



# **Curd, Galindo & Smith, LLP**

## **A t t o r n e y s   A t   L a w**

WINTER 2006

Brought to you by  
**Curd, Galindo &  
Smith, LLP**  
**Attorneys At Law**

301 East Ocean Boulevard  
Suite 460  
Long Beach, CA 90802  
562-624-1177  
1-800-300-2300  
FAX: 562-624-1178  
e-mail: [jsmith@cgsattys.com](mailto:jsmith@cgsattys.com)

**OFFICE HOURS**  
Monday-Friday  
8:00 a.m.-5:00 p.m.  
*Saturdays and Sundays  
by appointment.*

### **BANKRUPTCY PRACTICE**

- Bankruptcy—  
Chapters 7, 11, & 13
- Weekend & evening  
appointments
- Business reorganizations
- Debtor & creditor rights

**BANKRUPTCY  
PERSONAL INJURY  
REAL ESTATE  
GENERAL BUSINESS  
LITIGATION**

## **Buy-sell agreements for small businesses**

The transfer of ownership interests in a small business should take into account all of the considerations that make each business, especially a family-owned business, unique. The vehicle for accomplishing the transfer is usually called a buy-sell agreement. Its name barely begins to describe the buy-sell agreement's various purposes. With professional advice, the agreement can be tailored to meet the objectives of each small business, whether the business is in the form of a close corporation, partnership, limited liability company, or some other structure.

By creating a market for the ownership interest of a shareholder who has retired, become disabled, or died, a buy-sell agreement ensures that such an interest can be converted into cash when cash is more important than having shares in the company. Since small businesses often pay out most or all of their profits in salaries, an equity interest in the business would be much less valuable if its owner was not assured of being able to sell that interest back to the business or to other shareholders.

### **Valuation of the business**

When a triggering event in a buy-sell agreement causes the interest of one owner of a business to be purchased by other owners, or by the business as an entity, a critical issue is placing a dollar value on that interest. It is difficult to set a market value for shares in a closely held corporation, whose agreement can set the price for shares according to a predetermined formula, value as shown on the company's books, an appraisal by a third party, or some other method. In any event, it is important that the provisions on the valuation and purchase price of shares in the company be kept current.

### **Orderly transition of ownership**

A buy-sell agreement also may serve as an orderly method for maintaining control over the



company despite a change in the composition of its owners. In a family-owned business, this may mean a clause in the agreement effectively keeping the business in the family by allowing remaining family members to buy the interest of a departing owner. For children who decide not to carry on in the business, cash, perhaps generated by life insurance on a senior owner, might be an alternative to inheriting part of the business.

A typical buy-sell agreement for a family business provides that, on the death or departure of one shareholder, the remaining shareholders have the right to purchase his or her shares. Those participating in the buyout usually acquire those shares in an amount commensurate with their holdings. An alternative could give the corporation itself the right to purchase shares. However, this option may bring into play laws for the protection of creditors that limit the power of corporations to purchase their own shares. A hybrid approach sometimes used in buy-sell agreements allows the business to

*(continued on back page)*

*We take your family's legal needs personally.*

## Trademarks, service marks, and trade dress

Businesses interested in protecting their corporate identities, product names, or service identification should contact legal counsel.

The following is a brief outline of three important trademark concepts:

### Trademarks

Businesses customarily file trademark applications with the U.S. Patent and Trademark Office to establish exclusive identities for products as well as to differentiate their products from competitors'. A trademark may be any distinctive domain name, graphic image or symbol, logo, phrase, slogan, word, or other device. Registration may protect the trademark holder should another business attempt to use a similar trademark for commercial gain. Some examples of highly protected trademarks include the "swoosh" for Nike® footwear, Coca-Cola's® script logo for soft drinks, and the golden arches for McDonald's® restaurants.

### Service mark

Commercial enterprises obtain trademark-like protection for their services, events, and Web sites by filing for service marks. Highly recognizable service marks are eBay's® online marketplace logo, H&R Block's® tax preparation signage, and Sprint's personal communication devices insignia.

### Trade dress

Businesses also may protect the distinctive shape or color of the packaging or design for which they are known. Familiar examples are the UPS™ brown delivery truck, Gateway® computer "cow" packaging, and Blockbuster® video rental store exterior design.

## When to call an attorney

Here are five instances when a business's owner or managers should consult an attorney without delay:

### Lawsuits

If someone brings an action against your firm, do not respond. Call your lawyer.

### Business start-ups

Obtain counsel regarding ownership structures, owner and vendor contracts, stock issuance, and tax implications.

### Buying or selling businesses

Seek a lawyer's guidance for issues involving setting a price, calculating tax implications, and determining sale terms and conditions.

### Employee-relations difficulties

An employment-law attorney can advise on operations involving hiring, firing, discrimination, compliance, labor issues, or employee fraud.

### Intellectual property

Contact a lawyer for help with issues involving misappropriating trade secrets, patents, copyrights, or trademarks.



## TRADEMARKS

Businesses register trademarks to identify their products or services and to distinguish them from their competitors'. Trademarks, which can come in the form of names, words, symbols, or graphic images, are often assigned to several well-known categories.

**FANCIFUL**—terms often created to serve solely as a trademark, such as Kodak™ or Xerox™.

**ARBITRARY**—words in common use, but which do not characterize the product or service, such as Bumble Bee™ tuna.

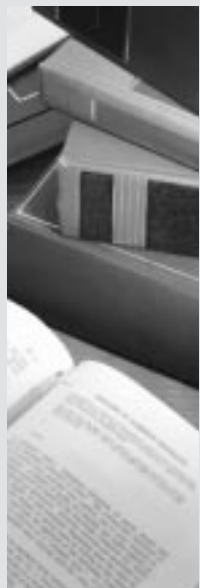
**SUGGESTIVE**—words implying a product's or service's values; Froot Loops™ cereal or Bounty™ paper towels are examples.

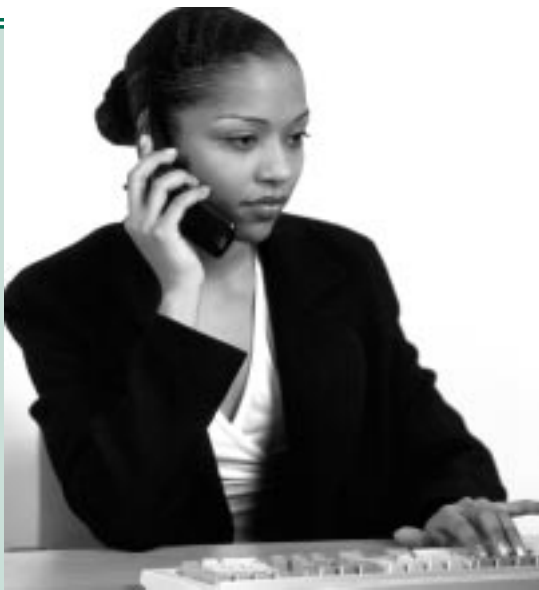
**DESCRIPTIVE**—concepts that address the use, size, characteristics, or effect on users—Holiday Inn™ hotels or Jiffy Time™ popcorn.

**GEOGRAPHICAL**—names associated with places, such as North American Van Lines™ or American Airlines™.

**PERSONAL NAMES**—names from founders or key persons, such as Jimmy Dean™ sausages or Estée Lauder™ cosmetics.

*Trademarking a business, product, or service name may involve many other considerations, such as challenges with generic words or unintended meanings abroad. Contact an attorney for further guidance.*





## Home-office businesses

Entrepreneurs planning to start home-office businesses should obtain legal counsel.

The desire to start a business of one's own may derive from a number of motivations. These may include coming up with a great marketing idea, wanting freedom from employers, having been downsized, or experiencing boredom with retirement. Whatever the reason, operating a commercial enterprise from one's residence requires serious planning.

### Business entity

An attorney can counsel on the appropriateness, benefits, liabilities, sales and business taxation implications, name-search needs, and costs to legally form a sole proprietorship, a partnership, or an "S" or other corporation.

### Municipal and zoning regulations

A lawyer also can advise on licenses and approvals:

- Kinds of home businesses allowed, such as public relations, beauty salon, music instruction, physical therapy, and others
- Square-footage caps
- Hours-of-operation restrictions
- On- and off-street parking regulations
- Staff-size limitations
- Business entrance location rules
- Exterior advertising signage guidelines

Please call with home-office business-planning questions.

## What's an LLC?

Those who are planning to start new commercial ventures grapple with selecting business formations to best suit their needs. For some it's a corporation, perhaps with Subchapter S status. Others may opt for a general or limited partnership or a sole proprietorship.

An increasingly chosen business form is the limited liability company (LLC), which offers a number of desirable operating benefits:

- LLCs are relatively easy to set up, and our courts recognize their legal authority to conduct business.
- LLCs provide legal protection in that no participant, called a "member," in an LLC is personally or individually responsible for the company's debt obligations, profits, or losses. The entity shelters members' personal assets from liability.
- The LLC itself pays no taxes but provides "pass-through" taxation benefits to its members.
- LLCs are not subject to cumbersome regulations governing other entities. Members are not required to set up boards, hold annual meetings, make resolutions, or maintain minutes.

## DISPUTE ARBITRATION

### *Our approach*

Arbitration can be an effective alternative to civil litigation to resolve any number of contentious issues with stakeholders. These can include consumer complaints, labor or employment disagreements, construction or real estate disputes, financial or banking conflicts, and many others.

Here is how our firm approaches meeting the arbitration needs of business executives who agree to arbitration to settle disagreements. We will...

- meet to listen to your background and input.
- attempt to select arbitrators best suited to the dispute's focus and contract terms.
- represent you at any prehearings.
- confer with you to plan the actual arbitration.
- present your case plainly and accurately, with all required background.
- present affidavits or witnesses to support your argument.
- keep you updated on arbitration progress.



*Arbitration can be an effective alternative to civil litigation. Please contact an attorney with arbitration questions.*

© Copyright 2006. Newsletters, Ink. Corp. All rights reserved. Printed in the U.S.A. [www.newslettersink.com](http://www.newslettersink.com)  
The information included in this newsletter is not intended as a substitute for consultation with an attorney. Specific conditions always require consultation with appropriate legal professionals.

## Buy-sell agreements for small businesses

*(continued from front page)*

buy its own shares, only to the extent permitted by relevant statutes, but the remaining shareholders could then purchase any shares not acquired by the corporation.

### Avoid conflicting terms

Since one of the triggers for application of a buy-sell agreement is a shareholder's death, shareholders should avoid conflicts between the terms of the agreement and their estate plans. When the terms of an agreement and a will cannot easily be reconciled, the odds increase for litigation, rather than the smooth transition for which the agreement was designed. If a will predates the agreement, it may be necessary to draft a new will that is consistent with the agreement. A less complicated approach is to amend the will with a codicil providing that business interests are to be disposed of according to the buy-sell agreement.

Consistency between an estate plan and a buy-sell agreement is important not only as to disposition of shares, but also as to voting or management rights in the company. A shareholder should determine whether his estate or heirs should have such rights, and then be sure that the documents accurately reflect the shareholder's wishes. Similarly, a shareholder should consider whether limits on his executor's voting rights are desirable, so as to avoid the possibility that the executor will act to frustrate the shareholder's intent.

One purpose of any contract is to avoid future disputes between the parties by establishing rights and duties for future contingencies. Aside from dealing with the substantive issues raised by transferred ownership, a buy-sell agreement also can head off conflict, or at least help solve it, by providing for a form of alternative dispute resolution and mediation.

## Thanks *for the referrals*

Everyone in our firm would like to thank those of you who have referred potential clients to our law office.

Referrals are a very important part of our law practice and have been a vital component in our growth.

We greatly appreciate each of our clients, and we take special pride in referrals since they mean someone went out of their way to help us and liked us enough to give our name to a relative or friend.

Our past clients, current clients, other attorneys, accountants, bankers, friends, and families have all been instrumental in building our firm.

If someone you know asks you for the name of an attorney, we hope that you will consider giving them our name and have them contact us.

*Thank you.*

## DOCUMENT SHREDDING

Corporate scandals gave rise to a surprising new industry: reconstructing shredded documents. *Business Law Today* reports that law firms pay companies using sophisticated character-recognition software up to \$2,000 to have a cubic foot of shredded records reconstructed into about 100 pages.