

# BUSINESS

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New Jersey residents are having to dig deeper into their wallets to keep their homes, according to census data.

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Credit markets are to thaw even after bailout announcement.

DOW

372.75 Close 11,015.69

S&amp;P 500

47.99 Close 1,207.09

NA

94.92

09.23.08

## ASK A LAWYER

### Terms of buyout should be made clear

**Q. My buy-sell agreement says I get bought out at the fair market value of my stock. Why does my partner say that means 60 percent of what my stock is really worth?**

Many buy-sell agreements provide for a buyout at "fair market value." In other words, upon a triggering event such as death, disability, retirement, divorce or bankruptcy, the remaining business partner(s) will buy out the departing partner for a price equal to the "fair market value" of his or her interest in the business.

Many buy-sell agreements, however, do not specify whether the fair market value should take into account valuation discounts typically applied to non-marketable, minority business interests. Such discounts can range from 20 percent to 45 percent and can significantly affect the appraised value of the business interest to be sold. If the buy-sell agreement does not provide otherwise, most appraisers will consider discounts in a determination of fair market value.

The terms of a buyout are critical elements of a buy-sell agreement. An all-cash buyout is very different from a seven-year buyout. The buyers (the remaining business partners) generally are concerned about the cash flow of the business, while the sellers (usually the family of the departing business partner) generally would like to get paid as quickly as possible. A balance must be struck between the two, and the buy-sell agreement should clearly reflect both parties' expectations. Life insurance or disability insurance often makes up the cash portion of a buyout on death or disability, but does not provide cash upon retirement. The buy-sell agreement should address each type of triggering event.

Also note that, for estate-tax purposes, the IRS is not bound by a buyout amount set forth in a buy-sell agreement, especially if that amount is based on a formula valuation or "certificate of agreed value" out of date. A worst-case scenario for a business owner could occur if the buy-sell agreement provides for an artificially low value (and the family receives less), but the Internal Revenue Service successfully asserts a higher value (and greater taxes are due).

Buy-sell agreements should be reviewed periodically by an attorney and kept current to avoid these kinds of issues.

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Do you have a business question for a lawyer? Send it to [Business-News@northjersey.com](mailto:Business-News@northjersey.com).