

# KEY TERMS FOR A BUY-SELL AGREEMENT

What are the Questions to Consider for a Potential Acquisition?

## Parties Involved

- Clearly identify the agency and all current owners or shareholders.
- Specify their ownership percentages or stakes.

## Triggering Events

- Death of an owner.
- Disability or incapacity of an owner.
- Retirement or voluntary exit.
- Involuntary exit (e.g., termination for cause).
- Divorce or marital separation impacting ownership.
- Bankruptcy or insolvency of an owner.
- Disputes between owners (deadlock resolution).
- Sale or merger of the agency.

## Valuation of the Business

- Establish a clear method for determining the value of the agency, such as:
  - Independent appraisal.
  - Pre-agreed valuation formula (e.g., a multiple of revenue, earnings, or book of business).
  - Periodic valuation updates agreed upon by owners.
- Specify how disputed valuations will be resolved (e.g., hiring a neutral third-party appraiser).

## Funding Mechanisms

- Outline how the buyout will be funded:
  - Life insurance policies on each owner (to fund buyouts upon death).
  - Disability insurance to cover buyouts due to incapacity.
  - Installment payments or lump-sum payments from remaining owners.
  - External financing options.

## **Ownership Transfer Restrictions**

- Specify who can purchase ownership stakes (e.g., existing owners, family members, third parties).
- Include a right of first refusal for existing owners.
- Prohibit transfer of shares to competitors or unrelated third parties.

## **Buyout Terms**

- Payment structure (e.g., cash, installments, interest rates).
- Timeline for completing the transaction.
- Non-compete and non-solicitation clauses for departing owners.
- Provisions for unpaid commissions, bonuses, or other liabilities.

## **Governance Provisions**

- Decision-making procedures during the buy-sell process.
- Appointment of an executor or trustee to oversee transfers, if necessary.

## **Tax Implications**

- Tax Implications
- Address tax treatment of the transaction for both the seller and the remaining owners.
- Consider implications of ownership transfers on the agency's tax status (e.g., S-Corp, LLC, etc.).
- Specify methods for resolving disputes, such as mediation or arbitration.
- Include provisions for legal costs and jurisdiction.

## **Dispute Resolution**

## **Periodic Review & Amendments**

- Require periodic reviews to update the agreement as the business evolves.
- Establish procedures for amending the agreement with the consent of all parties.

## **Misc. Provisions**

- Governing law and jurisdiction.
- Confidentiality clauses to protect sensitive business information.
- Severability clause (if one part is invalid, the rest remains enforceable).