EXHIBIT K

BUY/SELL AGREEMENT ARRANGEMENTS

Buy/Sell Agreements are an essential component of creditor protection and wealth conservation planning for anyone who has partners or fellow shareholders in a significant practice or investment company.

This is discussed in Chapter 25 ("The Biggest Mistakes Doctors Make") under the category of Failure of Multiple Physician-Owned Practices to Have Appropriate Buy-Sell and/or Shareholder Agreements in Place.

Creditors can be prevented from taking over ownership of corporate interests, or may be bought out at a relatively low value, if Shareholder or Operating Agreements and ownership certificates are appropriately handled.

The design and implementation of Buy/Sell Agreements can also have a very significant impact upon creditor and wealth preservation planning, and we commonly see significant mistakes made in the design and drafting of such agreements and with respect to the ownership and maintenance of life insurance and disability buy-out insurance that has been purchased with hard earned money.

There are several different kinds of Buy/Sell Agreements for physician practices and investment arrangements, and these are commonly set forth in a "Shareholder Agreement", "Buy/Sell Agreement", or an "Operating Agreement". The terminology of the name or names of agreements that provide buy-in and buy-out arrangements vary significantly, and important provisions associated therewith may be found under corporate by-laws, employment agreements, severance pay agreements, and other legal documents.

A LOGICAL GUIDE TO SELECTING A BUY/SELL AGREEMENT ARRANGEMENTS

"A Logical Guide to Selecting a Buy/Sell Agreement Arrangement: Traditional Choices are Not Always the Best" written by Alan S. Gassman, Copyright © 2009

1. Entity Redemption Arrangements. The company owns the life insurance policy and is the beneficiary thereof. Upon receipt of the life insurance proceeds, the company is to use such proceeds to buy out the deceased owner.

Will there be enough money to (a) buy out the deceased owner and (b) have the deceased owner released from any and all guarantees and obligations associated with the business?

(a) If it is not practical to have the deceased owner released for contractual or other reasons, should the part of the life insurance proceeds that would otherwise be kept by the company as key man insurance be escrowed pending satisfaction or releases of any and all guarantees that the deceased owner may have responsibility for.

(b) How can the deceased owner's family be sure that the monies received from the life insurance policy will actually be used to satisfy contractual buy-out agreements?

(c) What if the company claims that for some reason the agreement is not enforceable or that there are claims against the deceased owner that offset what would be paid to him or her?

(d) What if the company has a major creditor claim against it (what if the deceased owner died in a car accident that he or she caused while driving a company vehicle and the company is now being sued by others who died in the accident?)

(e) What if the company goes into bankruptcy and the family of the deceased owner becomes just another creditor in a bankruptcy proceeding?

(f) For income tax purposes the remaining shareholders do not get a stepped up basis for the stock purchased. The stock simply becomes treasury stock.

2. Cross Purchase Agreements can be considered to avoid the above potential problems.

Each owner may own the policy or policies on the other owners. Thus the policy proceeds should be protected from creditors of the company.

Also, each purchasing shareholder will get a tax basis in the purchased stock equal to the purchase price thereof.

(a) However, policy proceeds will not be protected from creditors of the surviving owner who would receive policy proceeds.

(b) Also, contractual disputes could result in the surviving owner using the funds for other purposes while litigating over the obligation to pay and becoming insolvent.

(c) Further if there are more than 2 shareholders, then on the death of one owner the policies owned on the others would need to be transferred to rebalance between them, thus causing issues under the transfer for value rules. For example, if there are 4 equal shareholders there have to be 4 polices each owned 1/3rd each by each 3 shareholders on the fourth, and if one leaves the company the remaining 3 policies have to be readjusted as to ownership. Under the transfer for value rules this could cause the proceeds of a life insurance policy to be subject to income tax when the insured person dies.

3. Hybrids of the Above Types of Agreements.

Consider a Trusteed Corporate or Cross-Purchase Agreement. Under these arrangements the owner and beneficiary of the policy can be a trust company, a law firm, or another trusted institution as trustee for the benefit of the company in a Trusteed Redemption arrangement, or for the benefit of the other shareholder or shareholders in a Trusteed Cross-Purchase arrangement. The trust agreement can require that the policy proceeds be held safely until sale and used solely for redemption or cross-purchase purposes. This at least assures the surviving family that the life insurance proceeds will not be absconded with.

Generally for tax purposes the policy needs to be considered as owned and payable to the company in a redemption arrangement, or to the surviving owner or owners in a cross-purchase agreement. Could a state court or a bankruptcy court override the trust agreement where there are creditors of the entity in a redemption arrangement, or creditors of the remaining shareholders in a cross-purchase arrangement?

There would be a purchase price tax basis for the other shareholders if the Trustee is appropriately characterized as an agent for the other shareholders.

4. The Optimal Solution: Use of a Related Partnership to Facilitate Purchase.

Because of the above concerns, oftentimes a separate limited partnership or limited liability company is established to own and facilitate the life insurance buy-out arrangement.

This entity will be taxed as a partnership to avoid the transfer for value rules that would otherwise be problematic if there are more than 2 owners and shifts of ownership in the policy would apply if there was a redemption arrangement.

The transfer for value rules do not apply when there is a reapportionment of entitlement to the proceeds of life insurance for use in a Buy/Sell arrangement between partners under a federal tax partnership. The partnership may have an additional investment besides the life insurance to help assure that it is recognized as a partnership for federal income tax purposes.

If the separate partnership is purchasing the interest in the entity on behalf of its surviving partners, who are the surviving owners of the operating entity, then a creditor of the company would have no claim against the policy proceeds, and a creditor of an individual "partner" in the partnership entity might have a claim against the member or partnership interest of the individual partner, but this would not permit the creditor to reach into the partnership to have a claim against the policy proceeds if appropriate charging order protection applies.

The above strategy was blessed by the IRS in Private Letter Ruling 200747002, which discussed having term insurance held under an LLC taxed as a partnership to facilitate the Buy-Sell arrangement. Under this Private Letter Ruling the manager of the LLC was a trust company that was required to use monies contributed to the LLC to purchase and maintain life insurance to fund a separate cross-purchased Buy-Sell agreement between three related shareholders. It would be possible to have permanent life insurance and to have special allocations of entitlement as to policy values under an LLC/partnership agreement. See The Advanced Tax Planner Volume 5, Issue #1 May-June 2008 at www.zelllaw.com and the ING publication entitled Buy-Sell Planning Using Life Insurance/Buy-Sell Arrangements Using a General Partnership.