

Wait-and-See Buy-Sell Arrangement

As a business owner you may not know how you want to deal with the succession issues arising from the death of a co-owner in the business: with a cross purchase agreement or with an entity purchase agreement. A wait-and-see buy-sell agreement lets you defer the choice to when the business interest is transferred, instead of committing you in advance.

A buy-sell agreement is a contract that identifies a buyer for your business interest in the event of your death, disability or retirement and establishes a fair price for your heirs. When taking the form of a cross purchase agreement, each owner becomes contractually obligated to buy the interest of the deceased or departing owner and the departing owner (or the estate) becomes obligated to sell the interest to the remaining owner(s). When taking the form of an entity purchase agreement, the business is a party to the agreement and contractually obligated to buy the interest of the deceased or departing owner, and the departing owner (or the estate) becomes obligated to sell the interest to the business. When funded with life insurance, the purchasing party(s) can be confident that some or all of the funds needed to complete the purchase will be available at the death of an owner.

A wait-and-see buy-sell agreement combines the cross purchase and entity purchase buy-sell agreements into one. Option One: At the death of a business owner, the company has an option to redeem the deceased's shares (the agreement resembles an entity purchase). Option Two: If the company does not redeem the shares within a time specified in the agreement, the right to purchase the deceased owner's shares passes to the surviving shareholders (where it resembles a cross purchase). Option Three: To the extent the surviving shareholders do not exercise their option, the company is required to redeem the remaining shares.

If the company is publicly traded it may not be able to lend money to an owner because of the Sarbanes-Oxley Act of 2002 making loans from public companies to directors and certain executive employees a criminal act.

The notice and consent provisions of Internal Revenue Code (IRC) §101(j) apply to any life insurance policy owned by an employer on an employee's life. To the extent that the death benefit exceeds the premiums paid it will be taxable income to the employer unless the employer has provided written notice to the employee of its intent to own a life insurance policy on the employee's life, has received that employee's written consent, and at least one of four safe harbors apply. One of the safe harbors is satisfied when the employer uses the death benefit to buy the insured's business interest from a member or members of the insured's family, or from the insured's estate or from a trust set up for a member or members of the insured's family.

In the arrangement illustrated below, the company owns a life insurance policy on the lives of each owner. It can use the proceeds of the life insurance to redeem a deceased owner's shares from the owner's estate, or it can lend money to the surviving owners to allow them to purchase the shares from the estate themselves.

*Underwritten by
Genworth Life and
Annuity Insurance
Company*

*Genworth Life
Insurance Company*

Lynchburg, VA

*Genworth Life
Insurance Company
of New York*

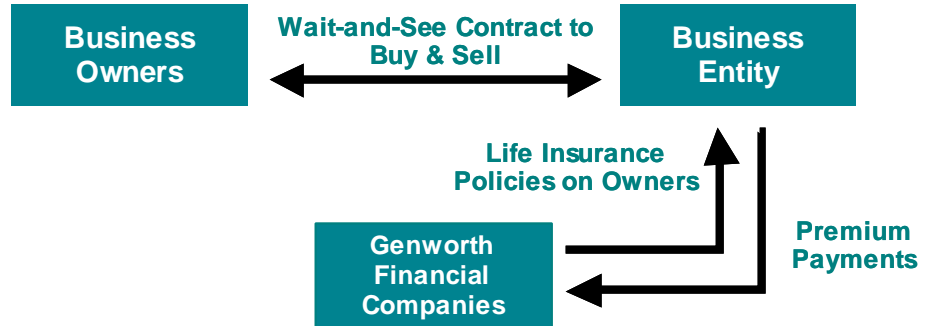
New York, NY



**INSURANCE
MARKETPLACE
STANDARDS
ASSOCIATION**

Genworth Life & Annuity,
Genworth Life and
Genworth Life
of New York
are members of the
Insurance Marketplace
Standards Association
(IMSA). Membership
promotes ethical market
conduct for individual
life insurance and
annuity companies.

PRIOR TO DEATH OR RETIREMENT



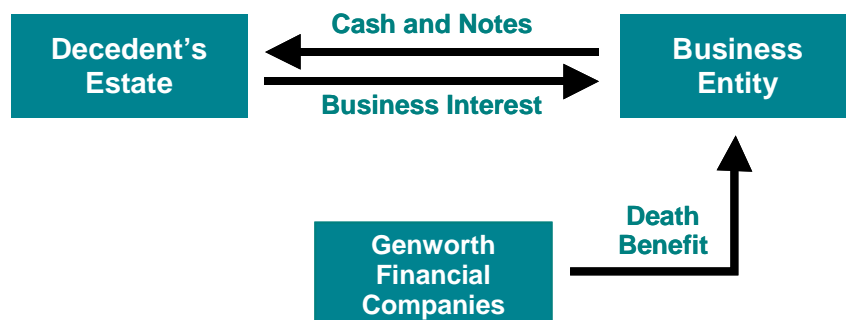
AT DEATH

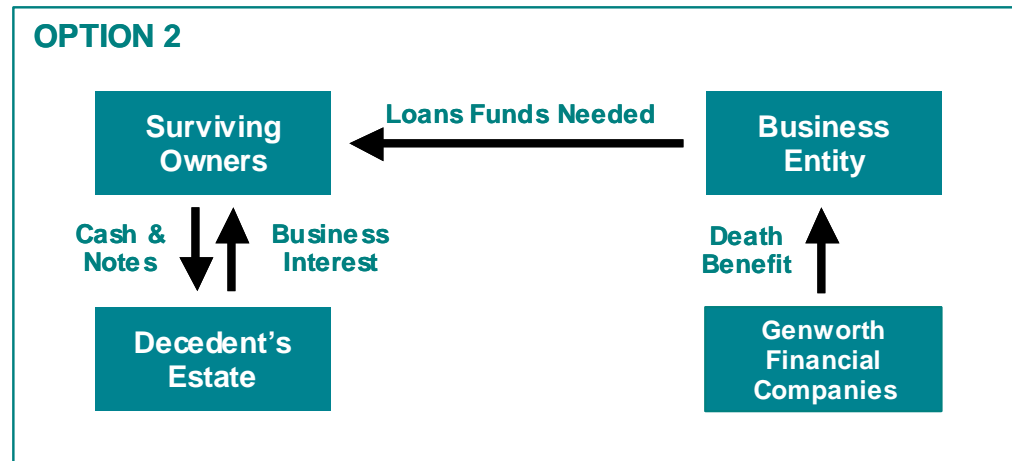
Step 1: The business entity receives the death benefit from a Genworth Financial company. The business may choose to redeem the deceased's shares. If it chooses not to do so, step 2 applies.

Step 2: The business entity lends the death proceeds to the surviving owners to allow them to purchase the deceased owner's business interest from his or her estate. If the surviving owners choose not to purchase the decedent's business interest (or if only some of them do so), step 3 applies.

Step 3: To the extent there are shares remaining in the decedent's estate, the business entity is required to redeem those shares.

OPTIONS 1 AND 3





ADVANTAGES:

- Gives the business a choice of buy-sell methods, cross purchase or entity purchase, depending on the business needs at the time the transfer of the business interest is effected.
- Identifies a ready buyer for the business and establishes a method of determining the purchase price for the business interest.
- Provides surviving owners with the assurance that they will be able to continue the operation of the business without interference from an unwelcome outside party or inexperienced heir.
- Gives both creditors and employees some assurance that the business will continue beyond the death, disability or retirement of one of the owners.
- Creditors may be more willing to extend credit to a business with a funded business continuation arrangement in place.
- When funded with life insurance policies, owners can feel more confident that some or all of the money needed to complete the buyout will be available at the death of an owner.
- If cash value life insurance policies are used to fund the arrangement, the business may opt to utilize any available cash value to assist in the purchase of the business interest at the retirement or withdrawal of one of the owners.
- Cash value within a life insurance policy may be accessed by the policyowners via policy loans, partial surrenders and withdrawals, subject to policy limitations or restrictions.¹

TAX CONSIDERATIONS:

- Death benefits paid under the policy to the business are generally received income tax free (see discussion above concerning IRC §101(j)).

- Premiums paid by the business on any life insurance policy funding the buy-sell arrangement are not income tax deductible.
- Any growth in the cash value in a life insurance policy is income tax deferred until removed from the policy.
- Cash value within a life insurance policy may be accessed by the business on a tax-favored basis provided the policy is not a modified endowment contract.
- If the life insurance policy is a modified endowment contract, any policy loans, partial surrenders and withdrawals will be subject to income tax to the extent there is gain in the policy values. Further, if the insured is less than age 59½, the taxable portion of the distribution may be subject to an additional 10% IRS penalty tax unless the distribution meets one of the allowable exceptions. Modified endowments are created when the premiums of cash value type policies exceed certain limits.
- A stock redemption agreement may be unwise for a family owned C corporation. At an owner's death, the attribution rules may cause the corporation's payment for that owner's shares to be treated as a dividend, and taxed to the extent of the owner's share of corporate earnings and profits.
- If the surviving shareholders exercise their right to purchase the deceased's shares, they receive those shares at fair market value on the date of the deceased's death (or alternate valuation date). If the value of the "new" shares is greater than the value of the shares as originally issued, then, on any subsequent sale of a surviving owner's business interest, the "new" shares will be sold for a smaller capital gain (and smaller tax liability) than the shares the owner already held. This favorable tax treatment is not available when the business entity redeems the deceased owner's shares.
- The agreement should not obligate the owners to purchase stock. If it does, and if they refuse to purchase the stock, and the entity redeems the stock, the redemption will be considered a taxable dividend to the estate of the deceased owner.
- Death benefits received by the business as beneficiary under the policy are not included in the insured owner's estate provided the insured did not possess any incidents of ownership in the policy within three years of death. Majority ownership in the business may result in the insured possessing an incident of ownership in the policy.

Disclaimer

The Genworth Financial companies wrote this content to help you understand the ideas discussed. Any examples are hypothetical and are used only to help you understand the ideas. They may not reflect your particular circumstances. You should carefully read your contract, policy, and prospectus(es), when applicable. What we say about legal or tax matters is our understanding of current law; but we are not offering legal or tax advice. Tax laws and IRS administrative positions may change. We did not write this material for use in avoiding any IRS penalty and neither you nor anyone else may use it for that purpose. You should ask your independent tax and legal advisors for advice based on your particular circumstances.

If this material states or implies that it was prepared or distributed to promote, market or recommend an investment plan or arrangement within the meaning of IRS guidance, or such use may be reasonably expected, then, as required by the IRS, the following also applies:

The tax information in this material was written to support the promotion or marketing of the transaction(s) or matter(s) addressed in this material.

¹ Policy loans, partial surrenders and withdrawals have the effect of reducing the death benefit and cash value. A policy loan is generally not taxable unless the policy is surrendered with an outstanding loan balance. In certain highly funded cases, life insurance policies may be considered Modified Endowment Contracts (MECs). In such cases, distributions will be taxable income to the extent that there is gain in the contract. In addition, a 10% IRS penalty tax may be due on any taxable income received prior to age 59½.

Genworth Financial companies include:

Genworth Life and Annuity Insurance Company, Richmond VA

Genworth Life Insurance Company, Lynchburg, VA

Genworth Life Insurance Company of New York, 666 Third Avenue, 9th Floor, New York, NY 10017

Only Genworth Life Insurance Company of New York is licensed in New York.

Variable products issued by Genworth Life and Annuity Insurance Company and in New York by Genworth Life Insurance Company of New York.

Principal Underwriter: Capital Brokerage Corporation (dba Genworth Financial Brokerage Corporation in Indiana)
6620 West Broad Street, Building 2, Richmond VA 23230, Member FINRA/SIPC