

## The Texas Shootout Provision to Resolve Owner Disputes

What happens when two, or more, non-controlling (usually equal) owners become locked in a bitter dispute but neither is able to fire or get rid of the other? How can a buy/sell agreement be designed to resolve this unfortunate but, all too common, situation?

Owners starting a business together, usually have the same goals, the same aspirations, and an identical work ethic. If the business becomes successful, cash distributions and salaries remain equal; but one owner (at least from the other owner's perspective!) may lose focus, ambition, drive, or desire. Meanwhile, the other owner views herself as the glue holding the business together. In her opinion, her ambition and drive still burn as fiercely as the first day the business opened its doors.

In this situation, owners typically stop talking to one another or their attempts to discuss differences end in argument and barely-concealed hostility and contempt. The only resolution seems to be for one owner—usually the less dedicated one—to be bought out. But why would he want to get off the gravy train? He isn't working very hard yet enjoys the same income, the same status, and the same right to the future growth in value of the company as the owner who devotes all her waking hours to the business. The typical result is deadlock, and a slow decline in the company's fortunes.

If the dispute, usually regarding the future course of the business, reaches the "bitter" threshold, there is only one resolution. One of the owners must be forced to sell his or her stock and get out of the business. Here is one way to manage this forceful-by-design exit.

### The Texas Shootout Provision

When you design your buy/sell agreement, you can include a provision that stipulates that either shareholder may offer to purchase the other shareholder's interest. The second shareholder must then either accept the offer and sell his stock or purchase the first owner's interest for the same price, terms and



**Michael Wildeveld, CEPA, M&AMI,  
CM&AP, CM&AA, CBI, CBB**  
[michaelw@veldma.com](mailto:michaelw@veldma.com)

**Veld Mergers & Acquisitions**  
[www.veldma.com](http://www.veldma.com)  
1 Park Plaza, 600  
Irvine, CA 92614  
[310-652-8066](tel:310-652-8066)

conditions spelled out in the offer. In other words, the second shareholder has only two choices: He must either accept the offer and sell his stock or turn the tables and buy the offering shareholder's stock.

At the conclusion of this buyout, there will be only one shareholder. We call this method the "Texas Shootout Provision" because at the end of the day, only one shareholder remains standing. It is a painful remedy to be sure. It is undertaken only when there is no alternative that the parties can agree upon. Simply having the Texas Shootout Provision included in the buy/sell agreement encourages owners who are not getting along with each other to agree to a buyout of one party or the other. If they do not, the foot-dragging partner cannot prevent the eventual buyout of his stock.

You can design the Texas Shootout Provision to offer one other alternative. It could allow either party—if both parties can't get along—to dissolve the business, pay off its debts, distribute the assets, and start all over. The bottom line is this: If co-owners, neither of whom have the ability to get rid of the other, reach a deadlock, the existence of a Texas Shootout Provision in a buy-sell agreement provides an effective, if painful, remedy.

*The information contained in this article is general in nature and is not legal, tax or financial advice. For information regarding your particular situation, contact an attorney or a tax or financial professional. The information in this newsletter is provided with the understanding that it does not render legal, accounting, tax or financial advice. In specific cases, clients should consult their legal, accounting, tax or financial professional. This article is not intended to give advice or to represent our firm as being qualified to give advice in all areas of professional services. Exit Planning is a discipline that typically requires the collaboration of multiple professional advisors. To the extent that our firm does not have the expertise required on a particular matter, we will always work closely with you to help you gain access to the resources and professional advice that you need.*

*This is an opt-in newsletter published by Business Enterprise Institute, Inc., and presented to you by our firm. We appreciate your interest.*

*Any examples provided are hypothetical and for illustrative purposes only. Examples include fictitious names and do not represent any particular person or entity.*