

ARIZONA LLC BUY-SELL AGREEMENT QUESTIONNAIRE

Complete this Questionnaire if you hire KEYTLaw, LLC, to prepare a Buy-Sell Agreement for your Arizona limited liability company. The Buy-Sell Agreement will be based on the information and answers contained in this Agreement. We recommend that all Members of the LLC be consulted about the contents of this Questionnaire.

The term "triggering event" means an act or omission that will give the company or a Member an option to purchase or require a mandatory purchase of the interest of a Member. For example, a common triggering event is the death of a Member. Put a check to the left of or circle each provision you want to include in the Buy-Sell Agreement.

1. _____
Name of Limited Liability Company

2. _____
LLC's Street Address City, State Zip Code

3. Management Type: Member Managed Manager Managed (see Articles of Organization)

4. List all Managers:

5. Contact: _____
Name of the person we should contact for questions about the LLC or the Buy-Sell Agreement

6. Contact: _____ _____
Phone Email Address

7. _____
Contact's Street Address City, State Zip Code

8. Effective Date of Agreement: _____

A. TYPE OF AGREEMENT

- 9. Buy-Sell Agreement Restrictions & buy-sell provisions apply to all Members
- Minority Member Buy-Back Agreement Restrictions & buy-sell provisions apply only to one or more minority Members

B. DRAG ALONG & TAG ALONG PROVISIONS

- 10. Include drag along provision. If majority Member sells, minority Member must sell
- 11. Include tag along provision. If majority Member sells, he/she/it must include sale of minority on same terms and conditions
- 12. Right of first refusal for minority. If majority Member makes an offer to sell, minority has the first right to buy on the same terms and conditions

C. TRIGGERING EVENT: TRANSFER RESTRICTIONS

One of the primary purposes of a Buy-Sell Agreement is to restrict the sale of Membership interests to outsiders. The Agreement should also restrict encumbering the Membership interests except as specifically permitted in the Agreement. Check the box for any provisions you want included in the Buy-Sell Agreement.

13. Do not include any restrictions on transferring or encumbering a Member's Membership Interest. Skip to the next major Section.
14. Breach of a transfer or encumbrance prohibition is a triggering event.
15. Company and all Members are restricted from issuing and transferring Membership interests without the consent of the Members.
16. Specific provision allowing Company to issue Membership interests, but all Members are restricted from transferring Membership interests.
17. Transfer restrictions only apply to minority Members and minority Members may not encumber Membership interests without prior written consent of the Company.
18. Transfer restrictions apply to everyone and minority Member may not encumber Membership interests without prior written consent of the Company.
19. A Member may encumber the Member's interest only with the approval of _____ percent of the voting Membership interests.
20. Permit transfers to family Members without consent of Members.
21. Permit transfers to a revocable trust of which the Member is a beneficiary and trustee without consent of Members.

D. TRIGGERING EVENT: DEATH

Select one of the following options for what happens upon the death of a Member:

22. Death is not a triggering event. Skip to the next major Section.
23. There is a mandatory redemption of the deceased Member's Membership interest.
24. The deceased Member's estate has an option to sell to the Company.
25. The Company has an option to purchase the deceased Member's Membership interests.
26. Death is not a separate triggering event.
27. The deceased Member has the option to sell to the Company for _____ months after the death.
28. The Company has the option to purchase for _____ months after death of the Member.
29. The estate of minority Member has the option to sell for _____ months after death of the Member.

- 30. The Majority Member(s) has(have) the option to purchase for _____ months after the death of the minority Member
- 31. The surviving Member(s) has(have) the option to purchase for _____ months after death a Member.

E. PROVISIONS TO FUND A PURCHASE WITH INSURANCE

- 32. Don't include provisions authorizing purchases of life and/or disability insurance.
- 33. Authorize the purchase of life and/or disability insurance to fund the Buy-Back Agreement:
- 34. Authorize both Company owned and Member owned purchases.
- 35. Authorize only Company owned purchases.
- 36. Authorize only Member owned purchases.

F. TRIGGERING EVENT: DISABILITY

Select one of the following options for what happens upon the disability of a Member:

- 37. Disability is not a triggering event. Skip to the next major Section.
- 38. There is a mandatory redemption of the disabled Member's Membership interests.
- 39. The disabled Member has an option to sell to the Company.
- 40. The Company has an option to purchase the disabled Member's Membership interests.
- 41. The disabled Member has the option to sell for _____ months after his/her disability.
- 42. The Majority Member(s) has(have) the option to purchase for _____ months after the disability of the Minority.
- 43. The minority Member has the option to sell for _____ months after becoming disabled.
- 44. The Company has the option to purchase for how _____ months after disability of the Member.
- 45. The non-disabled Member(s) has(have) the option to purchase for _____ months following the disability of a Member.

G. Disability Questions

- 46. A Member must be disabled for _____ months to trigger the disability provisions under the Agreement.
- 47. Include a provision requiring that life insurance be maintained during a Member's disability.
- 48. Include a provision requiring the spouse of a disabled Member to also sell upon disability of the Member.

H. Triggering Event: Termination of Employment

Select one of the following options for termination of a minority Member's employment with the Company:

49. Termination of employment is not a triggering event. Skip to the next major Section.
50. Both voluntary termination and involuntary termination are triggering events and they are treated the same.
51. Both involuntary termination and voluntary termination are triggering events and they are treated differently.
- Only involuntary termination is a triggering event.
- Only voluntary termination is a triggering event.
52. A minority Member's death is treated as a termination of employment rather than a death.
- The minority Member's death is included in voluntary termination of employment.
- The minority Member's death is included in involuntary termination of employment.
53. The minority Member's disability is treated as a termination of employment rather than disability.
- The minority Member's disability is included in voluntary termination of employment.
- The minority Member's disability is included in involuntary termination of employment.

I. Involuntary and Voluntary Termination of Employment

Select one of the following options for what happens upon the termination of the minority Member's employment with the Company:

54. There is a mandatory redemption of the Member's Membership interests.
55. The Member has an option to sell to the Company.
56. The Company has an option to purchase the Member's Membership interests.
57. The Company may terminate a Member's employment only upon a unanimous vote of the Majority of the Members.
58. The Member whose employment is terminated has the option to sell for _____ months.
59. The minority Member has the option to sell for _____ months after termination of his/her employment.
60. The remaining Member(s) has(have) the option to purchase for _____ months after termination of a Member's employment.

61. The Company has the option to purchase for _____ months after termination of the Member's employment.
62. The Majority Member(s) has(have) the option to purchase for _____ months after termination of the minority Member's employment.

J. Involuntary Termination of Employment

Select one of the following options for what happens upon the involuntary termination of the minority Member's employment with the Company:

63. There is a mandatory redemption of the minority Member's Membership interests.
64. There is a mandatory redemption of the Membership interests of any Member whose employment is involuntarily terminated.
65. The minority Member whose employment with the Company is involuntarily terminated has an option to sell to the Company.
66. The Company has an option to purchase the minority Member's Membership interests.
67. The Company may terminate a Member's employment only upon a unanimous vote of the Majority of the Members.
68. Any Member whose employment is involuntarily terminated has the option to sell for _____ months.
69. The minority Member has the option to sell for _____ months after involuntary termination of his/her employment.
70. The Company has the option to purchase for _____ months after involuntary termination of the Member's employment.
71. The remaining Member(s) has(have) the option to purchase for _____ months after involuntary termination of a Member's employment.
72. The Majority Member(s) has(have) the option to purchase for _____ months after the minority Member's employment is involuntarily terminated.

K. Voluntary Termination of Employment

Select one of the following options for what happens upon the voluntary termination of the minority Member's employment with the Company:

73. There is a mandatory redemption of the Member's Membership interests.
74. The Member has an option to sell to the Company.
75. The Company has an option to purchase the Member's Membership interests.

76. The minority Member has the option to sell for _____ months after voluntary termination of his/her employment.
77. The remaining Member(s) has(have) the option to purchase for _____ months after voluntary termination of a Member's employment.
78. The Company has the option to purchase for _____ months after a Member voluntarily terminates his/her employment.
79. The Majority Member(s) has(have) the option to purchase for _____ months after the minority Member voluntarily terminates his/her employment.

L. Triggering Event: Retirement Options

80. Retirement is not a triggering event. Skip to the next major Section.
81. Retirement is a triggering event.
82. Is the minority Member's retirement treated differently than termination of employment.
83. Treated the same as voluntary termination of employment.
84. Treated the same as involuntary termination of employment.
85. Retirement is a triggering event, but is treated differently than voluntary and involuntary termination of employment.

M. Retirement Options

Select one of the following options for what happens upon the retirement of the minority Member from the Company:

86. There is a mandatory redemption of the Member's Membership interest.
87. The Member has an option to sell to the Company.
88. The Company has an option to purchase the Member's Membership interests.
89. The minority Member has the option to sell for _____ months after his/her retirement.
90. The retiring Member has the option to sell for _____ months after his/her retirement.
91. The Company has the option to purchase for _____ months after retirement of the Member.
92. The Majority Member(s) has(have) the option to purchase for _____ months after the retirement of the minority Member.
93. The remaining Member(s) has(have) the option to purchase for _____ months after retirement of a Member.

- 105. Don't include a forced sale provision. Skip to the next major Section.
- 106. Member(s) owning more than _____ percent of the Membership interests may make a joint offer to the remaining Members to buy all of the remaining Member's Membership interests. The remaining Members may either accept the offer or buy the offering Members Membership interests at the same price.
- 107. Member(s) owning more than _____ percent of the Membership interests may make a joint offer to the remaining Members to buy all of the remaining Member's Membership interests. The remaining Members may either accept the offer, buy the offering Members Membership interests at the same price **or dissolve the Company.**
- 108. The Offeree shall have _____ days after receipt of the offer to decide what course of action to take.
- 109. The forced sale offer must not vary from the purchase price determined in the Buy-Sell Agreement by more than _____ percent.
- 110. Include a provision that the forced sale provision cannot be used against a disabled Member.

S. Involuntary Transfers

In the event of an Involuntary Transfer because of bankruptcy or court action:

- 111. Don't include a provision dealing with Involuntary Transfers. Skip to the next major Section.
- 112. A mandatory redemption of the Membership interests of the affected Member.
- 113. Notice of offer to sell following an Involuntary Transfer must be accepted within _____ days.
- 114. Involuntary buy-out provisions apply only to:
 - All Members
 - Only minority Members
 - Only the following Members:

T. Bona Fide Offers (Right of First Refusal)

A Right of First Refusal is a right given to the Company and/or Members to purchase the interest of a Member who enters into an agreement with a non-Member to sell the Member's interest in the Company to the non-Member. The Company first and then the other Members have the option to purchase the Membership interest on the same terms and conditions the selling Member offers to sell to the non-Member. This is an important provision because it allows Members to control who will own interests in the Company.

Select one of the following options for dealing with the Right of First Refusal upon receipt of a Bona Fide Offer by the minority Member

- 115. Don't include a Right of First Refusal.

116. The First Right of Refusal remains open for a period of _____ days.
117. Upon lapse of the Right of First Refusal, the selling Member must complete sale to Bona Fide Offeror within _____ days.
118. Check if all Membership interests being offered by the selling Member must be purchased when exercising the Right of First Refusal.
119. Check if, when sold to a Bona Fide Offeror, the Bona Fide Offeror must become a party to the Operating Agreement and the Buy-Sell Agreement.
120. Check if the Right of First Refusal is exercised for less than the Bona Fide Offer, the Company or Member cannot resell the Membership interests to the Bona Fide Offeror for a period of 6 months.
121. Select one of the following options:
- There is no drag along or tag along provision.
- There is a drag along provision, but no tag along provision.
- There is a drag along and tag along provision.
- To invoke the tag along/drag along provisions, Members owning at least what _____ percent of the Membership interests must desire to sell.

U. Determination of Purchase Price

Perhaps the most important provisions in the Buy-Sell Agreement are the provisions that determine how the purchase price will be determined. Check the appropriate box below to indicate how the purchase price will be calculated:

122. Price stated in the Agreement. Initially, the value of the entire Company shall be: \$_____.
123. Net book value of the Company multiplied by the percentage of total Membership interest purchased
124. Appraised value of the interest purchased. If the buyer and seller agree on the appraiser, the determination of the value of the Company will be binding on the parties and they will share the cost of the appraisal. If the parties cannot agree on an appraiser, each party will pick an appraiser and pay the cost of the appraiser. If the values determined by the two appraisers are within _____ percent of each other, the average of the two appraisals will be the value of the Company. If the values determined by the two appraisers are not within that range, the two appraisers will pick a third appraiser (the cost will be borne equally by the parties). The value of the Company will be the value between the highest and lowest appraisal.
125. Price determined by the specified formula listed below:

V. Payment Terms

Indicate below the terms and conditions of a purchase / sale under the Buy-Sell Agreement.

126. At closing of the sale, the buyer must pay not less than ____% of the total purchase price.

127. Principal payments will be:

Amortized over the term of the installment note.

Equal principal payments over the term of the installment note.

128. Payments are: monthly quarterly semi-annually annual

W. Interest rate

129. Fixed simple interest rate _____ percent

130. Initial interest rate _____ percent, but adjusted annually according to:

131. Wall Street Journal prime plus percentage _____ percent.

132. The interest rate charged by the entity's prime lending institution at the time of the purchase.

133. Applicable Federal Rate (AFR) plus _____ percent.

134. Interest compounded: monthly quarterly semi-annually annually

X. Additional Payment Terms

135. Include a provision requiring mandatory payments of _____ percent of distributions from the Company paid to the purchaser on the Membership interests purchased.

136. Include a provision requiring a minimum semi-annual payment of not less than \$_____.

137. Include a provision authorizing the Maker of the note to setoff any amounts owing from the purchaser to the Maker against obligations of the Maker under the note.

138. Include a provision giving the seller the right to examine the Company's books and records in the event of default.

Y. Default Interest Rate and Late Charges

139. If the Note is in default, interest rate increased by _____ percent.

140. Include a provision for late charges.

141. Late charges will be imposed if payment is _____ days late.

142. Late charges equal _____ percent of the payment due, but not less than \$_____.

143. Select to include any of the following as actions that cause a default under the Note.

Loaning, advancing or contributing capital to or guaranteeing the obligations of another entity or person other than in the ordinary course of business.

Merger or consolidation of the Company with any other entity.

Reorganization of the capital structure of the Company.

Describe any other default provisions:

144. Include a provision limiting voting rights of the purchaser and the purchaser's rights to receive distributions when the Note is in default.

Z. Covenant not to Compete

Include a provision for a Covenant not to Compete for:

145. Do not include a Covenant not to Compete. Skip to Question *.

146. Termination of employment of any Member.

147. Any Member who sells the Member's Membership interest other than a Bona Fide Offer or Forced Sale.

148. The Covenant not to Compete will last _____ months (should not exceed three years).

149. The Covenant not to Compete extends to customers with whom the Company negotiated for the sale of its products or services within _____ days prior or subsequent to the Member's termination.

150. Describe the geographical area to which the Covenant not to Compete extends, e.g. "a radius of 5 miles of the Company's principal place of business" or "Maricopa County, Arizona."

Caution: An Arizona court will not enforce a Covenant not to Compete if the duration is not reasonable (too long) or the scope (territory or geographical location) is not reasonable (too much area). For example, if the Company's only business is a retail store at Central Avenue and Camelback Road, Phoenix, Arizona, that gets 95% of its customers from within a two mile radius, a court will not enforce a Covenant not to compete that is: (i) the U.S., (ii) the State of Arizona, (iii) Maricopa County, or (iv) within ten miles of the store. It's easy to determine when a standard is too broad (see the above example), but it can be impossible in many situations. Unfortunately most of the time we cannot predict if a court will or will not enforce a Covenant not to Compete. If you are not a risk taker, it is best to be conservative in the duration and the scope.

AA. Damages for Breach of a Covenant not to Compete

Select one of the following options for calculating damages if there is a breach of the Covenant not to Compete:

- 151. Specific performance through injunctive relief as only remedy.
- 152. Liquidated damages of \$_____ per day in addition to injunctive relief.
- 153. Liquidated damages equal to _____ percent of the value of the breaching Member's Membership interest in addition to injunctive relief.
- 154. Liquidated damages equal to a forfeit of payments due under the Buy-Sell Agreement in addition to injunctive relief.
- 155. No specific damage provision.
- 156. Include a provision that if the Company believes that a Member is in breach of the Covenant not to Compete, payments may be withheld until a final determination is made as to whether the Member has in fact violated the Covenant not to Compete.

BB. Confidentiality Agreement

Select one of the following options for calculating damages if there is a breach of the Confidentiality Agreement:

- 157. Do not include a provision for protection of "Confidential Information." Skip to the next major Section.
- 158. Specific performance through injunctive relief as the only stated remedy.
- 159. Liquidated damages equal to _____ percent of the value of the breaching Member's Membership interests in addition to injunctive relief.
- 160. Liquidated damages equal to a forfeit of payments due under the Buy-Sell Agreement in addition to injunctive relief.
- 161. Include a provision that if the Company believes that a Member is in breach of the Confidentiality Agreement, payments may be withheld until a final determination is made as to whether the Member has in fact violated the Confidentiality Agreement.

CC. Release from Indebtedness Provision

- 162. Do not include any release from indebtedness provisions. Skip to the next major Section.
- 163. Include a provision that upon purchase of the minority Member's Membership interest pursuant to the Buy-Sell Agreement the Company and remaining Member(s) will take steps necessary to release the withdrawing Member from any Company debt and indemnify the terminated Member from any loss arising from the Company debt.
- 164. Include a provision requiring the remaining Members and spouses to give the terminated Member a personal guaranty with respect to the indemnification.

DD. Members as Managers

It is not uncommon in a Buy-Sell Agreement to include a provision requiring that all Members serve as a Manager. It is very important to check your state law on this issue and edit the language to reflect your state law. Select one of the following options:

- 165. Don't include a provision requiring Members to serve as Managers.
- 166. Fix the number of Managers equal to the number of Members (husband and wife who own their interest jointly are treated as one Member) and each Member will serve as a Manager.
- 167. Fix the number of Managers equal to the number of Members (husband and wife who own their interest jointly are treated as one Member) plus one. Each Member will serve as a Manager and the other Manager will be elected by a majority of the Members.
- 168. Give each Member (husband and wife who own their interest jointly are treated as one Member) the right to elect one Manager.
- 169. Require that Managers must be Members.

EE. Subchapter "S" Provisions

The Subchapter S provisions only apply to LLCs that are taxed under Subchapter S of the Internal Revenue Code of 1986 (the "Code"). Entities with this type of federal income taxation are commonly referred to as "S Corporations" for tax purposes.

- 170. Include Subchapter "S" termination provisions.
- 171. A Subchapter "S" Election can be terminated by a vote of the Members owning _____ percent of the voting Membership interests.
- 172. If a Member terminates the Member's interest while the Company when a Subchapter "S" election is in effect, Members owning _____ percent of the voting Membership interests will determine whether items of income shall be allocated to the withdrawing Member on a pro rata basis as provided in Code Section 1377(a)(1) or applied as if the taxable year consisted of 2 taxable years as provided in IRC Section 1377(a)(2).

FF. Restrictions on Company Action

- 173. Include a provision restricting certain Company actions during any period of time the Company is in default on payment of a promissory note given to a selling Member.

GG. Additional Provisions

Describe any additional terms or conditions that you want to include in the Buy-Sell Agreement.

DOCUMENTS TO DELIVER TO THE FIRM

If KEYTLaw, LLC, did not form your Company, please send the Company's Articles of Organization to Richard Keyt at rickkeyt@keytlaw.com or fax to 602-297-6890 – no cover sheet required.

SIGNATURE

It is important that the information in this Questionnaire be correct because KEYTLaw will use the information in dealing with the lender(s).

Signature of Manager or Managing Member

Print Signer's Name

HOW TO DELIVER THIS SIGNED QUESTIONNAIRE TO KEYTLAW

If you have any questions about this Questionnaire, call at 602-906-4953, ext. 1 or email Richard at rickkeyt@keytlaw.com.

1. **Email Method:** Print this Questionnaire then sign it. Scan the signed Questionnaire and save it as an Adobe .pdf file on your computer. Send the saved file as an attachment to an email message to rickkeyt@keytlaw.com.
2. **Fax:** Fax this signed Agreement to Richard Keyt at 602-297-6890. You do not need a cover sheet.
3. **Snail Mail:** Mail or deliver this signed Agreement in a sealed envelope addressed to:

Richard Keyt
KEYTLaw, LLC
3001 East Camelback Road, Suite 130
Phoenix, Arizona 85016