

Legal NEWSLETTER

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This publication is not intended to provide legal advice, but rather insight and awareness into legal issues that we feel could be useful to our clients and friends. Actual resolution of legal issues depends upon many factors, including variations of facts and state and federal laws.



LIABILITY CONCERNS OF DOG OWNERS

By Attorney Richard H. Fuller

Dog owners love their dogs. However, while our dogs give us great companionship, they can also create a liability concern, costing the owners substantial amounts of money if the dogs cause property damage or personal injuries. The statistics show that there are approximately 4.5 million dog bites per year in the United States and approximately 750,000 dog bite victims who require medical care each year. In 2015, more than 28,000 reconstructive surgery procedures were performed because of dog bites.

Under Wis. Stat. § 174.02, an owner of a dog is strictly liable for the full amount of damages caused by property damage or bodily injuries caused

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BUY-SELL AGREEMENTS: WORKING FOR THE BEST AND PLANNING FOR THE WORST

By Attorney Steven H. Thompson

However optimistic you are about the future of your business, the reality is at some point your business will either end or change hands. The best-case scenario is after many years of success, your business partners or a successor will fund a comfortable retirement for you by purchasing your interest in the business. The worst-case scenarios generally involve death, disability, divorce, disagreement or bankruptcy of you or your business partners. From the best-case to the worst, both you and your business may benefit from having a Buy-Sell Agreement in place.



Buy-Sell Agreements are sometimes called “business pre-nups” because they serve a similar function to the agreements soon-to-be married couples enter into which direct how their assets would be divided upon their death or divorce. Buy-Sell Agreements are binding contracts which spell out who business owners can sell their interests to, on what terms and how the price will be determined. When the business is going well, and all the owners are getting along, it is much easier to agree on equitable terms than when tensions are high at the time of a buy-out and parties have little incentive to negotiate fairly. By discussing issues in advance and setting the ground rules for what happens upon the occurrence of certain events, business owners can avoid future arguments and limit the potential for expensive litigation down the road.

Starting with the best-case scenario, a voluntary retirement from a successful business, Buy-Sell Agreements can help define an exit strategy and ownership succession. The Agreement can state which

valuation method will be used for the exiting owner’s share of the company. The Agreement can also help define the structure of the exit to minimize taxes. For business owners hoping to fund a large part of their retirement using these proceeds, not knowing their buy-out price or tax burdens in advance can seriously jeopardize their ability to plan for retirement. These Agreements also are helpful in getting owners to think about who their buyers may be. If a buyer must be found unexpectedly or on short notice, the purchase price will likely be much lower than the true value.

As great as you and your business partners may get along now, it is possible at some point business or personal disagreement will rise to the level where one of you will be forced to leave the business, or a business owner may unexpectedly exit the business for personal reasons. In these situations, you and the exiting owner may have different opinions about what fair buy-out prices and procedures would be. In the absence of an Agreement,

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TRUST SETTLEMENTS: HOW TO NAVIGATE THE PROCESS

By Attorney Amy A. Janke

Regardless of the type of estate plan you have set up, if someone passes away, there are a number of matters that will need to be addressed. A trust sets up the terms for how a trustee should administer the affairs and assets of the deceased. Below are discussion points for some of the most common matters associated with the trust settlement process.

Will: If there is an original last will and testament, it should be filed with the Register in Probate in the county of which the deceased was a resident prior to passing. Whether there is a trust governing disposition of assets or not, filing the original last will and testament is required under Wis. Stat. § 856.05(1).

Debts: A creditor claims notice should be published in the newspaper to bar creditor claims after the notice period. Debts of the deceased should be paid. Often, there are many medical expenses that have been incurred immediately prior to passing. Those types of expenses have priority to be paid and should be paid promptly. Likewise, funeral/burial expenses have priority and should be paid promptly.

Credit Cards and Credit Bureaus: If there are credit cards in the deceased's name, those companies should be contacted and provided a death certificate. Once those credit card accounts are settled and closed, all the deceased's credit cards should be destroyed or discarded. Similarly, to avoid additional credit and fraud issues, the three credit bureaus (Equifax, Transunion, and Experian) should be notified of the deceased's passing.

Real Estate: If there is real estate in the deceased's name, the real estate will need to be transferred from the deceased's name. The method used to



transfer the real estate in the deceased's name will depend on how the real estate is titled. There is no single sure-fire method to remove the deceased's name from the real estate and/or to transfer the real estate to the deceased's beneficiaries. Therefore, it is recommended that you consult your estate planning attorney to discuss how to address real estate titled in the deceased's name or in the deceased's trust to ensure the provisions of the trust are complied with.

Bank Accounts: If there are bank accounts in the deceased's name, you will need to know if: (a) those accounts have joint owners listed, (b) those accounts have any pay-on-death designations, or (c) those accounts are in the deceased's name solely.

Some think that because they have a trust, everything happens automatically. However, the trust settlement process requires involvement in addressing matters such as debts, real estate, wills and much more. If you find yourself in need of help navigating this process, contact our estate planning attorneys at Anderson O'Brien Law. ♦

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by a dog to another person, animal, or property.

If the owner of the dog is aware of a previous time when the dog, without provocation, caused serious injury to someone, then the owner of the dog will be liable for twice the full amount of damages caused by the dog biting someone again with sufficient force to break the skin and cause permanent injuries. The amount of damages may include pain and suffering, past and future medical bills, wage loss, and permanent disfigurement. In addition to monetary damages, a court may order that the dog be euthanized. Dog attack victims in the United States suffer over \$1 billion in losses every year.

Given that a dog owner is strictly liable for damages, what can a homeowner do to protect themselves? First of all, keeping one's dog on a leash and preventing it from roaming onto other people's property may help prevent unwanted injuries. Additionally, not allowing strangers or small children to approach one's dog will also prevent situations where the dog may feel threatened. Also, keeping the dog in the house when mail carriers or delivery people are approaching the home would be a prudent course of action.

No matter what precautions one takes, it cannot always prevent dog bites from occurring. To protect against this personal financial risk it would be wise to evaluate your insurance coverage at the present time. Depending on which insurance company you have, there are a wide variety of approaches taken by the insurance companies as to whether they cover dog bites or whether they exclude damages resulting from dog bites.

A way to minimize the financial risk associated with dog bites would be to purchase an umbrella insurance policy which provides additional protection for liability.

It is also important to note that if you do, in fact, have coverage for dog bites under your homeowner's policy, then the insurance company is obligated to provide a defense to you in the event you are sued in a lawsuit resulting from the dog bite. ◇

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these disagreements can escalate quickly and may result in litigation. By having the Agreement in place, the emotional impact of dispute and the tendency for people to believe they are being treated unfairly is checked by being able to look to an agreement everyone consented to beforehand for how the exit will take place.

Even if you and your business partners are lucky enough to always agree, events outside of your control, such as an owner's death, divorce, disability or bankruptcy, can lead to uncertainty as to who ends up with control of the business. When an owner dies, his or her share passes to their heirs. This often results in the spouse or children of a deceased business partner either wanting to participate in the business or, more commonly, wanting their proportionate share of the business earnings without having to work for them. Divorce can lead to a similar situation. If a business owner becomes disabled and unable to contribute to the business, their interest may become a burden on the other owners. Buy-Sell Agreements also often contain provisions for what happens if an owner becomes involved in criminal activity or becomes mentally unstable. If a business partner goes bankrupt, potentially for reasons having nothing to do with your business, creditors may be able to pursue their business interest to pay off what they are owed. Each of these situations result in either an unwanted business partner or an unexpected party demanding the value of the interest they now possess. A Buy-Sell Agreement can give the remaining owners rights to force out owners who have become a liability or purchase interests at a determined price to prevent heirs, ex-spouses or creditors from gaining control. These goals are often accomplished by terms which give the remaining owners the first option to purchase any interest transferred from an owner for a price determined in the agreement.

Whatever the future holds for you and your business, a Buy Sell Agreement can help make sure you are prepared for it. If your business already has a Buy-Sell Agreement in place, it may be time to review the document to make sure you understand it and that it still meets the needs of your business. ◇



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