

# Business succession and the buy-sell agreement

Somewhere in the back of the mind of a small-business owner is a question: What will happen when it's time for one of the partners to retire or if one of the partners becomes incapacitated or dies?

To address these issues, business owners should consider negotiating a "buy-sell" agreement. A buy-sell agreement may be entered into in the context of almost any type of business, including LLCs, partnerships and S-corporations. It's best to enter into a buy-sell agreement early on, but it's not uncommon for the agreement to be negotiated when one of the owners nears retirement age and naturally begins to think about an exit strategy.

Typically, the buy-sell agree-

ment takes effect upon the occurrence of a triggering event, such as an owner reaching a negotiated age, the death or disability of an owner, or the attempted or involuntary transfer of an owner's interests in the company.

Upon the occurrence of a triggering event, and depending on the nature of the business and the agreements of the parties, a retiring owner may be empowered to exercise a "put" option. A put in this context is a right to require that the company or the remaining owners buy the departing owner's interest for a sum certain, an appraised value, or a price based on a function of the business's earnings.

If a put is not appropriate

under the circumstances, a call option may be. A call in this context is a right to demand that the departing owner (or his or her successors) sell the departing owner's interest, back to the company or to the remaining owners, under appropriate terms and conditions.

When the agreement gives the remaining owners the right or obligation to buy the departing owner's interests, the agreement typically gives these owners the opportunity to purchase these interests pro-rata. This will preserve the relative balance of power with respect to the remaining owners.

A sinking fund may be established by the company to pay off the departing owner in whole or in part. Otherwise, payment could be paid off over time through a bank loan or a promissory note made by the company and paid to the departing owner over a term of months or years. If

the triggering event is death, then life insurance may be a source for this purchase money.

A triggering event may occur upon the transfer of an owner's interests. For example, the departing owner may have tried to give his or her interests to a child or to sell the interests to a third party, without the other owners' consent. Otherwise, a creditor may have acquired these interests through foreclosure, or an ex-spouse may be awarded these interests in a divorce proceeding.

Few business owners want to partner-up with a former owner's ex-spouse or another stranger to the company, so a buy-sell agreement may prohibit or limit the ability of third parties to join the business. Otherwise it may limit a third-party's ownership rights if one does acquire an interest, or it may grant a call option with particularly favorable terms to the com-

pany or the original owners. Such limitations may discourage unauthorized transfers or attempts by creditors to collect on an owner against his or her interests in the company.

Much can be done in this day and age without the assistance of a lawyer, but the self-help forms on the Internet or at the local office supply store don't typically or sufficiently address the nuanced and particularized issue of succession planning for a multi-owner business. If any of these concerns apply to your business, consider getting help from a qualified attorney experienced in structuring these deals.

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## THE BOTTOM LINES | YOUR BUSINESS ANNOUNCEMENTS

### Spring business seminar series

The Roaring Fork Business Resource Center has once again joined efforts with Colorado Mountain College and the Colorado Small Business Development Center (SBDC) Network to present an informative business seminar series. This spring, seminars will be held at Colorado Mountain College's Glenwood Center at 1402 Blake Ave. Each seminar is just \$35 and runs from 9 a.m. until 1 p.m. on Thursday mornings in March and April.

The seminars are designed to provide small business owners and entrepreneurs with the resources and tools they need to successfully run their organizations. Remaining seminar topics include: Marketing Your Small Business (March 21), Facebook & Linked-In for Business (March 28), Improving Your Sales (April 4), and Understanding Business Financials and Taxes (April 11). For full seminar descriptions, visit [www.rfbrcc.org](http://www.rfbrcc.org). Advanced registration is recommended and may be done so by calling the CMC Glenwood Center at 970-945-7486.

### New Castle Family Fitness

Kathleen Menten APRN, LAC, has joined the staff at New Castle Family Fitness. Kathleen is a board certified advanced practice psychiatric nurse, acupuncturist, and Chinese herbalist.

Although Kathleen has been practicing in this valley since 1986, she left to help create the Integrative Medicine Program at Johns Hopkins Hospital, where she did acupuncture and was part of the pain team. Now she is re-establishing a full time practice here in New Castle and also in Glenwood Springs.

Kathleen's passion is helping people to find meaning in their lives and to rewrite their story when their current reality does not appeal to them. She is a die-hard eclectic, drawing from many traditions to help people. Her acupuncture style reflects this. It is a combination of Traditional Chinese Medicine (TCM), Five Element, Scalp Acupuncture, Auricular Acupuncture and Muscle Activation Technique. She works Tuesdays and Thursdays.

Call 970-987-3691 for information about Kathleen's services, and call New Castle Family Fitness at 984-3200 to reserve your spot.

### Glenwood Veterinary Clinic now offers veterinary chiropractic

Glenwood Veterinary Clinic now offers equine and small animal chiropractic performed by Dr. Aaron Langley, who was recently certified through intensive course work and hands-on training with the internationally recognized Options for Animals College of Animal Chiropractic in Wellsville, Kan., and recently passed the qualifying examination for certification given by the International Veterinary Chiropractic Association.

Call Glenwood Veterinary Clinic at 970-945-5401 with any questions about the benefits of chiropractic treatment for your animals, or to set up a consultation with Dr. Langley directly. More information on veterinary chiropractic and other integrated therapies like acupuncture, equine massage, and therapeutic laser treatment is available at [www.glenwoodvet.com](http://www.glenwoodvet.com).

### Menten joins Garfield Clean Energy project featured in LED lightmaker's marketing materials

A project by Garfield Clean Energy and the Glenwood Caverns Adventure Park received global exposure recently when it was featured in a case study by Florida- and Netherlands-based Lighting Science Group Corp.

Lighting Science designs, develops, manufactures and globally markets LED lighting solutions that are environmentally friendlier and more energy efficient than traditional lighting products.

The brief case study mentions Caverns' owner Steve Beckley's quest to keep the caves from drying out and his replacement of more than 300 incandescent light bulbs with LED lamps. The switch is expected to save the Caverns \$12,000 a year in electricity costs and thousands more in maintenance costs.

### Dos Gringos comes in second place in valleywide Cup Challenge

The recent Reusable Cup Challenge gave coffee shops throughout the Roaring Fork Valley the chance to engage customers in reducing waste. Two shops



Contributed Photo

Dr. Aaron Langley brings veterinary chiropractic to Glenwood Veterinary Clinic.

exceeded 50 percent of drink sales purchased in reusable cups. Boden's Butter of Aspen emerged victorious and Dos Gringos in Carbondale was a close second.

As in previous years, locals and visitors alike choose reusable cups over disposable paper or Styrofoam cups when getting coffee at local cafes. Each participating coffee shop counted the number of reusable cups that were used each day and asked customers to help them win by remembering to bring their own cup or to ask for a reusable cup when staying in. Tallies were collected each day and the

winner was the location with the largest percentage of reusable cups during the week.

The Reusable Cup Challenge was sponsored by Waste Free Roaring Fork, a collaborative working group of local citizens in partnership with the City of Aspen, CORE, municipal Green Teams and Environmental Boards. Responsible for leading the reusable bag outreach efforts and ordinances in Aspen and Carbondale, Waste Free Roaring Fork maintains a website for waste reduction resources in the valley at [wastefreeroaringfork.com](http://wastefreeroaringfork.com)