



## Often Overlooked Yet Important Items in Process Buy-Sell Agreements

Excerpted from Chapter 15 of the new book, *Buy-Sell Agreements: Ticking Time Bombs or Reasonable Resolutions?*

Several other issues related to valuation should appropriately be addressed in your buy-sell agreements. The following discussion is by no means exhaustive, but includes items that are helpful in minimizing problems or uncertainties with the operation of process buy-sell agreements. While some of these items may seem obvious when identified, they are quite often overlooked or are unclear in buy-sell agreements.

**Financial Statements.** It is enormously helpful to specify the financial statements to be used by the appraiser(s). In the absence of specification, the parties must agree on the financial statements to be used, or else the appraiser(s) must decide. Significant differences in valuation conclusions can result from the selection of financial statements of different dates and quality. This confusion should be avoided.

Possible alternatives for specifying financial statements include:

1. *Most Recent Audit, or the audited financial statements for the most recent fiscal year relative to the valuation date.* Note that there is room for confusion here. Assume that the fiscal year is the calendar year. Suppose that the trigger date for a valuation process is January 15, 2007. The most recent audit was issued as of December 31, 2005 on April 27, 2006. If the buy-sell agreement calls for the use of the most recent audit available on the trigger date, the financial data may be more than one year old as in this example.

The agreement might specify that if a trigger event occurs between the end of a fiscal year and the issuance of the audit for that year, the appraisers would rely on the audit when it becomes available. That audit would then be used for the rest of the fiscal year.

### New Teleseminar Series

Mercer Capital has teamed up with BV Resources to bring you a 3-part teleseminar series

#### Part 1: You'll Never Think about Buy-Sell Agreements the Same Way Again

May 24, 2007 » Noon-1:40pm CST »  
Featuring Chris Mercer

**Highlight:** In this first session, we focus on providing useful information that can be beneficial to you and/or your clients immediately! Specifically, you do not want to miss the section on how to review a buy-sell agreement (from a valuation perspective). We walk through the 40-page "Buy-Sell Audit Checklist". [Click here to learn more.](#)

#### Part 2: The Planner's Role in Buy-Sell Agreements

June 14, 2007 » Noon-1:40PM CST »  
Featuring Chris Mercer, L. Paul Hood, Jr., Esq.,  
and John H. Brown, Esq.

**Highlight:** This session focuses on helping planners help their clients – and in turn, potentially build their own practice. [Click here to learn more.](#)

#### Part 3: Opportunities & Challenges for Business Appraisers

July 19, 2007 » Noon-1:40pm CST »  
Featuring Chris Mercer, Roger Grabowski,  
and Jim Hitchner

**Highlight:** This session focuses on helping appraisers become facilitators of business valuation dispute resolutions. Plenty of real-world examples. [Click here to learn more.](#)

See Page 10 for Details!

In the alternative, if the trigger date was December 15, 2006, the most recent audit would be the 2005 audit issued in April 2006, but internal financial statements for the full year 2006 would be available within weeks, and the audit for 2006 would be available in three or four months, perhaps within the timeframe that appraisals would be prepared.

Suffice it to say that disagreements over which audit (i.e., which fiscal year) to use as the base for financial analysis could cause material differences in the concluded results. Note that the confusion could result whether the buy-sell agreement required the use of either the most recent audit or the most recent fiscal year statements.

2. *Trailing 12-Months at the Most Recent Quarter-End (Month-End) to the Trigger Date.* In the absence of specific guidance, many appraisers, if not most, would utilize financial statements for the most recent twelve months as of the quarter-end (or month-end) immediately prior to the trigger date. Use of the trailing 12 months would automatically include the most recent fiscal year (and audit, if available), and would also include any routine year-end adjustments for that year-end.

We generally recommend the use of the trailing 12-month financial statements for the most recent quarter-end preceding the valuation date (or month end, depending on the completeness and quality of the monthly financial statements).

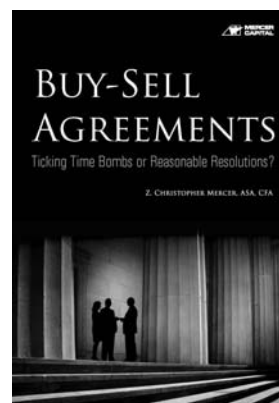
**Process Timetables.** Many buy-sell agreements provide for unrealistic timetables, and therefore, begin with process problems from the outset. The typical buy-sell process contains a number of phases where time is required:

1. *Time to Get Process Started.* It takes time to kick off a valuation process. If the trigger event is the death of a shareholder, no one will be focused on the buy sell agreement until the passage of a reasonable time. On the other hand, if the trigger event is a retirement or termination, the parties may be ready to initiate the buy sell agreement process immediately.
2. *Time to Select Appraiser(s).*
  - a. Most process agreements call for the parties to retain an appraiser. If a company or a shareholder is beginning from scratch to select an appraiser(s), it can easily take 30 to 60 days or more to identify firms, review qualifications, interview appraisers, and select an appraiser(s).
    - i. Some agreements allow only 30 days for this process, which may be unrealistic for one party or the other.
    - ii. Some agreements are silent regarding the selection process, thereby providing no pressure for the appraisal process to get started (or concluded).
  - b. Many process agreements call for two appraisals at the outset. If they are within a designated percentage of each other, no further appraisals are required. If not,

---

## DID YOU KNOW?

---



Our newest book  
is now Available!

Only \$79 plus s/h

Visit our website to order  
[www.mercercapital.com](http://www.mercercapital.com)

---

however, the two initial appraisers must agree on a third appraiser. This process takes time - often considerable time. Some agreements provide timetables for this process and others do not. In some agreements, the sole role of the first two appraisers is to select the third appraiser. The same time issues relate to this selection. Allow at least 30 to 60 days for this process. (The obvious way to avoid this time lag in getting appraisals started is to select the appraiser at the initiation of the buy-sell agreement using one of the single appraiser processes previously discussed.)

3. *Time to Prepare Appraisal(s).*

- a. Once selected, the appraiser(s) must prepare their appraisal(s). Experience has taught that the appraisal process normally takes from 60 to 90 days. Mercer Capital engagement letters typically state that we will use our best efforts to provide a draft valuation report for review within 30 days of an on-site visit with management. We hit that target the great majority of the time, and most often miss it because of client-related issues. Note that the entire process would still take 60 days or more, depending on how quickly the client responds to the information request, schedules the visit, and how long the client takes to review the draft. It takes many companies 30 to 60 days to provide the basic information that we require prior to the on-site visit because the activities of running their businesses preclude prompt action.
- b. If a third appraiser is retained, this appraiser will require time for his or her process. If this is the only appraisal being provided, the process normally takes from 60 to 90 days. If there have been two appraisals already, the third appraiser may be helped by the fact that the company has already developed most of the information that will be required. On the other hand, being the third appraiser can be a fairly dicey situation. In addition to preparing one's own appraisal as the third appraiser, it is also necessary to review the appraisals of the other two firms. Allow at least 30 to as many as 90 days or more for this process.

4. *Time to Review Draft Appraisals.* The procedures of many appraisal firms call for the preparation of draft reports to be reviewed by management, and in the case of some buy-sell agreements, by all sides. This review process will generally take from 15 to 30 days or more, particularly in contentious situations.

5. *Time to Arrange Financing or to Close.* Once the appraisal process has been concluded, it normally takes some time to bring the process to closure. The company may be allowed 30 days, or some amount of time to close the transaction.

We can summarize the process timelines to get a picture of how the various types of process agreements might look in operation. You may be surprised at how the various processes actually lay out, regardless of what the written timetables suggest. The timelines in Figure 9 are estimated based on actual experiences with the operation of buy-sell agreements. Three kinds of process agreements are listed to provide a realistic overview.

---

**DID YOU KNOW?**

Mercer Capital's website has been totally redesigned!

To help our clients, referral sources, and prospects better access the wealth of information contained on our website, we've updated and enhanced the site.

If you haven't visited lately, take a moment and visit today!

---

**[www.mercercapital.com](http://www.mercercapital.com)**

---

### BUY-SELL AGREEMENT TIMELINES

Process Activities (in days)	Multiple Appraisers		Single Appraiser - Select Now, Value Now		Hybrid (Single Appraiser with Multiple Appraiser Option)	
	Low	High	Low	High	Low	High
Trigger Event Occurs	0	0	0	0	0	0
Time to React	1	30	1	30	1	30
Pick Appraiser(s)	30	60	0	0	0	0
Provide Appraisal(s)	60	90	30	60	30	60
Review Appraisal(s)	15	30	15	30	15	30
<b>Earliest Time to Resolution</b>	<b>106</b>	<b>210</b>	<b>46</b>	<b>120</b>	<b>46</b>	<b>120</b>
Select Other Appraiser(s)	30	60			30	60
<i>Reviews by Appraisers</i>						
Prepare Additional Appraisal(s)	30	60			30	60
Review Appraisals/Reviews	15	30			15	30
Agree on Conclusions	15	30			15	30
Finalize Transaction	0	30			0	30
<b>Additional Time for Process</b>	<b>90</b>	<b>210</b>	<b>0</b>	<b>0</b>	<b>90</b>	<b>210</b>
<b>Potential Time to Resolution</b>	<b>196</b>	<b>420</b>	<b>46</b>	<b>120</b>	<b>136</b>	<b>330</b>

FIGURE 9

The existence of defined timetables in agreements serves to keep the parties focused on the timeline; however, they are seldom binding.

Figure 9 illustrates three examples, Multiple Appraiser processes, the Single Appraiser - Select Now, Value Now option, and the Single Appraiser with Multiple Appraiser Options.

- *Multiple Appraiser* processes can be accomplished in the broad range of 100 to 200 days or so if the initial process involving two appraisers is conclusive. If it is necessary to select and retain a third appraiser, it is likely that considerable additional time will pass before resolution occurs. It is not surprising for a multiple appraiser process involving three appraisers to take six months to a year or more to complete.
- *The Single Appraiser - Select Now, Value Now* option is potentially the most rapid option for process buy-sell agreements. If a trigger event occurs after the initial appraisal, the valuation process will be known by all parties, and the appraiser will be familiar with the company. This option should be able to be accomplished within six weeks or so, on the short end, and four months on the longer end.
- *The Hybrid or Single Appraiser with Multiple Appraiser Options* can take as long as the typical multiple appraiser option; however, the probability of it being accomplished in much shorter time is significant. If the parties agree on the concluded value of the "third

### WOULD YOU LIKE A FREE COPY OF THE 40-PAGE "BUY-SELL AUDIT CHECKLIST?"

To receive your free copy of the 40-page "Buy-Sell Audit Checklist" in a 8.5 x 11" format ready for your use (a \$50 value), send us your favorite buy-sell agreement war story (please change all the names to protect the innocent and guilty!).

One of the reasons we wrote the book, *Buy-Sell Agreements*, was to help business owners and their advisors craft workable agreements. Examples of agreements gone wrong (and those that operated as planned) serve as a powerful reminder of what could happen to you.

Send your war story to Chris Mercer at [mercerc@mercercapital.com](mailto:mercerc@mercercapital.com) and include your name. Once we receive it, we'll e-mail you your FREE copy of the 40-page "Buy-Sell Audit Checklist."

appraiser," this option is akin to the Single Appraiser - Select Now, Value Now option and can be accomplished accordingly.

Note that the estimates here assume that there is no litigation and that the parties are generally cooperating to move the process along.

The bottom line is that it is good to agree on realistic timelines in your buy-sell agreements. It is then easier to ask the various appraisers and other parties to stick to them. The operation of process buy-sell agreements can take a long time. This means that the process may be a considerable distraction to management, particularly when significant transactions are involved. It should be obvious, but the prolonged operation of a buy-sell agreement can not only be distracting, but frustrating and confusing to the family of a deceased shareholder, or to a terminated employee. ...

*[Also discussed in this chapter is "Who Bears the Costs of the Appraisal Process?" and "Who Benefits (or Loses) from Unavoidable (or Avoidable) Delays?" To order your copy of the book, visit our website at [www.mercercapital.com](http://www.mercercapital.com) or see the order form at page 14.]*

A handwritten signature in black ink, appearing to read 'Z. Mercer', with a long horizontal flourish extending to the right.

Z. Christopher Mercer, ASA, CFA  
[mercerc@mercercapital.com](mailto:mercerc@mercercapital.com)

**Timothy R. Lee, ASA**

New York Society of CPAs Business Valuation Conference » May 21, 2007

**“Application of Industry & Economic Data in Business Valuation”**

**Andrew K. Gibbs, CFA, CPA/ABV**

SNL Securities » May 22, 2007

**“Core Deposit Intangible Asset Valuation”**

**Matthew R. Crow, ASA, CFA**

BV Resources Teleconference » May 23, 2007

**“SFAS 141(R)”**

**Z. Christopher Mercer, ASA, CFA**

The Institute of Business Appraisers Annual Conference » June 21, 2007

**“Buy-Sell Agreements: Ticking Time Bombs or Reasonable Resolutions?”**

**Travis W. Harms, CFA, CPA/ABV**

Advanced Business Valuation Seminar sponsored by the American Society of Appraisers » July 18, 2007

**“Developing Reliable Valuation Models”**

**Travis W. Harms, CFA, CPA/ABV**

CICBV Regional Conference » September 8-9, 2007

**“A Theoretical and Practical Review of the DCF Model”**

**Z. Christopher Mercer, ASA, CFA & Travis W. Harms, CFA, CPA/ABV**

Dallas & Houston CFA Chapter Meetings » September 18-19, 2007

**“Buy-Sell Agreements: Ticking Time Bombs or Reasonable Resolutions?”**

**Z. Christopher Mercer, ASA, CFA**

AICPA Business Valuation Annual Conference » December 2, 2007

**“Discounts for Lack of Marketability Panel”**

**Z. Christopher Mercer, ASA, CFA & Travis W. Harms, CFA, CPA/ABV**

AICPA Business Valuation Annual Conference » December 3, 2007

**“An Integrated Theory of Business Valuation”**

**Z. Christopher Mercer, ASA, CFA**

Baltimore Estate Planning Council » June 21, 2007

**“Buy-Sell Agreements: Ticking Time Bombs or Reasonable Resolutions?”**

**Z. Christopher Mercer, ASA, CFA**

ING International Forum » January 12, 2008

**“Buy-Sell Agreements: Ticking Time Bombs or Reasonable Resolutions?”**

**An Integrated Theory of Business Valuation - SECOND EDITION**

by Z. Christopher Mercer, ASA, CFA and Travis W. Harms, CFA, CPA/ABV

Offered by John Wiley & Sons

To be published in the October, 2007

**MERCER CAPITAL'S E-BOOK LIBRARY**

<b>Title</b>	<b>Description</b>	<b>Investment</b>	<b>Release Date</b>
<b>Quantifying Marketability Discounts Valuing Shareholder Cash Flows</b>	<i>Quantifying Marketability Discounts</i> has been updated and is now offered as an e-book. This edition provides a brand new chapter which discusses each of the assumptions of the QMDM in-depth. As a bonus, when you purchase the e-book, you will also receive the QMDM Companion, the latest edition of the QMDM in spreadsheet format.	<b>\$95.00</b>	<i>Currently available</i>
<b>Valuing Financial Institutions</b>	We are responding to requests to put this book back into print and we are doing so as an e-book.	<b>\$65.00</b>	<i>Currently available</i>
<b>Are S Corporations Worth More Than C Corporations?</b>	An e-booklet that adds to the S Corporation vs. C Corporation debate.	<b>\$19.95</b>	<i>Currently available</i>
<b>Embedded Capital Gains The History and the Issues</b>	A closer look at the embedded capital gains issue.	<b>\$19.95</b>	<i>Currently available</i>
<b>Employee Stock Option Valuation Issues</b>	We have compiled some of our latest thinking on the subject of valuation of employee stock options.	<b>Complimentary</b>	<i>Currently available</i>
<b>Rate &amp; Flow An Alternative Approach to Determining Active/Passive Appreciation in Marital Dissolutions</b>	In this e-book, we present an alternative model for determining active / passive appreciation in a marital dissolution. In states where an owner/spouse's active management of a business does not preclude the consideration of passive appreciation, we offer a fresh approach based on rate and flow analysis.	<b>Complimentary</b>	<i>Currently available</i>
<b>The QMDM Fact Sheet</b>	A summary of the history of the QMDM and its acceptance in the business appraisal profession.	<b>Complimentary</b>	<i>Currently available</i>

**New Series: "Understand the Value of Your ..."**

<b>Understand the Value of Your Physician Practice</b>  NEW!	The ownership of every practice will change hands. The event that triggers the transfer can be categorized as either voluntary or involuntary. It is important for physicians to consider the universe of ownership transfer possibilities, because sooner or later, you will be involved.	<b>Complimentary</b>	<i>Currently available</i>
<b>Understand the Value of Your Auto Dealership</b>	Because your business will change hands, it is important for you to understand the key concepts of business value and how value is determined for your business.	<b>Complimentary</b>	<i>Currently available</i>
<b>Understand the Value of Your Wholesale Distributorship of Malt Beverage Products</b>	The financial landscape is littered with rules of thumb pertaining to the value of privately owned businesses. Perhaps in no other industry is the rule of thumb concept more prevalent than in beer distribution. Why is this so? After all, beer distributors are typically street wise and business savvy. They increasingly employ skilled professionals at all levels of their organizations and the evolving disciplines of their trade are largely mandated by sophisticated, international breweries. Indeed, given the scrutiny of the IRS, the control of the breweries, the evolution of product mix, and the wide ranging concerns of shareholders, it is critical that value be determined and articulated in a credible fashion. The purpose of this article is to provide insight into the situational (when and why) and analytical (how) aspects of valuing beer distributorships.	<b>Complimentary</b>	<i>Currently available</i>

Visit our website at [www.mercercapital.com](http://www.mercercapital.com) for more information or to download an e-book.

## MERCER CAPITAL ON THE ROAD

The professionals of Mercer Capital have a great deal of experience speaking to industry and professional groups across the nation on topics such as:

- » Buy-Sell Agreements
- » The Integrated Theory of Business Valuation
- » Is Your Business Ready for Sale?<sup>™</sup>
- » Purchase Price Allocation
- » Valuation of Employee Stock Options
- » Litigation Support and Expert Testimony
- » Valuation of Privately Held Businesses, Partnerships, or LLCs
- » Financial Institution Valuation
- » ESOP Valuation

**To book a Mercer Capital professional as a speaker at your next conference or CLE/CPE meeting, please contact Barbara Walters Price at [priceb@mercercapital.com](mailto:priceb@mercercapital.com).**

## A GENTLE PLUG FOR OUR FIRM

**MERCER CAPITAL** is a business valuation and investment banking firm serving a national and international clientele. Our reputation for excellence is based on an ability to solve complex financial problems expeditiously. We convert over 20 years of experience, including thousands of assignments, into solutions for the issues of today.

**Corporate Valuation.** Mercer Capital provides a broad range of independent valuation and financial advisory services, including:

- » Dispute Analysis Services and Expert Testimony
- » Valuation for Corporate Tax Matters
- » Valuation for Corporate Income Tax Issues
- » Valuation for ESOPs
- » Purchase Price Allocations
- » Valuation of Employee Options
- » Goodwill Impairment Testing
- » Valuation of Intangible Assets
- » Fairness Opinions

**Investment Banking.** Mercer Capital's investment banking division specializes in providing merger and acquisition services to sellers or buyers of private businesses or public companies divesting divisions and subsidiaries. In addition, we assist clients in industry consolidations, roll ups, and refinancings.

## INTERNET COMMERCE: OBTAIN PROPOSALS TO VALUE YOUR COMPANY, BANK, FLP OR LLC VIA OUR WEBSITE

The cost of your time and delays in obtaining proposals has just gone down. Use one of the PROPOSAL REQUEST FORMS on our website.

Many of your colleagues have already used our PROPOSAL REQUEST FORMS and are impressed by the decrease in transactional overhead and the increased ease in obtaining actionable proposals for their clients. We are pleased to be doing business with them. Try it yourself! Visit our website and provide us with the pertinent information via this form, and we'll prepare a proposal and deliver it to you via e-mail, fax or USPS. Complete confidentiality is assured.



## UNSUBSCRIBE

We will continue to send the newsletter as published at no cost unless you notify us that you wish to be removed from the distribution list. To REMOVE yourself from this list, send an e-mail to: [merceroowner@mercercapital.com](mailto:merceroowner@mercercapital.com) and type the words "Unsubscribe – Value Matters" in the subject line (without the quotation marks).



Business Valuation • Investment Banking

Headquarters:  
5860 Ridgeway Center Parkway, Suite 400  
Memphis, Tennessee 38120  
901.685.2120 » Fax 901.685.2199

Louisville Office:  
511 South 5th Street, Suite 206  
Louisville, Kentucky 40202  
502.585.6340 » Fax 502.585.6345

[www.mercercapital.com](http://www.mercercapital.com)

---

DISCLAIMER. This publication does not constitute legal, valuation, tax, or financial consulting advice. It is offered as an information service to our clients and friends. Those interested in specific guidance for legal and accounting matters should seek competent professional advice. Inquiries to discuss specific valuation or corporate finance matters are welcomed. Permission is specifically granted to send copies of this Value Matters™ to others who might have an interest in its contents. Permission is also granted to quote portions of this newsletter with proper attribution.

---

Copyright © 2007 by Mercer Capital Management, Inc., all rights reserved. Text, graphics, and HTML code are protected by US and International Copyright Laws, and may not be copied, reprinted, published, translated, hosted, or otherwise distributed by any means without explicit permission.

# BUY-SELL AGREEMENTS TELESEMINAR SERIES

MAY 24 :: JUNE 14 :: JULY 19



## NEW TELESEMINAR SERIES

### Buy-Sell Agreements: Ticking Time Bombs or Reasonable Resolutions?

Sponsored by Mercer Capital and BV Resources

~~~~~  
**ATTORNEYS, CPAs, BUSINESS APPRAISERS:** Are you missing a business opportunity to assist your clients with their buy-sell agreements?

**BUSINESS OWNERS:** Does your buy-sell agreement say what you think it says? Are you sure?

Buy-sell agreements are found in every business of size. Yet, they are often misunderstood. The parties involved may believe the “words on the page” say one thing only to discover after a trigger event, that, in fact, they say something else entirely or are simply unclear. Attorneys work diligently with shareholders to craft these agreements and shareholders want the agreement and the resulting process to be fair. Why then do so many buy-sell agreements fall short upon a trigger event?

After working with buy-sell agreements for over thirty years, we offer some answers from a valuation perspective in this [three-part teleseminar](#). In addition, we offer advice and insight that can help you craft and/or review a buy-sell agreement so that the “words on the page” indeed communicate clearly your intentions.

This series will present information on buy-sell agreements that you’ve never heard before.

~~~~~  
You are invited to attend all three sessions of this teleseminar series:

### **PART 1: YOU'LL NEVER THINK ABOUT BUY-SELL AGREEMENTS THE SAME WAY AGAIN**

Featuring Chris Mercer  
100 minutes » Noon – 1:40pm CST  
**Thursday, MAY 24, 2007**

#### **HIGHLIGHTS:**

- Identify the six defining elements that every buy-sell agreement should possess but most do not
- Learn which pricing mechanisms typically work and which typically do not
- How to review a buy-sell agreement from a valuation perspective, not only for business appraisers but also for business owners and their professional advisors

In this first session, we focus on providing useful information that can be beneficial to you and/or your clients immediately! Specifically, you do not want to miss the section on how to review a buy-sell agreement (from a valuation perspective). We walk through the 40-page “Buy-Sell Audit Checklist” from the book. This is alone worth the price of admission!

To receive your FREE copy of the 40-page “[Buy-Sell Audit Checklist](#)“ in a 8.5 x 11” format ready for your use (a \$50 value), send us your favorite buy-sell agreement war story (please change all the names to protect the innocent and guilty!). Chris just might use your story in the teleseminar series yet even if he doesn’t, you will still receive your FREE copy of the “Buy-Sell Audit Checklist”. Send your war story to Chris at [mercerc@mercercapital.com](mailto:mercerc@mercercapital.com) and include your name.

## **PART 2: THE PLANNER'S ROLE IN BUY-SELL AGREEMENTS**

Featuring Chris Mercer (moderator), L. Paul Hood, Jr., Esq., and John H. Brown, Esq.

100 minutes » Noon – 1:40pm CST

**Thursday, JUNE 14, 2007**

### **HIGHLIGHTS:**

- Features two of the most respected planners in the nation – L. Paul Hood, Jr., Esq. is a nationally-known estate planning attorney and John H. Brown, Esq., is president of Business Enterprise Institute (BEI), the only single source of education, marketing support, and exit planning design for advisors of business owners.
- Understand the defining elements that should be present in every buy-sell agreement
- The challenges faced by planners when crafting buy-sell agreements for clients
- Learn how to approach your clients to review their buy-sell agreements – a business opportunity for you and a real service for them
- Plenty of real-life examples of buy-sell agreements that went well and those that didn’t
- How to review a buy-sell agreement from a valuation perspective specifically for planners

This session focuses on helping planners help their clients – and in turn, potentially build their own practice.

As a well-respected attorney commented to us upon the publication of our book:

“Buy-sell agreements have always plagued me. You write them and they never come out the way you think they should ....

Attorneys and other planners work diligently with shareholders/investors to craft solid buy-sell agreements. However, this often comes at the end of a transaction process when the shareholders/investors think that all is done and they should be able to get down to business. They typically do not want to incur further legal costs and are ready to move on, so they give the buy-sell agreement little thought because, as is so often said “There will never be a problem, anyway.” Famous last words!

A life insurance professional told us a story that after hearing one of our recent presentations on buy-sell agreements, he decided to approach four of his clients to talk about their buy-sell agreements. Because he focused on this niche and had the information we provided in the speech, he was able to review each client’s buy-sell agreement and offered real value to his clients by finding areas that could potentially become problems.

## **PART 3: BUY-SELL AGREEMENTS: OPPORTUNITIES & CHALLENGES FOR BUSINESS**

### **APPRAISERS**

Featuring Chris Mercer (moderator), Roger Grabowski, ASA and Jim Hitchner, CPA/ABV, ASA

100 minutes » Noon – 1:40pm CST

**Thursday, JULY 19, 2007**

#### **Highlights:**

- Features three of the biggest names in business valuation
- The role of the business appraiser
- Multiple appraiser vs. single appraiser process agreements
- How to become involved in the drafting stage of buy-sell agreements
- Identify the main areas of dispute when things go wrong and the client ends up in litigation
- Learn how to approach your clients to review their buy-sell agreements – a business opportunity for you and a real service for them
- Plenty of real-life examples of buy-sell agreement engagements

The “words on the pages” of your or your client’s buy-sell agreement probably do not say what you think they say. Nevertheless, know this: If there is ever a dispute over your buy-sell agreement, chances are that certain “words on the pages” will not be interpreted by a business owner or even their attorney. They will be interpreted by one or more business appraisers. As such, it is vital for business appraisers to be knowledgeable. Also, without solid advice from a reputable appraiser, the words may be interpreted by a judge or jury in an expensive and time-consuming trial.

As Rand Curtiss, FIBA, MCBA, ASA, ASA noted in a review of the book, [\*Buy-Sell Agreements: Ticking Time Bombs or Reasonable Resolutions?\*](#) “Appraisers who apply [the] lessons [of the book] will be able to position themselves in the marketplace as not just valuation specialists but in the wider role of facilitators of business valuation dispute resolutions, a much more productive role for us.”

This session focuses on helping appraisers become facilitators of business valuation dispute resolutions along with offering real-world guidance from three professionals who have been in the trenches.

~~~~~

#### **WHY YOU SHOULD ATTEND?**

Attend the teleseminar series to learn about buy-sell agreements from a business and valuation perspective, and to learn how to avoid or to fix potential problems with your and/or your client’s buy-sell agreements before they have to be implemented. If you are a professional advisor to business owners, learn how to help your clients which is a real business opportunity for you and a real service to them.

Chris will be speaking directly from my 30+ years of experience as a business appraiser and businessman about the problems, issues, advantages, and disadvantages of different types of buy-sell agreements. The panelists will be contributing their years and depth of experience.

#### **WHO SHOULD ATTEND?**

Anyone with or associated with businesses having buy-sell agreements to govern the process and price of future transactions in stock. This includes business owners, officers and directors, their attorneys, their accountants, life insurance professionals, wealth planners, and other professional advisors, including their business appraisers.

#### **HOW & WHERE?**

Teleseminar – all you need is a phone line and, in the comfort of your own office, conference room, or home.

#### **CPE CREDIT**

Two hours of CPE credit will be offered for each teleseminar.

---

## YOUR INVESTMENT

You can sign up for one, two, or all three sessions. It's Your Choice!

### **COMPLETE THREE-PART SERIES CONFERENCE PACKAGE: Only \$595.00** **(a 20% discount off the regular teleseminar pricing)**

Register for the complete series and receive:

- a FREE CD or e-Transcript (PDF) per session - a \$270 value – and,
- a FREE copy of the best-selling book "*Buy-Sell Agreements*" - a \$79 value!

Earn 2 CPE credits per conference.

Add extra CPE participants for \$49 each.

Mention priority code: **CB3** to receive the discount and specify your choice of a CD or e-Transcript (PDF).

### **TWO-PART CONFERENCE PACKAGE: Only \$429.00** **(a 15% discount off the regular teleseminar pricing)**

Register for 2 of the 3 conferences and receive:

- a FREE CD or e-Transcript (PDF) per session - a \$180 value!

Earn 2 CPE credits per conference.

Add extra CPE participants for \$49 each.

Please mention priority code: **CB2** to receive the discount and specify your choice of a CD or e-Transcript (PDF).

### **ONE-PART CONFERENCE PACKAGE: Only \$249.00**

Register for one session and CD for \$339

Register for one session and Transcript for \$339

Register for one session, CD, and Transcript for \$429

Earn 2 CPE credits. Add extra CPE participants for \$49 each.

## **AS A BONUS**

To receive your FREE copy of the 40-page "**Buy-Sell Audit Checklist**" in a 8.5 x 11" format ready for your use (a \$50 value), send us your favorite buy-sell agreement war story (please change all the names to protect the innocent and guilty!). Chris just might use your story in the teleseminar series yet even if he doesn't, you will still receive your FREE copy of the "Buy-Sell Audit Checklist". Send your war story to Chris at [mercerc@mercercapital.com](mailto:mercerc@mercercapital.com) and include your name.

---

### **To take advantage of the discount package pricing:**

**Before May 24, 2007, call BV Resources at (503) 291-7963 or send an e-mail to [customerservice@bvresources.com](mailto:customerservice@bvresources.com) indicating that you would like to register and they will contact you!**

For more information, contact Barbara Price at [priceb@mercercapital.com](mailto:priceb@mercercapital.com) or 901.685.2120

**Time is running out! Sign up today for information you won't find anywhere else!**  
Visit Mercer Capital's [website](#) or BV Resources [website](#) for other information!

The Reviews Are In...

# BUY-SELL AGREEMENTS

TICKING TIME BOMBS OR REASONABLE RESOLUTIONS?

...Is A Hit!

Released in January 2007, "*Buy-Sell Agreements: Ticking Time Bombs or Reasonable Resolutions?*" has quickly become a valuable tool for attorneys, business advisors and business owners who recognize the importance of buy-sell agreements. Don't take our word for it. Below are just some of the published reviews of "*Buy-Sell Agreements: Ticking Time Bombs or Reasonable Resolutions?*"

To summarize *Buy-Sell Agreements* in one word, that word would be "methodical." Mercer focuses like a laser beam on virtually all of the possible permutations of the pricing and valuation provisions of buy-sell agreements, together with the advantages and disadvantages of each...*Buy-Sell Agreements* offers a comprehensive buy-sell audit checklist that alone makes it worthy of purchase, serious use and study...If you are looking for a book that has a comprehensive discussion of the pricing and valuation aspects of buy-sell agreements (which I've really not ever seen before), this is it...*Buy-Sell Agreements* is a no-brainer addition to the library of every one who works with or who drafts buy-sell agreements.

**L. PAUL HOOD, ESQ.**

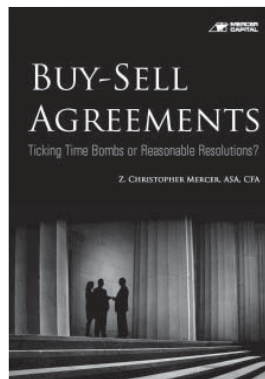
*Steve Leimberg's Business Entities Newsletter,  
Issue 119, February 13, 2007.*

*Courtesy: Leimberg Information Services, Inc. (LISI)  
at [www.leimbergservices.com](http://www.leimbergservices.com)*

In this eminently well-written, concise, and non-technical book, Chris lays out the fundamental parameters and processes that must be considered to minimize problems...Appraisers who read this book and apply its lessons will be able to position themselves in the marketplace as not just valuation specialists but in the wider role of facilitators of business valuation dispute resolutions, a much more productive role for us.

**RAND M. CURTISS, FIBA, MCBA, ASA, ASA**

*President, Loveman-Curtiss, Inc.  
Chair of the American Business Appraisers National Network  
Published on IBA Discussions Blog at [www.go-iba.org/blog](http://www.go-iba.org/blog)*



In the teacher's manual to our *Business Associations* case book, my friend, colleague and coauthor Bill Klein posits that "any lawyer who advises people entering into a business venture and who fails to urge the adoption of a buy-sell agreement is guilty of malpractice." Z. Christopher Mercer's new book *Buy-Sell Agreements: Ticking Time Bombs or Reasonable Resolutions* offers a tremendously useful guide to these remarkably important contracts. In it, he provides guidance for business people and their financial advisors to use in assessing the need for a buy-sell agreement and, if one is appropriate, deciding on key terms. It will also be very useful to counsel drafting buy-sell provisions, as it offers drafting checklists and samples of how various issues can be treated. I recommend it very highly.

**STEPHEN BAINBRIDGE**

*William D. Warren Professor of Law, UCLA  
Published on [ProfessorBainbridge.com](http://ProfessorBainbridge.com)*

Mr. Mercer has done a great job of addressing the reasons business owners might want to have a buy-sell agreement and the business factors these business owners should consider in the agreement...Overall, Mr. Mercer provides valuation practitioners, business consultants, and business owners with a very useful handbook for preparing, reviewing and interpreting buy-sell agreements.

**DAVID A. ELLNER, CPA/ABV**

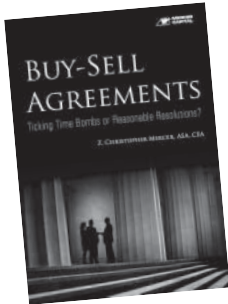
*The Financial Valuation Group  
Published in the AICPA ABV e-Alert  
Volume 9, Issue 2, February/March 2007*

# BUY-SELL AGREEMENTS

TICKING TIME BOMBS OR REASONABLE RESOLUTIONS?

**"...is terrific - sophisticated, refreshingly thoughtful and the first really new ideas (to me, anyway) in this area I've heard or seen in a long time."**

*Putnam C. Smith, J.D., LL.M., Partner, Lipscomb, Johnson, Sleister, Dailey & Smith, LLP, Cumming, Georgia*



ONLY

**\$79**

(Plus shipping)

COMES WITH A  
100% MONEY-BACK  
GUARANTEE!

Written for business owners, attorneys, CPAs, business appraisers, and other professional advisors to business, this book provides a roadmap for you (or your clients) to develop or improve your buy-sell agreement. The first book written from a valuation perspective which is important to note because business appraisers are usually consulted when there is a problem. Learn from our 25 years of experience working with well-constructed and terribly constructed buy-sell agreements (in almost every case no one realized there were problems until a trigger event occurred)!

#### HIGHLIGHT SECTIONS/CHAPTERS INCLUDE:

- » **Categories & Types of Buy-Sell Agreements**
- » **Process & Single Appraiser Buy-Sell Agreements**
- » **Process Timetables** - *Why it takes more time than you think*
- » **The Six Defining Elements of Buy-Sell Agreements** - *Agreements must have all six but most do not!*
- » **War Stories** from our experience
- » **The Buy-Sell Audit Checklist** - *This alone is worth the price of the book*
- » In addition, the **ASA BV Standards and USPAP Standards 3, 9 & 10** are reprinted in full for your convenience

To order, fax back to 901.685.2199, call us at 901.685.2120, or visit [www.mercercapital.com](http://www.mercercapital.com)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip Telephone

\_\_\_\_\_  
Email

Visa    Mastercard    American Express    Check Enclosed

\_\_\_\_\_  
Card Number

\_\_\_\_\_  
Name on Card

\_\_\_\_\_  
Exp. Date

\_\_\_\_\_  
Signature

#### SHIPPING CHARGES

|              | 1 Book  | 2 or More |
|--------------|---------|-----------|
| FedEx Ground | \$7.00  | \$12.00   |
| 2-Day        | \$11.00 | \$15.50   |
| Overnight    | \$35.00 | \$40.00   |

Please call for Canadian & International rates

| QTY | Regular Price                    | TOTAL |
|-----|----------------------------------|-------|
|     | \$79                             |       |
|     | Sales Tax - TN Residents (9.25%) |       |
|     | Shipping Charge                  |       |
|     | <b>TOTAL</b>                     |       |

#### Make checks payable to

Peabody Publishing, LP  
5860 Ridgeway Center Parkway,  
Suite 400,  
Memphis, TN 38120