision – whether to start your own practice or join an existing dental group. If you decide to start out privately, there may be a point in time when you take on an associate who will eventually become a partner. At that time in your career, when you start operating as a group rather than as a sole proprietor, having a buy-sell agreement in place is critical.

Whenever there is more than one owner in a practice, there must be a written buy-sell agreement. The agreement can be drafted between shareholders of a corporation, partners of a partnership or LLC, or even between the owner and a key employee if necessary. Many times the provisions of a buy-sell agreement are incorporated inside the shareholder or partnership agreements.

Simply put, a buy-sell agreement controls the group and the circumstances under which a transition of ownership occurs. By having this agreement in place, the practice is guaranteed an orderly transition of ownership.

Voluntary vs. Involuntary

The two major instances that arise in a transition of ownership are voluntary and involuntary. The agreement should address both of these two occurrences. Most buy-sell agreements state that the owner's interest can not be sold to someone outside of the group without the permission of the other members of the group. The members have the option to purchase the shares from the selling member at the price an outside party is willing to pay.

Some of the involuntary reasons for a transfer of ownership include death, disability or loss of license. Reasons for a voluntary transition of ownership would include a sale of the practice to one of the existing members or retirement of one of the existing owners.

What Are the Advantages?

By having a buy-sell agreement in place, you gain the following advantages:

- Smooth transition of the practice with continuity of management.
- Establishment of a fair and reasonable price allowing each member to plan for the eventual retirement or sale of the practice well in advance of the transaction date. (Most practices have predetermined formulas that can be computed on an annual basis.)
- The individual selling his/her interest has a built-in buyer (the remaining owners).
- The buy-sell arrangements can be used as a tool in the event of a divorce or bankruptcy of one of its members.

One of the major advantages of a well-written and funded buy-sell agreement is that it eases the transition if there is a death or disability of one of the owners. It is not always conducive for a remaining owner to be in practice with the spouse of his/her deceased or disabled co-owner. It can be a very traumatic time for both parties involved.

How Are Agreements Funded?

There are three ways to fund your practice's buy-sell agreement. The first and easiest manner is through life and disability insurance. Under this method, the funding liability has shifted to the insurance company. The cost for the practice will be the yearly premiums for the life and disability policies. The second most common method is borrowing the money from a lending institution, from the selling practitioner, or from the estate of a deceased owner at the time when the funds are actually needed. By using this method you are increasing the practice's debt and incurring interest costs on the purchase. The third method is to pay cash at the time of redemption. This method would have tax implications for the practice as it would require you to save the funds through the years.

The structure of the buy-sell agreement can be designed so that the *practice* purchases the shares from the selling practitioner or the remaining *shareholders/partners individually* purchase the selling practitioner's interest. These methods have two completely different tax advantages or disadvantages, which should be discussed with the practice's tax advisor.

What Is Best for the Practice?

In conclusion, every dental group should have a well-planned buy-sell agreement that should be reviewed and updated every three to five years. Although all parties to the agreement might not be completely satisfied with the terms, it is important to keep in mind that a well-written agreement will focus on what is best for the practice.

As one of the leading accounting and consulting firms for healthcare practices, Cowan, Guteski & Co., P.A. is well-versed in helping dentists develop a buy-sell agreement for their practice. For additional information, contact Donald A. Cowan, CPA/PFS, CFP®, Shareholder/Director – Dental Consulting Division/Healthcare Services Group, at 732-349-6880 ext. 122 or dcowan@cowanguteski.com or Deborah M. Cordivari, Supervisor – Dental Consulting Division/Healthcare Services Group, at 732-349-6880 ext. 133 or dcordivari@cowanguteski.com.

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