

Cross endorsed buy-sell arrangements

Foreword to counsel and specimen documents

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What is a cross endorsed buy-sell arrangement?

A cross endorsed buy-sell helps alleviate business concerns if one of the owners passes away. These worries include the loss of the business as the primary source of income and difficulty selling the business.

A cross endorsed buy-sell arrangement is an agreement between the owners of a company, where each business owner purchases a policy on his or her own life and “rents” a portion of the death benefit to the other owners. Each owner recognizes rental income but retains access to the cash value in his or her own policy.

Who are the prospects?

- Partnerships and LLC taxed as partnerships
- C or S corporations where there is more than one owner and the business owners are also partners in a partnership
- Business owners who need to accumulate assets for retirement and need to create assets to fund a buy-sell arrangement
- Businesses that already have a buy-sell arrangement that is unfunded or funded with term insurance

Structure

A and B own a business taxed as a partnership valued at \$2 million.

Partnership value: \$2 million



Step 1 - Purchase life insurance

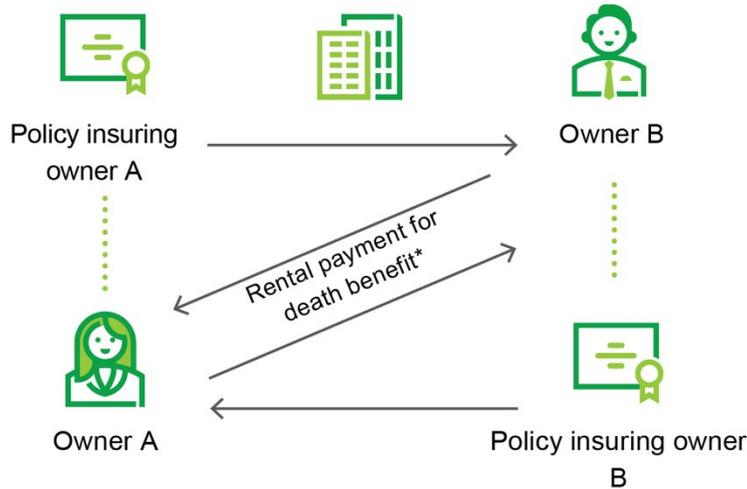
Here, each business owner will purchase and own a life insurance policy on his or her life. In this case, each policy will have a \$1 million death benefit

Partnership value: \$2 million



Step 2 – Endorse death benefit

This step requires each of the business owners to endorse a portion or all death benefit for a rental charge to other business owners. This is documented with a private endorsement split-dollar agreement. The rental charge will be reportable economic benefit (REB), which is the annual term costs of the death benefit. The term costs are from the IRS Table 2001 rates or the insurer’s annual renewable term (ART) rates, whichever is lower.



Examples of REB for a \$1 million single policy

Age	Table 2001	Our ART rates
40	\$1,100	\$750
50	\$2,300	\$1,110
60	\$6,510	\$1,950

*Rental payment is based on the economic benefit of death benefit.

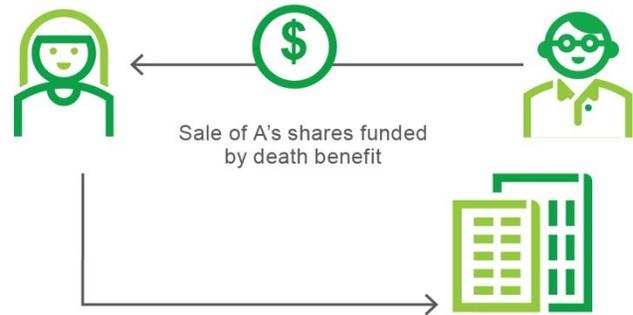
What happens upon death of an owner during the term of the agreement?

In this case, let's say A dies 10 years later. Now the death benefit on A's life goes to B per the private endorsement split-dollar arrangement.

UPON DEATH



DEATH BENEFIT FOR BUY-SELL



As long as both the buy-sell and endorsement agreements are properly executed, the strategy is estate tax neutral. This is because at the owner's death, the full amount of the death benefit will be included in the deceased owner's estate. But, as long as the split-dollar endorsement agreement is legitimate, there will be a legal obligation to pay the specified portion of the death benefit to the other owner, which should be considered a deduction against the estate.

What happens if neither owner dies and they terminate the agreement?

The private endorsement split-dollar arrangement and buy-sell agreement will terminate and each owner will continue to own the policy. Cash value accumulation can partially fund a buyout agreement or supplemental retirement income. In addition, the policy death benefit can remain for estate liquidity upon death or transferred to an irrevocable life insurance trust (ILIT) or spousal limited access trust (SLAT).

What are the benefits and considerations of cross endorsed buy-sell?

Benefits

- Owner access to cash values in the policy on his or her life.
- No cost at termination of the agreement.
- Purchasing one dual-purpose policy reduces the overall costs of insurance (may be more cost-efficient than purchasing individually owned permanent policy for personal issues and term policy for buy-sell purposes).
- Owners can use the policy's death benefit for estate planning.
- Owners can make additional contributions to the policy in order to boost supplemental retirement income.

Considerations

- Cash flow to pay premiums and income taxes on rental charges (if paid).
- Economic benefit increases with age.
- Transfer-for-value issues if a partnership is not used.
- Under the split-dollar final regulations, the economic benefit amounts received by each owner will be treated as rental income and taxed at ordinary income tax rates. In essence, the sum of all anticipated economic benefit amounts represents twice-taxed dollars.
- The present value of the combined income taxes on the sum of all anticipated economic benefits is essentially an option price the parties have agreed to at the outset to purchase the flexibility provided by the cross endorsed buy-sell agreement.
- The owners may want to add a provision to the buy-sell agreement restricting a policy owner's ability to access policy cash values during the buy-sell period. Such a restriction may limit access to cash values only to the extent that withdrawals and/or loans will not adversely impact the amount of death benefit endorsed to the other owners of the arrangement. In addition, the owners may want to add policy instructions to each policy to restrict such access.

Preface to Cross Endorsed Buy-Sell Specimen Agreement

This specimen cross endorsed buy-sell agreement illustrates a basic example of Cross Endorsed Buy-Sell Agreement.

This specimen agreement should be used only as a guide. It outlines some basic provisions typically included in such trusts. This specimen agreement is not intended as a final draft. Counsel must draft a document that meets the client's needs and circumstances. COUNSEL ALONE IS RESPONSIBLE FOR THE ACTUAL WORDING OF THE FINAL AGREEMENT.

Neither Minnesota Life Insurance Company or Securian Life Insurance Company, nor its agents, are engaged in the practice of law; these specimen agreements are intended only for illustrative purposes, and counsel must draft an agreement appropriate for his or her client.

Specimen Cross Endorsed Buy-Sell Agreement

This agreement is entered into on [DATE] by and between [NAME OF PARTNER 1], of [PARTNER 1 ADDRESS], and [NAME OF PARTNER 2], of [PARTNER 2 ADDRESS], hereinafter called "Partners."

The partners own Partnership Interests in [NAME OF PARTNERSHIP], hereinafter called the "Partnership," in the amounts set forth in attached Schedule "A." Each Partner wishes to make all of their Partnership interest subject to the terms of this agreement.

The purpose of this Agreement is to provide for the purchase by the surviving or remaining Partners of a Partner's Partnership Interest (as reflected in this Agreement), and to provide the necessary funds to carry out such purchase and sale. Partners agree that such purchase and sale shall occur upon the death, disability, retirement or withdrawal of either Partner. In consideration of the promises in this agreement, the Partners bind themselves as follows:

Article 1: Partnership continuation

Upon the death, disability, retirement or withdrawal of a Partner, the remaining or surviving Partner shall continue the Partnership business without interruption. During such periods, the surviving or remaining Partner shall suffer all losses and retain all profits, individually.

Whenever the purchase price is paid in installments as called for in this Agreement, the purchasing Partner, in consideration of the sale and transfer of the Partnership Interest, hereby agrees to assume, pay and discharge all liabilities of the Partnership and shall release and discharge the selling Partner, his or hers heirs or personal representative, from all debts, claims, and demands of the Partnership and further agrees to indemnify and hold harmless the selling Partner, his or her heirs or personal representatives, from and against all such debts, claims or demands.

Article 2: Agreement to buy and sell upon the death of the partner

Upon the death of a Partner, that Partner's personal representative shall sell and the surviving Partner shall buy the deceased Partner's Partnership Interest. The price will equal the value as provided in this Agreement. The deceased Partner's estate and the surviving Partner shall provide such instruments as may be necessary to complete the sale.

Article 3: Valuation and purchase price

The Partnership's Certified Public Accountant (CPA) shall determine the current market value of all Partnership assets, making such adjustments for tax-depreciated assets and undervalued or overvalued assets as is required to reflect more clearly current market values and adding thereto a value, ascribed and mutually-agreed-to by the parties, for Goodwill.

The value of the Partnership under this method and the value currently agreed to is **[\$VALUE]**. Each Partner's current Partnership Interest is valued at:

Name	Value	Name	Percentage interest

Such value may be changed from time to time by the parties hereto by endorsement opposite their signatures in the Schedule of Value provided; however, if the parties neglect to re-evaluate the Partnership for a period of 2 years, the Partnership's CPA is directed to apply the same valuation procedure as of the last day of the month preceding the death, retirement or withdrawal of a Partner. The retiring or withdrawing Partner (or, in the event of death, the partner's personal representative) and the remaining or surviving partner may, nevertheless, mutually-elect to accept the last valuation made as controlling for purchase and sale purposes.

Article 4: Insurance funding

To provide cash to purchase a Partner's Interest, each Partner shall apply for a life insurance policy upon his/her life. Each Partner shall pay all premiums necessary to maintain such policy in force and shall provide the other Partner(s) evidence of such payments. Each Partner shall also be party to a private endorsement agreement where he/she will endorse a portion of the death benefit of the policy on his/her life to the other Partner.

Article 5: Terms of payment upon death

Upon the death of a stockholder, the surviving Partner(s) shall promptly make claim for the death proceeds of any life insurance policies insuring the life of the deceased Partner pursuant to the Private Endorsement Agreement and shall pay over proceeds equal to the purchase price as determined in Article 3. Partner's personal representative shall thereupon deliver to the surviving Partner any assignments, bill of sale or other necessary legal evidence of title as required to transfer all right, title and interest to the surviving Partner of all the Partnership assets and Goodwill, including the right to continue to use the Partnership name.

Article 6: Lifetimes or retirement sale; restrictions on encumbrance

In the event a Partner desires to sell his or her Partnership Interest during his or her lifetime or upon retirement, he/she shall be precluded from selling or offering to sell his or her Partnership Interest to any other person or institution until he/she has offered to sell to the remaining Partner at the price determined under this Agreement. The remaining Partner shall have **[NUMBER OF DAYS]** days within which to accept this offer to sell and, if not exercised within such period, the withdrawing or retiring Partner may sell to such other person or institution as he/she so desires, provided, however, that he/she shall not sell such interest without first offering it to the remaining Partner at the price and terms offered to such other parties.

In the event the remaining Partner elects to purchase the retiring or withdrawing Partner's Interest, such purchase shall be made on an Installment Sale basis. The remaining Partner shall make an initial down payment in cash of **[PERCENT]** % of the purchase price as determined by Article 3. The remaining balance shall be paid in **[NUMBER]** equal annual installments commencing with the annual anniversary of the initial down payment.

The installment amounts due under the unpaid balance shall be evidenced by promissory notes with provision for annual payments on principal for a **[NUMBER]** year term and with interest at the rate of **[PERCENT]** % per annum.

Except in the normal course of business financing, no Partner shall assign, pledge, mortgage or otherwise encumber his or her Partnership Interest without notice to and the receipt of written consent of the other Partner. Violation of this limitation by any Partner shall entitle the other Partner unilaterally to terminate this Agreement.

Article 7: Amendment and termination

This agreement may be amended or terminated by a written agreement signed by all parties. This agreement shall be terminated by the bankruptcy, receivership or dissolution of the corporation.

Article 8: Liability of insurance company

Any insurance company issuing policies of insurance pursuant to this agreement shall have no liability except as set forth in the policy. The payment by an insurance company pursuant to the terms of any policies, which are subject to this agreement, shall be a complete discharge of the company from all claims, suits and liability.

Article 9: Choice of law

This agreement shall be construed in accordance with the laws of the state of [STATE].

Article 10: Heirs, executors and administrators

This agreement shall be binding upon the stockholders individually and their respective heirs, executors and administrators.

Article 11: Disposition by Spouse (optional, community property)

In the event that the spouse of a stockholder predeceases him or her and makes a testamentary disposition of his or her community interest in the stock, then:

Transfer to surviving spouse – To the extent that such disposition is to his or her surviving spouse, or to a trust or trusts of which he or she is sole trustee, the transfer shall not be subject to the offer requirements under this agreement, but the interests of transfer shall, in the hands of the transferee, be subject to this agreement fully as if still owned by the stockholder. This includes, but is not limited to, the duty of the transferee to sell such interests to the other stockholders, and their duty to purchase it, on the stockholder's death.

Transfer to others – Except as provided above, no such disposition by such spouse shall be effective without him or her first offering such interest as follows: To his or her surviving spouse, the entirety thereof on the same terms and at the same proportionate price as applies to a transfer by a stockholder during his or her lifetime under Article 1, but without any prior offer to the corporation or to the other stockholders.

If his or her surviving spouse fails to accept such offer, then to the other stockholders, the entirety thereof on the same terms and for the same proportionate price as applies to a transfer by stockholder during his or her lifetime under Article 1, but without any prior offer to the corporation.

Article 12: Acknowledgment (optional, community property)

Each stockholder and his or her spouse declares that he or she, respectively, is completely informed as to the facts relating to the subject matter of this agreement and as to their rights and liabilities; enters into this agreement voluntarily after receiving advice (or after having had the opportunity to receive advice) of independent counsel of his or her own choosing, has given mature thought to making this agreement; has carefully read each provision of this agreement; and fully and completely understands each provision of this agreement, both as to subject matter and legal effect.

(Formalities of execution are governed by local law.)

The parties have executed this agreement on this [DAY] day of [MONTH], [YEAR].

Partner

Partner

CONSENT OF SPOUSES

We, the undersigned spouses of the stockholders, hereby acknowledge that we have read the foregoing agreement and consent to its terms, to the disposition made therein of any interest we have in the stock of the corporation or the life insurance policies described under Schedule "C" as community or separate property, and to the price now or hereafter determined by the stockholders.

Spouse

Spouse

Schedule of value

The revised value of the Partnership, as provided in Article 3, is as follows:

_____ \$ _____

DATE **AGREED VALUE**

Partner

Partner

Private Endorsement Agreement – Cross Endorsed Buy-Sell

This agreement is entered into on **[DATE]** by and between **[NAME OF OWNER]**, of **[OWNER ADDRESS]**, hereinafter called “Owner” and **[NAME OF PARTNER]**, of **[PARTNER ADDRESS]**, hereinafter called “Partner.”

WHEREAS, Owner and Partner are partners in a valid partnership; and

WHEREAS, the Owner wishes to endorse a portion of the death benefit from Policy to fund Partner’s buy-sell obligation as contained in the Buy-Sell Agreement dated **[DATE]**;

NOW THEREFORE, the Partners agree as follows:

Article 1: Policy ownership

In furtherance of the purposes of this Agreement, the Owner will purchase and own a certain policy of life insurance on the life of the Owner, being Policy No. **[POLICY NUMBER]** issued by the Minnesota Life Insurance Company or Securian Life Insurance Company (hereinafter called “the Insurer”) in a face amount of \$**[FACE AMOUNT]** (said policy being hereinafter called “the Policy”). The Owner alone shall be able to exercise all rights of ownership with respect to the Policy.

Article 2: Payment of premiums

Each premium on the Policy shall be paid by the Owner as it comes due. Within **[NUMBER OF DAYS]** days of the date of the premium payment, the Partner shall reimburse to the Owner an amount equal to the value of the Reportable Economic Benefit of the life insurance protection enjoyed by the Partner.

Article 3: Choice of dividend option(s)

To the extent the Insurer declares dividends on the Policy, the Owner shall have the right to choose the option or combination of options he/she desires from among those offered by the Insurer. The Owner shall notify the Insurer of his/her choice.

Article 4: Beneficiary designation and payment of policy proceed

So long as this Agreement remains in effect, the parties agree that the beneficiary designation under the Policy shall provide that upon the death of the Owner the proceeds of the Policy will be payable in two (2) parts as follows:

- A. **Part A** – One part shall be payable to the Owner, and shall be an amount equal to the cash value of the Policy, including dividend accumulations or the cash value of dividend additions as of the date of death of the Owner, less any policy indebtedness to the Insurer;
- B. **Part B** – The other part shall consist of the entire balance of the proceeds, including proceeds attributable to insurance purchased with annual dividends. The Partner shall receive this part of the Policy’s proceeds.

Article 5: Procedure at employee's death

Upon the death of the Owner while the Policy and this Agreement are in force, the Owner's personal representative shall promptly take all necessary steps, including rendering of such assistance as may reasonably be required by Partner, to obtain payment from the Insurer of the amounts payable under the Policy to the respective parties, as provided under Article 4.

Article 6: Disability waiver of premium

If the Policy appertaining to this Agreement is issued with a supplemental agreement providing for waiver of premium in the event of disability, or any additional death benefit, the additional premium for such supplemental agreement shall be paid by the Employee for the benefit of the Employee. In the event said waiver of premium benefit becomes operational, Employer's interest in the Policy at death, under Section 4, or on surrender, under Section 9, shall be limited to the greater of: (a) the total premiums advanced by the Employer, pursuant to Section 2 of this Agreement less any Policy indebtedness to the Insurer; or (b) the total cash value of the Policy, including dividend accumulations and the cash value of any dividend additions at the last policy anniversary before one premium was waived, less any policy indebtedness to the insurer.

Article 7: Choice of dividend option(s)

To the extent that the Insurer declares dividends on the Policy, the Owner shall have the right to choose the option or combination of options it desires from among those offered by the Insurer.

Article 8: Termination of agreement

This Agreement will terminate when the first of any of the following events occurs:

- A. Termination of the Owner's Partnership Interest with the Partner for reasons other than death; or
- B. At either party's submission of written notice to the other party of intent to terminate the Agreement; or
- C. Performance of the Agreement's terms following the death of the Owner; or
- D. Failure by either the Owner or the Partner, for any reason, to make the premium contributions required under Section 2 of this Agreement.

Article 9: Disposition of policy upon termination of agreement

Upon the termination of this Agreement for any reason other than Section 8(C) above, the Owner shall have complete and unencumbered ownership of the Policy.

Article 10: Taxable income

The Partner is responsible for determining the amount, if any, includable in his/her gross income for tax purposes as a result of this Agreement.

Article 11: Insurer's obligations

The Insurer is not a party to this Agreement. It is understood by the parties hereto that in issuing such policy of insurance, the Insurer shall have no liability except as set forth in the policy and except as set forth in Sections 12 and 13 of the Agreement. Except as set forth in Sections 12 and 13, the Insurer shall not be bound to inquire into, or take notice of, any of the covenants herein contained as to the policy of insurance or as to

application of proceeds of such policy. Except as set forth in Sections 12 and 13, upon the death of the Insured, the Insurer shall be discharged from all liability on payment of the proceeds in accordance with the policy provisions and without regard to this Agreement or any amendment hereof.

Article 12: Fiduciary provisions

Minnesota Life Insurance Company or Securian Life Insurance Company shall be the fiduciary of the strategy solely with regard to the review and final decision on the claim for benefits under its policy, as provided in the claims procedure set forth in Section 14.

Article 13: Claims procedure

The following claims procedure shall apply:

- A. Filing of a claim for benefits. The Partner or the beneficiary of the Policy shall make a claim for the benefits provided under the Policy in the manner provided in the Policy.
- B. Claim denial. With respect to a claim for benefits under said Policy, Minnesota Life Insurance Company or Securian Life Insurance Company shall be the entity which reviews and makes decisions on claim denials according to the terms of the Policy.
- C. Notification to claimant of decisions. If a claim is wholly or partially denied, notice of the decision, meeting the requirements of Section (D) following, shall be furnished to the claimant within a reasonable period of time after a claim has been filed.
- D. Content of notice. The Insurer shall provide, to any claimant who is denied a claim for benefits written notice setting forth in a manner calculated to be understood by the claimant, the following:
 - 1. The specific reason or reasons for the denial; and
 - 2. Specific reference to pertinent Policy or provisions of this agreement on which the denial is based; and
 - 3. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
 - 4. An explanation of this Agreement's claim review procedure, as set forth in Sections (E) and (F) below.
- E. **Review procedure.** The purpose of the review procedure set forth in this Section and Section (F) below is to provide a method by which a claimant under the Split-Dollar Strategy may have a reasonable opportunity to appeal a denial of claim for a full and fair review. To accomplish that purpose, the claimant or his/her duly authorized representative:
 - 1. May request a review upon written application to the Insurer; and
 - 2. May review pertinent documents or agreements; and
 - 3. May submit issues and comments in writing. A claimant or his/her duly authorized representative shall request a review by filing a written application for review at any time within sixty (60) days after receipt by the claimant of written notice of the denial of the claim.

F. **Decision on review.** A decision on review of a denial of claim shall be made in the following manner:

1. The decision on review shall be made by the Insurer, which may, in its discretion, hold a hearing on the denied claim. The Insurer shall make its decision promptly, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of the request for review.
2. The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent policy or provisions of this Agreement on which the decision is based.

Article 14: Amendments

Amendments may be added to this Agreement by a written agreement signed by each of the parties and attached hereto.

Article 15: Choice of law

This Agreement shall be subject to and construed according to the laws of the state of [STATE].

Article 16: Binding agreement

This Agreement shall bind the Owner and its successors and assigns, this Partner and his/her heirs, executors, administrators, and assigns, and any Policy beneficiary.

Article 17: Substantial risk of forfeiture

Notwithstanding any other provision herein, any and all cash value amounts that accrue in excess of the employee's reimbursement obligation and that are set aside for the employee shall be subject to forfeiture in the event the employee terminates employment at any time, for any reason.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Owner

Partner

Signature

Signature

Additional agreements may be available. Agreements may be subject to additional costs and restrictions. Agreements may not be available in all states or may exist under a different name in various states and may not be available in combination with other agreements.

Life insurance products contain charges, such as Cost of Insurance Charge, Cash Extra Charge, and Additional Agreements Charge (which we refer to as mortality charges), and Premium Charge, Monthly Policy Charge, Policy Issue Charge, Transaction Charge, Index Segment Charge, and Surrender Charge (which we refer to as expense charges). These charges may increase over time, and these policies may contain restrictions, such as surrender periods. Policyholders could lose money in these products.

Please keep in mind that the primary reason to purchase a life insurance product is the death benefit.

Policy loans and withdrawals may create an adverse tax result in the event of lapse or policy surrender, and will reduce both the surrender value and death benefit. Withdrawals may be subject to taxation within the first 15 years of the contract. You should consult your tax advisor when considering taking a policy loan.

This information is a general discussion of the relevant federal tax laws provided to promote ideas that may benefit a taxpayer. It is not intended for, nor can it be used by any taxpayer for the purpose of avoiding federal tax penalties. Taxpayers should seek the advice of their own advisors regarding any tax and legal issues specific to their situation.

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Insurance products are issued by Minnesota Life Insurance Company in all states except New York. In New York, products are issued by Securian Life Insurance Company, a New York authorized insurer. Minnesota Life is not an authorized New York insurer and does not do insurance business in New York. Both companies are headquartered in St. Paul, MN. Product availability and features may vary by state. Each insurer is solely responsible for the financial obligations under the policies or contracts it issues.

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Securian Financial Group, Inc.
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