

Golden Bullets

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BUSINESS CONTINUATION PLANNING: THINGS TO CONSIDER

Many of my **clients need help making plans to transfer their businesses** one day. Whether they intend to sell to a third party at retirement, or want their family members to take over in the event of death, written plans are a key part of any strategy.

I work with my business owner clients to protect the business and to make sure the owner's goals are met. A **properly drafted, implemented and funded buy-sell agreement can help achieve those goals in many cases.**

If the buy-sell agreement is badly written or the buy-sell funding is mismanaged, the plan won't work. Furthermore, even if the arrangement is right at the time it's put in place, it needs to be reviewed regularly to make sure the objectives are being met.

Since I want to do a good job helping my business owner clients, I am constantly learning to try to improve my skills. I recently heard about **three court cases** in which the parties implemented flawed plans that ended up with **owners and families litigating** over money and the future of the business. I thought you might like to know about these cases as well.

1. *Lynn v. Lynn* is a North Carolina appeals court case in which the shareholders of a company agreed that the owners would be bought out by the company in the event of an owner's death. The owners bought life insurance to help fund the buyout obligation, but the policy's beneficiary was inconsistent with the requirements of the buy-sell agreement. **The surviving owners and the deceased owner's spouse ended up in court fighting over money and business ownership.** The court decided in favor of the surviving owners.

2. The *Baker* case, from Wyoming, was similar to the *Lynn* case in that the insurance needed to fund a death-time buyout of a deceased owner's shares was never purchased by the business. **The surviving business owners thought that the decedent would transfer a personal policy to the business—but that never happened.** After the owner's death, the surviving spouse and surviving owners ended up in a fight over what the insurance death benefit was to be used for. The court decided that more fact-finding was needed—and the case (and its associated legal expenses) continued.
3. In the *D3 Interiors* federal court case, one of the business owners bought an insurance policy to provide money for a business buyout in the event of a disability. While this policy was properly owned by the business, the parties failed to enter into the kind of buy-sell agreement required by the insurance policy. As a result, after the disability of one of the owners, **the court ruled that the insurance company did not need to pay the claim.**

These cases support an important point. There is much that can go wrong when business owners implement business continuation plans. I do my best to keep my own clients' plans on track by helping to coordinate the work of the whole professional team, and by keeping in touch so that adjustments can be made when circumstances change.

Have you made detailed, written plans for the continuation of your closely held business? Are those plans complete and up-to-date? I can help you match your intentions to your actual plans. Please don't wait until it's too late.

AS ALWAYS, PLEASE FEEL FREE TO CALL TO DISCUSS THESE OR OTHER FINANCIAL SECURITY ISSUES OF CONCERN.

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