

The Legal Strategist

S. BARRETT & ASSOCIATES, P.C.

WWW.SBARRETLAW.COM

FOURTH QUARTER 2014

TEXAS ESOTERIC FACTS

In a previous issue of *The Legal Strategist* (2nd quarter 2008) the topic of Buy-Sell Agreements was featured. This quarter's topic expands on the normal Buy-Sell and explores the "Shotgun" Agreement. A Shotgun Agreement is a form of a Buy-Sell, but with just one triggering event; that of one shareholder offering to purchase the other shareholder's interest in the company. Once triggered, the relationship of the parties will forever be altered.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on *The Legal Strategist* tab of our web site, please contact our office to set up a consultation.

Scott Barrett

The letters "G.T.T." were 19th-century short hand for "Gone to Texas," a quick way for people to let their families know that they had left for greener grass. Eventually, so many people headed to Texas to escape the law that "G.T.T." came to mean "on the lam."

FEATURE TOPIC: THE SHOTGUN BUY SELL AGREEMENTS



What is a "Shotgun" Buy – Sell Agreement? A Shotgun Agreement is intended to end the shareholder/member/partner ("owner") relationship between the parties. The most commonly used shotgun buy-sell agreement is typically used when there is a 50/50 ownership relationship. The agreement essentially provides that either owner may activate or trigger the shotgun by providing a notice to the other owner of the intention to purchase the ownership interest of the other owner at a specified price. The non-offering owner must then either sell their ownership interest at the offered price to the offering owner or purchase the offering owner's ownership interest at that same price. The purchase must take place in a relatively short time frame, usually 30 to 60 days. Invoking the provision is normally used to buy out one party in the case of an irrevocable ownership dispute. However, it should be noted that it could be used as a way to buyout the other owner where no dispute exists.

When the owners are on relatively equal terms, the use of a shotgun clause can be a fair and effective method for resolving disputes between squabbling owners by providing a method for one owner to exit the company. The principle is that the offering owner will seriously consider the terms of their offer and only offer a reasonable price and conditions as he or she may, at the option of the other owner, be forced to sell themselves.

However, there are a number of situations which can dramatically alter the effect of a Shotgun Agreement. The main reason people don't like this Agreement is because of the uncertainty it creates. Each owner lives in constant fear that the owner may have financial problems that would give the other owner an incentive to exercise the shotgun buy out and name a low price at a time the owner could not come up with the money needed to purchase the interest from the other owner. In addition to inequalities in financial positions, provisions that do not contemplate how the Agreement will work in the context of multiple owner situations can lead to abuse and result in unwanted confusion or results for the parties. Due to these problems, some attorneys have suggested that a Shotgun Agreement should only be used in situations where there is a 50/50 ownership situation and each of the owners are also relatively equal financially. Accordingly, caution should be exercised in using a Shotgun Agreement in situations where there are positional differences between the owners or in the case of more than two owners.

As I have stated before, I firmly believe that it is essential for all businesses with multiple owners to have a well planned Buy – Sell Agreement. As each business, and it's owners, are unique the use of a Shotgun Agreement may be drastic or essential depending on the specifics of the specifics and interpersonal relationship of the owners.

If you would like more information on the Buy Sell Agreements, and in particular, Shotgun Agreements, please contact [Scott Barrett](mailto:Scott.Barrett) to set up a consultation.