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Buy-Sell Agreements Don't Have to be Scary
By Jim Nalley – Vice President, BCC Advisers
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Halloween is now in our rear-view mirror; however, many business owners still have some goblins lurking in the depths of their company's buy-sell agreement. Even scarier is the fact that some don't have a buy-sell or transition agreement in place at all!! While certain entities diligently review this document annually with their legal and financial advisers, many others only dust it off when an event arises that may trigger its use. Unfortunately, the goblins that can lurk in the aforementioned agreements tend to get bigger and scarier if they haven't been exorcised on a reoccurring basis. With the end of 2011 fast approaching, now is an excellent time to pull your buy-sell or transition agreement out of the proverbial mothballs and see exactly what it says.

Many privately-held companies have various owners and the majority of them feel like they are part of a large family. However, like many families, disagreements can and most certainly do arise. They often arise when buy-sell triggering events happen such as retirement, disablement, death or divorce. In fact, many of the valuation-related litigated matters for which our firm is hired involve shareholder disputes arising from one of these triggering events. Often, a poorly written, poorly understood or out-of-date buy-sell agreement causes much of the problem.

One of the most important factors to consider in a buy-sell agreement is that the feasible wishes and desires of the owners and potential parties to the agreement are met. A proper understanding of the agreement's clauses by all stakeholders and signers is imperative. While everyone is generally happy and gets along when these agreements are drafted, rest assured, there will come a time when they won't. It is at this later time that the agreement and the understanding of it will be most important.

A proper agreement will consider reasonable funding mechanisms and terms. Even if all parties get along, often the departure of a long-time owner can be challenging to the company and can be made worse by unfair terms and buy-out expectations, which can leave the company cash-poor. Life insurance may be the answer in certain situations, the handling of which must be properly considered and defined in the buy-sell from a valuation perspective. Improper language regarding insurance proceeds can lead to serious tax repercussions and valuation misconceptions. Valuation elements to consider also include the standard of value, valuation date, appraiser qualifications and the risk of fixed price values or formula agreements.

Fortunately, there are many trained and credentialed appraisers, accountants, lawyers and financial advisers that can work as a team to lead you through the haunted labyrinth of your buy-sell agreement and make the inevitable transitions in your company's ownership less scary!