

LIFECYCLE BUY-SELL

Foreword to counsel and specimen documents



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Introduction

The lifecycle buy-sell is designed to combine the benefits of the traditional entity redemption and cross-purchase buy-sell arrangements. The benefits include:

- Requires only one life insurance policy per owner,
- Avoids the corporate alternative minimum tax and
- Provides a full basis increase to surviving owners.

In addition, the lifecycle buy-sell provides several other benefits which cannot be had from either the cross purchase or entity redemption type buy-sells.

Those benefits include:

- The ability to transfer life insurance policies funding the arrangement to a departing owner/insured without the receipt being taxable income to the owner/insured and without recognizing any gain within the policy from cash values exceeding the sum of the life insurance premiums.
- The LifeCycle Buy-Sell provides complete flexibility in allocating the life insurance premium burden among the owners.
- The owners/insureds can accumulate significant dollars on a tax-favored basis, safe from corporate creditors, to be used to supplement their retirement income. These results are accomplished by forming a partnership to own the life insurance policies which fund a corporate buy-sell agreement.

The corporate buy-sell agreement gives the surviving owners the option of using entity redemption or cross purchase, depending on which would be the most advantageous when the death actually occurs. By having a separate entity own the life insurance policies, a great deal of flexibility is added to the succession strategy.

Lifecycle buy-sell structure

A. Set up

1. Partnership agreement

Under the lifecycle buy-sell, the shareholders of the corporation form a separate partnership with the purpose to ensure the continuous operation and control of the corporation upon the death or retirement of a shareholder. This separate partnership can also be set up as a Limited Liability Company (LLC) taxed as a partnership.

2. Two Buy-Sell Agreements (Partnership and Corporation)

The partnership agreement provides that, upon death, the decedent's membership interest transfers to the surviving members. In addition, the corporation and the shareholders enter into a separate buy-sell agreement (known as a wait and see buy-sell agreement), which provides that, upon the death of a shareholder, the surviving shareholders may buy his or her stock. The agreement also provides that, to the extent that the surviving shareholders do not buy all of the decedent's stock, the corporation must redeem it.

Initial lifecycle setup

C corp value: \$2 million

A (40)	B (40)	C (40)
100 shares	100 shares	100 shares

Wait and see buy-sell agreement

1. Business has first option
2. Survivors have next option
3. Business must buy stock

3. Partnership purchases life insurance policies

The partnership purchases life insurance policies on each of the shareholders to fund both the partnership and corporate buy-sells. In addition, the policies can also be designed to accumulate sufficient cash to provide retirement income to fund a living buyout at retirement. There are two factors to consider when determining how much life insurance to buy:

1. The first is whether the cash value represented by a particular partner's partnership interest is going to accumulate into a significant asset.
2. The second is at death, the partnership needs to have sufficient cash to buy the deceased partner's partnership interest (consisting of his or her share of the total cash value immediately before death) and to distribute enough cash out to the survivors to purchase or redeem the decedent's stock.

4. Source of premium payments

The specimen agreement anticipates that capital contributions (premium payments) will be made by the corporation on behalf of the partners. The premiums for the policies are paid through a bonus or distributions from the corporation to the shareholders, which the shareholders contribute to partnership for the premium payments. In addition, the partnership can be seeded with cash or other investments to begin with, and the income from those investments used to pay the premiums.

Another source of premium payment may be the insurance policies which can be borrowed against or surrendered (when no longer needed) to help fund premiums. If these other sources are not sufficient to pay the insurance premiums, the operating agreement should include a "call" provision to require additional contributions.

5. Premium allocation

The specimen agreement provides flexibility for allocating those capital contributions (premium payments) among the partners as the partners agree and can be varied year to year. The amount allocated to any partner does not need to correspond to the premium on the life insurance policy insuring that partner. In fact, it is usually tied to the amount of premium the particular partner would have to pay if he owned policies on the other shareholders under a cross-purchase arrangement. In the alternative, each partner bears the cost of all premiums based on the percent ownership in the corporation.

Partnership set up

C corp value: \$2 million

A (40)	B (40)	C (40)
100 shares	100 shares	100 shares

Partnership

A	B	C
100 units	100 units	100 units

The allocation of the premium burden among the partners is important if the policy cash values will be significant assets to the partners. This is because the amount of the premium bonus allocated to a partner is also the amount of the deemed contribution of capital to the partnership. The partners' capital contribution percentage determines what portion of the total partnership value (basically the cash value of all policies owned by the partnership) to which the partner is entitled. This determines the amount to be paid for a partner's partnership interest at death or retirement. It is important to note that this allocation only affects the ownership of the lifetime cash values because the death benefits are specially allocated to just the survivors.

The following is a hypothetical example for illustrative purposes only. It is not indicative of any particular product or guarantee of future performance.

For example, assume A, B and C each own one-third of a corporation. Assume further that the premiums necessary to insure A, B and C are \$14,000, \$9,000 and \$7,000, respectively. The partners have agreed to allocate the total \$30,000 premium, \$10,000 to each.

If the corporation pays the premium, each owner will have \$10,000 of taxable income, and the corporation will have a \$30,000 tax deduction. The partners will each have a \$10,000 deemed contribution of capital to the partnership each year.

If, at the end of 10 years, the policies have \$130,000, \$110,000 and \$90,000 of cash value, respectively (for a total of \$330,000). Each partner will have an interest in the partnership worth \$110,000.

Corporation makes bonuses to partners

C-corporation value: \$2 million

A (40) 100 shares	B (40) 100 shares C	(40) 100 shares
↓ Bonus to A \$10,000	↓ Bonus to B \$10,000	↓ Bonus to C \$10,000

LLC pays premiums

- Premium payments for each owners are:
 - A - \$14,000
 - B - \$9,000
 - C - \$7,000
- But allocate bonuses equally among the owners
 - A - \$10,000
 - B - \$10,000
 - C - \$10,000

LLC



A
100 units
\$10,000 basis



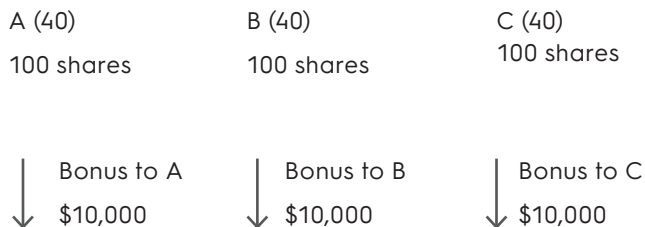
B
100 units
\$10,000 basis



C
100 units
\$10,000 basis

LLC pays premiums

C-corporation value: \$2 million



LLC value = cash value of life insurance policies



A
100 units
\$10,000 basis



B
100 units
\$10,000 basis



C
100 units
\$10,000 basis

B. Upon retirement of an owner

Upon the termination of a partner's interest in the partnership at retirement, the policy insuring the partner may be distributed to him or her in exchange for the partner's interest in the partnership. If the cash value of the policy does not equal the partner's share of the total partnership cash value, adjustments may be made prior to the distribution. The adjustment can be accomplished by withdrawing cash from the policy or policies with excess cash and depositing it into the policy or policies short on cash value. Such transfers are not income taxable (assuming no modified endowment contracts and assuming withdrawals do not exceed policy basis) and do not affect the partners' bases.

The transfer to the departing partner is exempt from the transfer for value rule because the transfer is to the insured.¹ There will be no gain or loss to the departing partner under Internal Revenue Code (IRC) Section 731(a), regardless of whether the value of the policy is more or less than the departing partner's adjusted basis in his or her partnership interest. Similarly, there will be no gain or loss recognized by the partnership under Section 731(b), regardless of the relationship of the sum of the premiums to the cash value.

Under Section 732(b), the departing partner will take the policy with a basis equal to the departing partner's adjusted basis in his or her partnership interest immediately before the distribution. This amount will most likely be different from the sum of the premiums paid on the policy. Usually, the basis will be the sum of the premium bonuses allocated to the departing partner over the period in which he or she was a partner.

1. IRC §101(a)(2)(B).

10 years later

C-corporation value: \$3 million

A (50)	B (50)	C (50)
100 shares	100 shares	100 shares
↓ Bonus to A	↓ Bonus to B	↓ Bonus to C
↓ \$10,000	↓ \$10,000	↓ \$10,000

LLC value = cash value of life insurance policies



A
100 units
\$100,000 basis
\$130,000
cash value



B
100 units
\$100,000 basis
\$100,000
cash value



C
100 units
\$100,000 basis
\$70,000
cash value

Retirement benefit A retires from LLC

C corporation value: \$3 million
A (50) B (50) C (50)
100 shares 100 shares 100 shares

LLC value = Cash value of life insurance policies
A B C
100 units 100 units 100 units
\$100,000 \$100,000 \$100,000
basis basis basis
\$130,000 \$100,000 \$70,000
cash value cash value cash value

Retirement benefit Adjustments to cash value

C corporation value: \$3 million
A (50) B (50) C (50)
100 shares 100 shares 100 shares

LLC value = Cash value of life insurance policies
A B C
100 units 100 units 100 units
\$100,000 \$100,000 \$100,000
basis basis basis
\$100,000 \$110,000 \$90,000
cash value cash value cash value

Retirement benefit Policy on A's life is distributed to A

C corporation value: \$3 million
A (50) B (50) C (50)
100 shares 100 shares 100 shares

LLC value = \$200,000
A B C
100 units 100 units 100 units
\$100,000 \$100,000 \$100,000
basis basis basis
\$100,000 \$110,000 \$90,000
cash value cash value cash value

In the alternative, the retiring owner sells his stock and partnership interest to the remaining owners for an installment note. The remaining owners use the cash value² from the policies to pay installments on the note. If the retiring owner dies during the payment period, the death proceeds are used to pay off the installment note. After the installment period, the death proceeds can be used to reimburse the partnership for the premium payments.

2. Loans and withdrawals will reduce both the surrender value and death benefit. Depending upon actual policy experience, the Owner may need to increase premium payments to keep the policy in force.

The corporate stock owned by the retiring owner would be sold either to the corporation or the members through an installment note. The installment note can be funded either through the corporate distributions or from the cash values of the policies remaining in the partnership.

C. Upon death of an owner

When the life insurance proceeds come into the partnership, the deceased partner's interest (in the partnership) will first be purchased by the partnership in accordance with the partnership buy-sell provisions. Then the remaining death proceeds are paid to the surviving partners/shareholders, so the obligation to purchase or redeem the decedent's shares of the corporation under the buy-sell agreement can be fulfilled.

Life insurance death benefits received by the partnership are income tax-free (as long as notice and consent requirements have been met – see Legal and tax issues with lifecycle buy-sell).³ The proceeds are included in each partner's distributive share under Section 702 as tax-exempt income. Each partner's basis in his or her partnership interest increases under Section 705(a)(1)(B) by his or her distributive share of the tax-exempt income.

Distributions from the partnership to a partner are generally nontaxable under Section 731 as long as the cash distributed does not exceed the partner's basis in his or her partnership interest. Consequently, it is important that the death benefit be specially allocated only to the surviving partners so they can get the full basis increase. This will allow the surviving partners to distribute the death benefit to them income tax-free so they have the funds necessary to effect the corporate buyout provisions.




³IRC §101(a).

A's death benefit paid to LLC

C corporation value: \$3 million

A	B	C
100 shares	100 shares	100 shares
\$1 million value	\$1 million value	\$1 million value

LLC value = Cash value of life insurance policies

 A	 B	 C
A	B	C
100 units	100 units	100 units
\$100,000 basis	\$100,000 basis	\$100,000 basis
\$1.1 million death benefit	\$110,000 cash value	\$90,000 cash value

A's death special allocation

C corporation value: \$3 million		
A	B	C
100 shares	100 shares	100 shares
\$1 million value		
LLC value = Cash value of life insurance policies		
A	B	C
100 units	100 units	100 units
\$100,000 basis	\$100,000 basis	\$100,000 basis
\$1.1 million death benefit	\$110,000 cash value	\$90,000 cash value
	← +\$550,000	← +\$550,000

A's death increase B and C LLC basis

C corporation value: \$3 million		
A	B	C
100 shares	100 shares	100 shares
\$1 million value		
LLC value = Cash value of life insurance policies		
A	B	C
100 units	100 units	100 units
\$100,000 basis	\$650,000 basis	\$650,000 basis
	\$110,000 cash value	\$90,000 cash value

A's death B and C buy A's interest in LLC

C corporation value: \$3 million		
A	B	C
100 shares	100 shares	100 shares
\$1 million value		
LLC		
A's estate	B	C
100 units	100 units	100 units
\$100,000	\$600,000 basis	\$600,000 basis
← \$50,000		
←		\$50,000

A's death B and C buy A's interest in corporation

C corporation value: \$3 million		
A	B	C
0 shares	150 shares	150 shares
LLC		
A's estate	B	C
100 units	100 units	100 units
\$1,000,000	\$600,000 basis	\$600,000 basis
\$100,000	\$500,000	
←		
←		\$500,000

The death proceeds can be loaned or contributed to the corporation, which would then redeem the shares of the decedent.

A's death

B and C buy A's interest in corporation

C corporation value: \$3 million

A	B	C
	150 shares	150 shares

Partnership

A's estate	B	C
\$1,000,000	100 units	100 units
\$100,000	\$100,000 basis	\$100,000 basis

Legal and tax issues with lifecycle buy-sell

A. Business purpose of lifecycle buy-sell

The business purpose discussion is an important issue for tax and legal advisors to consider when determining whether a lifecycle buy-sell is an appropriate strategy for their clients. The discussion below is designed to put the client in the strongest legal position on this issue. The business purpose discussion must be considered on federal income tax and state law levels.

1. Federal income tax issues

The federal issue is whether the purpose of facilitating a business continuation strategy for a related entity constitutes an adequate business purpose under partnership law. After publishing several favorable private letter rulings (PLR) related to this issue in the early 1990s, the Internal Revenue Service (IRS) announced that it would not issue any additional advance letter rulings on this topic.⁴ No reason was given for this direction by the IRS. Please note the IRS has not challenged a business continuation general partnership as a valid partnership for income tax purposes on “business purpose” grounds.

⁴ Rev. Proc. 96-12, 1996-1 C.B.616.

Please see below a discussion of the major rulings and cases that impact this issue:

Ruling or case	Discussion
PLR 9012063 Valid partnership	<p>Facts: A corporation owned policies on the lives of its two shareholders. The shareholders, A and B, were also partners in a partnership that owned real estate. The partnership leased its real estate to the corporation. The corporation wanted to transfer ownership of the policies to the partnership, as partial payment of rent owed the partnership. Once the policies were transferred, the partnership would then designate A as the beneficiary of B’s policy and B as the beneficiary of A’s policy. The IRS was asked to rule whether the transfer for value rule would cause death proceeds to be treated as taxable income.</p> <p>Rule: The IRS ruled both the transfers of ownership to the partnership and the transfer of the beneficial interest from the partnership to the partners were transfers for value. However, the first transfer was exempt as a transfer to a partnership in which the insured was a partner and the second transfer was exempt as a transfer to a partner of the insured.</p>
PLR 9042023 Valid partnership	<p>Facts: A majority shareholder formed a general partnership, and the shareholder’s corporation transferred its life insurance policies on the shareholder’s life to the newly formed partnership for valuable consideration. The facts only indicate that the partnership was newly formed and simply funded with life insurance.</p> <p>Rule: The IRS ruled a valid partnership was formed and the transfer would fall within the partnership exception to the transfer for value rule.</p>
PLR 9045004 Valid partnership	<p>Facts: Four shareholders were in a corporation that sold musical instruments. In addition, the shareholders were investors in a real estate and oil and gas partnership. One of the proposed transfers was a life insurance policy from the corporation to shareholder D, who owned a one percent interest in the partnership. The purpose of the transfer was “to facilitate a buy-sell agreement.”</p> <p>Rule: The IRS ruled the transfer was a transfer for value. But, because the transfer was to a partner of the insured, the exemption applied and any death proceeds from the policy would continue to be income tax-free. Please note the partnership had no connection with the corporation and was a passive investment for the shareholder who received the policy from the corporation.</p>
Swanson v. Commissioner, 518 F.2nd 59 (2nd Cir. 1975) Invalid partnership	<p>Facts: A partnership was set up with three irrevocable trusts with a stated purpose to engage in the business of constructing, furnishing, care, upkeep, rental and sale of rental properties. The specific purpose was to develop property in which Swanson owned a one-half undivided interest. The trustee of the trusts was named as the managing partner. Swanson was never added as a partner in the partnership.</p> <p>Rule: The Tax Court found that the totality of the evidence indicated that the parties did not intend to nor did they actually operate the Swanson Family Partnership as a viable partnership. It also indicates that Swanson never became a partner by virtue of his failure to contribute any property to the organization. Therefore, the transfer of the life insurance policies to the Swanson Trusts for value was not made to a partnership in which the insured (Swanson) is a partner nor to a partner of the insured.</p>
PLR 9309021 Valid partnership	<p>Facts: A corporation was the owner of policies on the lives of its two shareholders. The shareholders intended to form a partnership and have the corporation transfer ownership of the policies to the partnership for their “interpolated terminal reserve value.” The partnership would be designated as beneficiary of the policies and make all future premium payments.</p> <p>Rule: The IRS ruled the partnership would be recognized for federal income tax purposes. Even though the only apparent purpose of the partnership would be to purchase and manage life insurance policies on the lives of its partners, the proposed partnership still qualified as a valid partnership. The IRS also ruled the transfers of ownership would be transfers for value, but would qualify under the partnership exception.</p> <p>The ruling also contains a discussion of the income tax consequences of the payment of death proceeds under the policies to the partnership. The ruling explains the proceeds would be tax exempt at the partnership level and would increase each partner’s basis in the partnership to the extent of his or her distributive share of partnership tax-exempt income. Under partnership tax rules, a distribution to a partner is generally not taxable if the amount distributed is not in excess of the adjusted basis of the partner’s interest. Hence, distribution of death proceeds to the surviving partner would be nontaxable if the distribution did not exceed the adjusted basis of his or her partnership interest prior to the distribution.</p>

The applicable regulations, code sections and case law give support to individuals who use a general partnership to manage and handle life insurance policies to fund a business succession strategy. To the extent the partnership is established to hold the policies that are the centerpiece of the co-partners' business continuation strategy, they are engaged in a long-term venture. The written partnership agreement should:

- Clearly note the purpose of the life insurance policies and state the partners' profit motive as it relates to the investment features of the life insurance policies.
- Articulate the partners' intent to join their assets, to generate and share the partnership's profits in order to, among other things, ensure the continuous operation and continuity of their corporation, and provide retirement accumulations similar to an investment partnership.
- Also include the various restrictions that are customary in partnerships: All participants should agree to relinquish their right to deal with the policy on their life, or any other policy owned by the partnership, as a separate owner, by waiving partition rights and agreeing not to encumber the policies without the unanimous consent of the co-partners.⁵

Assuming these measures are taken and the formalities of the partnership entity are observed, clients and tax advisors may employ this technique with minimal tax risk.

2. State partnership and LLC law

A partnership (or an LLC taxed as a partnership) must have a valid business purpose under state law. In many states, all that is required on the LLC certificate of organization is a brief description of the "general character" of the business. However, some states require a business purpose to form a valid partnership or LLC and do not view ownership of a policy or other passive investments to qualify. If forming the entity in such a state, please consider what additional assets or purposes need to be included to create a valid partnership entity.

B. Incidents of ownership and inclusion in the estate

A decedent's gross estate will include insurance proceeds from a policy on a decedent's life if the decedent, at his or her death, possessed any "incidents of ownership" over such policy, exercisable either alone or in conjunction with any other person.⁶

1. What are "incidents of ownership"?

Generally, "incidents of ownership" refers to the right of the insured or the insured's estate to the economic benefits of the policy. It can also include the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke an assignment, to pledge the policy for a loan, or to obtain from the insurer a loan against the surrender value of the policy. Therefore, any incidents of ownership in the insurance policy which are exercisable by the insured in his or her capacity as a partner or member may cause the policy proceeds to be includable in his or her estate for estate tax purposes.

5. See, *Bussing v. Commissioner*, 89 T.C. 1050 (1987); Tech. Adv. Mem. 79-51-006 (Aug. 21, 1979); Tech. Adv. Mem. 78-32-007 (Apr. 29, 1970); PLR 8002111; PLR 7919065; PLR 8117042; and PLR 8048064.

6. IRC §2042.

2. Incidents of ownership and partnerships

In general, insurance proceeds payable to a partnership should not be includable in the estate of a deceased partner directly under Reg. §20.2042-1(b)(1), even if the insured partner is a general partner.⁷ However, there are differing results in different cases:

Ruling or case	Discussion	Incidents of ownership?
Estate of Knipp v. Comm’r, 355 U.S. 827 (1957)	In a Tax Court case, the court held that a general partner does not possess incidents of ownership in a policy that names a general partnership as the owner and beneficiary, if the policy was purchased in the partnership’s ordinary course of business and the insured partner owned less than a 50% interest in the general partnership.	No
Rev. Rul. 83-147	The IRS held that a partner does possess incidents of ownership if the policy on the partner’s life is owned by the partnership, designates a member of the partner’s family as the beneficiary, and premiums were paid by the partnership in partial satisfaction of the partner’s share of partnership income. This ruling stated that the result was different than the Tax Court case because the beneficiary was not the partnership.	Yes
PLR 9623024	The IRS held that the insured general partner does not possess incidents of ownership in the policy if the partnership agreement states that the proceeds, once received by the partnership, can be distributed to the remaining partners in proportion to their interests to the extent that the proceeds from the policy were not needed to pay the partnership’s obligations. The IRS reasoned that the value of the deceased partner’s interest would include his pro rata portion of the proceeds and therefore inclusion under IRC §2042 would amount to unwarranted double counting of the proceeds.	No
PLRs 9625022 and 9625023	The IRS ruled that life insurance proceeds would not be included in the estate of a member in a limited liability company (that was taxed as a partnership) which could not participate in decisions regarding a policy insuring the member’s life.	No
PLRs 9625013-9625019	The IRS ruled that life insurance proceeds would not be included in the estate of a member in a limited liability company. In addition, these PLRs involved using the proceeds to fund the purchase of a deceased owner’s share of a related corporation and also of the limited liability company, which held real estate it rented to the corporation.	No
PLRs 9843024 and 200111038	The IRS ruled that the insured limited partner does not possess incidents of ownership in the policy if the partnership agreement precludes the limited partners from exercising any control over the partnership’s management and investment activities.	No
PLR 200017051	The IRS ruled that the insured general partner does not possess incidents of ownership in the policy if the partnership agreement expressly states that an insured partner “had no right or power to exercise or to otherwise participate in the exercise of any of the incidents of ownership with respect to such policy or policies.”	No
PLR 200214028	The IRS ruled that the insured general partner did not possess incidents of ownership because the proceeds were payable to or for the benefit of the partnership. In that case, the partnership agreement required that the proceeds be used to redeem the insured partner’s interest in the partnership.	No
PLR 200747002	The IRS ruled that none of the insureds possessed incidents of ownership on the policies that the others contributed to the LLC. However, the IRS requested some modifications to the operating agreement. The modifications limited the members’ ability to make decisions regarding the LLC’s holding of policies. The IRS was concerned that the members could collude in a manner akin to the reciprocal trust doctrine, so it required that the operating agreement preclude members from voting on anything relating to any life insurance policy. Similarly, the IRS required that the operating agreement not expressly authorize amendments by the members, preferring that applicable state law defaults control the situation.	No

7. PLR 200017051 (Jan. 24, 2000).

Ruling or case	Discussion	Incidents of ownership?
PLR 200947006	The insured had direct and indirect ownership of a partnership that held a policy on his life where the partnership, and other partnerships in which the insured had direct or indirect ownership, were beneficiaries. The arrangement was restructured so that the insured had no right to make decisions on behalf of a trust that owned the partnership, and the insured's other direct or indirect interest in the partnership was terminated. The IRS ruled that the insured not only had no incidents of ownership after the transaction but also (to avoid Code § 2035) had no incidents of ownership before the transaction.	No
PLR 2009409004	The IRS ruled that a policy owned by and payable to a partnership was not includable, even though the insured was a partner and was the sole owner of the corporate general partner. In addition, the policy was the only asset of the partnership and thus impliedly not a separate business purpose for the partnership.	No

Drafting note

To avoid incidents of ownership, it is recommended the partnership agreement state that the insured must not have any right or power to exercise or to otherwise participate in the exercise of any of the incidence of ownership with respect to the policy or policies on his or her life. Thus, it is critical the other partners alone have the sole ability to exercise such incidents of ownership.

3. What is included in the deceased partner's estate?

Absent incidents of ownership, the extent of inclusion should be limited to the fair market value of the insured partner's interest in the partnership.⁸ Since the strategy is to allocate most of the proceeds to the other partners and pay the deceased partner his/her capital account to redeem his/her interest, the payment price should be the only amount included in the deceased partner's estate.

4. Drafting recommendations

Life insurance proceeds paid to a business may be includible in a business owner's estate if they have "incidents of ownership" in the policy. The lifecycle buy-sell may minimize this risk by:

- LLC Management is vested in a manager and not the members. The manager should be "independent." The members can only remove and replace the manager with another independent manager. In fact, using a corporate trustee to manage the LLC may be recommended in some circumstances.
- None of the members can vote on or otherwise exercise any incidents of ownership with respect to any policy owned by the LLC.

Absent any incident of ownership in a policy held by the LLC, the member's estate tax exposure should be limited solely to the value of his or her membership interest based upon the corporate redemption.

8. IRC §2033.

C. Transfer for value

The transfer-for-value rule, contained in Section 101(a)(2), provides:

In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance contract or any interest therein, the amount excluded from gross income by (the beneficiary of death proceeds under a life insurance contract) shall not exceed an amount equal to the sum of the actual value of such consideration and the premiums and other amounts subsequently paid by the transferee.

The transfer for value rule provides that when a policy is transferred for valuable consideration, the death proceeds received in excess of the consideration paid are taxed as ordinary income (as opposed to tax-free under the general rule for life insurance proceeds). Consequently, running afoul of the transfer for value rule must be avoided at all costs.

Some points to remember:

- It does not matter whether the policy is term or permanent insurance.
- It applies to group as well as individually purchased life insurance coverage.
- The method for how the policy is transferred is irrelevant.
- It can apply even if ownership of a policy has not been transferred.
- A mere shift in an interest in the contract may be sufficient to trigger the rule.
- For the rule to apply there must be both a transfer of a policy or an interest in a policy and valuable consideration for that transfer to the transferor.

There are five safe-harbor exceptions that may shelter a transfer from the transfer for value rule penalty (even if there is a transfer for valuable consideration).

The safe harbors are:

1. Transferor's basis ("in whole or in part")
2. Transfer to the insured
3. Transfer to a partner of the insured
4. Transfer to a partnership in which the insured is a partner
5. Transfer to a corporation in which the insured is a shareholder or officer

Please note: Transfers to a co-stockholder are not protected and will trigger the transfer for value rule.

D. Transferring existing policies from existing buy-sells

Type of existing buy-sell

Cross purchase	If there is an existing agreement with the policies owned by the shareholders, each shareholder can contribute the policies they own to partnership without any income tax issues because of the transfer for value exception for partnerships.
Entity redemption	If there is an existing stock redemption agreement, with policies owned by the corporation, you will need to get the policies out of the corporation. Here are a couple of options to consider: <ul style="list-style-type: none">• Corporation transfers each policy to the insured shareholder as an S distribution• Corporation transfers all policies pro-rata to the shareholders so each has a pro-rata interest in each policy• Corporation sells the policies to the partnership

E. Creditor protection

There are significant creditor protection advantages using an LLC. While the insureds are alive and the policies are in the LLC, a charging order is the best remedy judgment creditors may obtain against an insured-member where the LLC is domiciled in states that limit creditors to charging orders.

However, at the death of an insured, the LLC must distribute the death proceeds to the surviving members, so they can purchase the interest in the operating entity from the deceased member's estate. The distribution of death benefit proceeds to the surviving member may or may not be protected from the creditors of the member.

F. Notice and consent requirement under 101(j)

IRC §101(j) defines an Employer-Owned Life Insurance (EOLI) contract as a life insurance policy issued after August 17, 2006, that:

- Is owned by a person engaged in a trade or business and under which such person (or a related person) is directly or indirectly a beneficiary under the contract, and
- Insures an employee of the trade or business of the policy owner or a related person (collectively the "applicable policyholder") on the date of the contract's issuance.⁹

Unless an exception applies, an applicable policyholder must include in gross income the death benefits received under an EOLI contract that exceed the total premiums and other amounts paid by the policyholder for the contract.

There are two exceptions:

1. **Insured's status as an employee.** The insured under the contract was:
 - a) An employee at any time during the 12 months prior to his or her death, or
 - b) A director or a highly compensated employee or individual at the time the contract was issued.¹⁰
2. **Death benefits paid to insured's heirs.** The contract death benefits are either:
 - a) Paid to the insured's estate, family members, or other designated beneficiaries (other than the policyholder), or a trust for the benefit of any such individuals, or
 - b) Used to purchase an equity (or capital or profits) interest in the applicable policyholder from any person described above.

However, these exceptions are applicable only if the notice and consent requirements are met before the issuance of an EOLI contract.

9. For this purpose: (1) a "related person" is any person with a relationship to the policy owner as specified in IRC §§267(b), 707(b)(1), 52(a) or 52(b); and (2) an "employee" is a U.S. citizen or resident who is an officer, director or certain highly compensated employees as defined in IRC §414(q).

10. For this purpose, (1) a "highly compensated employee" is defined in Code §414(q) but ignoring paragraph (1)(B)(ii) (i.e., any employee who is a 5% owner or had compensation from the employer in excess of \$115,000 (inflation adjusted)), and (2) "highly compensated individual" is defined in Code §105(h)(5), but substituting 35% for 25% (i.e., an individual who is (a) one of the five highest paid officers, (b) a shareholder who owns (with the application of the constructive ownership rules of IRC §318) more than 10% of the employer's stock, or (c) among the highest paid 35% of all employees).

As a general rule, whenever a business entity will own a life insurance policy (including wholly owned corporations and sole proprietorships). Specifically:

- **Entity redemption buy-sell.** The business owns the policy insuring the business owner and receives the death benefits to fund the owner's buyout.
- **Lifecycle LLC buy-sell.** A separate partnership or LLC is used to hold life insurance on the owners of an operating business to fund the buy-sell of the operating business.
- **Key person life insurance.** A business owns policy to protect it against the loss of a key employee, owner, director, etc.
- **Nonqualified deferred compensation plans.** Any policy used to fund a nonqualified plan which is owned by the business. IRC §457(f) plans may have similar considerations.
- **Supplemental Executive Retirement Plans (SERPs).** Policies purchased as general asset reserves to fund nonqualified voluntary salary/bonus deferral plans or supplemental executive retirement plans.
- **Endorsement split-dollar arrangements.** Any policy where the business owns the policy, and the business (or a related person) will receive the death benefits.
- **Changes or exchanges of grandfathered policies.** Any change to a grandfathered policy or an IRC §1035 exchange of a grandfathered policy for a new policy if there is:
 1. A material increase in the death benefit or
 2. Another material change in the policy.

In Notice 2009-48, the IRS stated that life insurance policies issued in the following situations generally would not qualify as EOLI contracts for purposes of IRC §101(j):

- **Cross purchase arrangements.** Policies owned by the owner of an entity engaged in a trade or business for purposes of financing the purchase of another owner's equity interest.
- **Qualified plans and Voluntary Employee Beneficiary Associations (VEBAs).** Policies held in a qualified plan or voluntary employees' beneficiary association that is sponsored by an entity engaged in a trade or business.

To fit within any exception to EOLI taxation, policyholders must satisfy certain notice and consent requirements prior to issuance of the EOLI contract. The IRS issued the following guidance in Notice 2009-48 regarding compliance with the notice and consent requirements:

Notice: The employee must receive written notification that the applicable policyholder:

1. Intends to insure the employee's life;
2. Reasonably expects to purchase a specified maximum amount of life insurance (stated either in dollars or as a multiple of salary) on the employee during the employee's tenure; and
3. Will be a beneficiary of any proceeds payable upon the death of the employee.

Consent: The employee must provide written consent to being the insured and to the continuation of coverage after termination of the insured's employment. The contract must be issued:

1. Within one year after the employee's consent or
2. Before the termination of the employee's employment, whichever is earlier.

Policyholder's responsibility. EOLI compliance is the policyholder's responsibility. In any potential EOLI situation involving a Minnesota Life or Securian Life policy, there are two steps:

1. The employer must sign a copy of Minnesota Life's form F66015 or Securian Life's form FSL-66015, "Employer Notification Regarding the Potential Taxation of Death Benefits" before the policy is issued, and return it to the financial representative. This form simply notifies the employer of its potential obligations under these rules. It does not relieve the employer of its obligation to obtain a signed notice and consent from the prospective insured.
2. The client should discuss the EOLI rules with an attorney and, if the EOLI rules apply, obtain a signed notice and consent from the insured before the policy is issued. See the Minnesota Life sample "Insured's Acknowledgement of Notice and Consent – Employer Owned Life Insurance Policy." It is the employer's obligation to obtain a signed form from each prospective insured before the policy is issued. The employer should retain these signed forms and file them along with their life insurance policies. The employer must also report these policies to the IRS annually by attaching completed Form 8925 to the employer's annual income tax return.

Form of compliance. While Notice 2009-48 presumes that an employee will receive a separate form for notice and consent, recently PLR 201217017 held that a separate document was not required where the totality of the applicable policyholder's documentation in connection with the EOLI contract evidenced that all the notice and consent requirements were met prior to contract issuance (specifically a buy-sell agreement and a life insurance application, both executed by the insured employee prior to issuance of the contract, which together contained all the required notice and consent information).

Accordingly, for existing EOLI contracts, an employer may be able to evidence notice and consent without separate documentation if it can demonstrate that all required notice and consent information was included in one or more documents that were provided to and/or executed by the insured employee prior to the contract's issuance. For newly issued contracts, however, obtaining a separately executed notice and consent form from the insured employee will more easily and clearly document compliance.

Additional reporting requirements. Policyholders of EOLI contracts must file Form 8925 with their annual federal tax returns for each year that an EOLI contract is owned to report certain information regarding EOLI contracts, including the number of employees insured and the total insurance held under EOLI contracts and the number of non-consenting insured employees (if any). The policyholder must also keep whatever records may be necessary to evidence compliance with IRC §§ 101(j) and 6039I.

How can I correct an EOLI issue?

Per Notice 2009-48, the only situations in which the IRS will not challenge inadvertent failures to satisfy the requirements are if:

1. The applicable policyholder made a good faith effort to satisfy the notice and consent requirements (e.g., maintains a formal system for notice and consent for new employees); and
2. The failure to satisfy the requirements was inadvertent; and
3. The failure to obtain the notice and consent was discovered and corrected by the due date of the tax return for the taxable year in which the EOLI contract was issued (failure to obtain consent cannot be corrected if the insured employee has died).

Otherwise, removing the “taint” of an improperly issued EOLI contract often involves:

1. Cancelling the existing policy and issuing a new one; or
2. Affecting a material increase in the policy death benefit or other material change in the contract.

The notice and consent requirements must be satisfied prior to the issuance of a new policy or to a material change in an existing policy.

Conclusion

The lifecycle buy-sell can avoid the drawbacks associated with both the cross purchase and the stock redemption buy-sell arrangements while providing additional benefits.

It allows flexibility to customize the design to fit the particular business situation. In addition, it can provide a place to accumulate additional retirement savings for the shareholders safe from corporate creditors. For these reasons, the lifecycle buy-sell is often the preferred option among business owners preparing for retirement and business continuity.

Specimen lifecycle buy-sell agreement

Counsel alone is responsible for the actual wording of this final insured's acknowledgement of notice and consent. Neither Minnesota Life Insurance Company, Securian Life Insurance Company nor its representatives are engaged in the practice of law; these specimen agreements are intended for illustrative purposes and counsel must draft a buy-sell agreement appropriate for his or her client.

This Agreement is entered into on the [DAY] day of [MONTH], [YEAR], by and between [CORPORATION NAME], a [STATE OF INCORPORATION] corporation (hereinafter the "Corporation"), and [STOCKHOLDER 1 NAME], [STOCKHOLDER 2 NAME], and [STOCKHOLDER 3 NAME] (hereinafter the "Stockholders").

WHEREAS, the Stockholders own stock in the Corporation in the amounts set forth in attached Schedule "A." Each Stockholder wishes to make all of their stock subject to the terms of this Agreement.

WHEREAS, the Stockholders desire to insure the continuity of management of the Corporation by providing for the purchase of a Stockholder's stock in the event of death, retirement, or in the event of a sale of any shares during a Stockholder's lifetime.

WHEREAS, the Stockholders created, and became partners in a partnership known as [PARTNERSHIP NAME] (the "Partnership") under the Operating Agreement dated [DATE OF OPERATING AGREEMENT] to assure that the funds necessary to fulfill the obligations under this Agreement will be available. It is the intent of the parties that this LifeCycle Buy-Sell Agreement and the Operating Agreement shall work in conjunction to accomplish the elements of those Agreements.

WHEREAS, the Partnership will own and be named as the beneficiary of life insurance on the lives of each Stockholder, said life insurance is intended to be in an amount sufficient to provide the funds necessary to purchase a deceased Stockholder's shares of stock in the Corporation and interest in the LLC.

In consideration of the promises in this Agreement, the Stockholders bind themselves as follows:

NOW, THEREFORE, IT IS AGREED:

Article 1: Restriction on transfer of stock

No Stockholder shall encumber or dispose of his stock in the Corporation, now owned or hereafter acquired, except in accordance with the terms of this Agreement, nor shall any Stockholder put such stock in joint names with the right of survivorship with any other person.

Article 2: Sale of stock upon death

Upon the death of a Stockholder, the surviving Stockholders may purchase, and the estate of the decedent shall sell, all the shares of stock of the Corporation now owned or later acquired by the deceased Stockholder. Each surviving Stockholder may purchase the percentage of the decedent's shares equal to the ratio of the shares owned by the surviving Stockholder divided by total shares owned by all surviving Stockholders. If, or to the extent that, the surviving Stockholders do not purchase all of the shares then owned by the deceased Stockholder's estate, the Corporation shall redeem such stock. The sale price shall be determined in accordance with Article 4. The purchase or redemption of shares shall be done in accordance with the conditions set forth in Article 5.

Article 3: Sale of stock during lifetime

If a Stockholder desires to sell part or all of his or her shares of stock at any time during his lifetime, he or she shall first give written notice to the Corporation and the other Stockholders. Upon receipt of the notice, the other Stockholders shall first have thirty (30) days to exercise their option to purchase such shares of stock at the price established in accordance with Article 4. Each other Stockholder's option purchase shall be for the percentage of the shares equal to the ratio of the shares owned by the other Stockholder divided by total shares owned by all other Stockholders.

If, or to the extent that, the other Stockholders do not purchase all of the shares then owned by the Stockholder desiring to sell, then Corporation shall have thirty (30) additional days to redeem such stock at the price established in accordance with Article 4. If said shares of stock are not purchased or redeemed within the period, the Stockholder desiring to sell the shares may dispose of them in any lawful manner available, but not at a price less than that established in accordance with Article 4, without first offering to sell the shares to the other Stockholders and then to the Corporation at the lesser price.

Article 4: Value of stock

The value of stock, as determined by the Stockholders, is as set forth in Schedule B, attached hereto. At the end of each fiscal year, or within sixty (60) days thereafter, the Stockholders shall redetermine the value of their stock. The new stock value shall be attached to this Agreement on Schedule B and shall be signed by and binding on all the parties to this Agreement.

If a Stockholder dies within thirty-six (36) months of the last redetermination of value, or a Stockholder retires, or desires to withdraw from the Corporation within thirty-six (36) months of the last redetermination of value, that last redetermination shall be used. If more than thirty-six (36) months have passed since the last redetermination, however, then qualified appraisers shall be appointed to determine the value, as follows:

The Stockholders, and the legal representative of the deceased Stockholder's estate if applicable, shall have the opportunity to appoint, at their own cost, a qualified appraiser within thirty (30) days of receipt of a written notice of intent to sell under Article 3 or the appointment of a legal representative in the case of a deceased Stockholder. If only one party appoints a qualified appraiser within the thirty (30) days, that appraiser shall unilaterally establish the value for the decedent's stock value by a written opinion.

If more than one party appoints a qualified appraiser within the thirty (30) days, those appraisers shall establish a value in a single written opinion agreed to by them. If they cannot agree, they shall together appoint a qualified appraiser whose sole written opinion shall establish the appraised value.

For purposes of this section, a "qualified appraiser" is a professional appraiser or Certified Public Accountant who is qualified by experience and ability to appraise such shares of stock. The appointment of a qualified appraiser shall be made by notifying the other party in writing of the appointment.

Notwithstanding the above procedure, the legal representative of a deceased Stockholder and the surviving Stockholders may accept as controlling the last redetermination of value. Similarly, a retiring or withdrawing Stockholder may accept the last redetermination of value as controlling, provided that the remaining Stockholders agree to that value. It is the intent of the parties that the value of the Corporation as determined does include goodwill.

Article 5: Purchase of a decedent's stock

Upon the death of a Stockholder, the surviving Stockholders shall have thirty (30) days after the appointment of a legal representative of the decedent's estate to purchase shares of the decedent's stock in the Corporation from the deceased Stockholder's estate. If, or to the extent that, the surviving Stockholders do not purchase all of the shares then owned by the deceased Stockholder's estate, the Corporation shall redeem such stock within sixty (60) days after the appointment of a legal representative of the decedent's estate, or within thirty (30) days after the receipt of written notice from all surviving Stockholders that they do not intend to purchase such shares, if earlier. Upon receipt of the entire purchase price in cash, as provided in this Agreement, the legal representative shall transfer the deceased Stockholder's shares to the surviving Stockholders or the Corporation, as the case may be.

Article 6: Life insurance

In order to assure funds are available to purchase the shares of a deceased Stockholder, the LLC has purchased (or will purchase) life insurance on the lives of the Stockholders. In order to facilitate the performance of this Agreement, the Stockholders agree to take any physical examinations and sign such applications as shall be necessary in connection therewith from time to time. Any policies purchased shall be subject to this Agreement, and any addition or substitution of policies shall be subject to all the terms and conditions of this Agreement. All such policies shall be listed on Schedule C attached hereto and made a part hereof. The LLC may purchase additional insurance on the lives of any of the parties to this Agreement, or anyone who may later become a party to this Agreement. Additional purchases of insurance shall also be listed on Schedule C.

The LLC shall be the beneficiary and absolute owner of all policies purchased by the LLC on the lives of the Stockholders for purposes of this Agreement, and shall have and retain possession of such policies and dispose of them and the proceeds thereof only as provided in this Agreement. The LLC shall pay all premiums due on all such life insurance policies taken out by the LLC and the LLC shall provide each insured Stockholder with proof of payment within fifteen (15) days after the due date of each premium.

Until termination of this Agreement, neither the LLC nor any Partner shall do any of the following to policies purchased pursuant to this Agreement: surrender the policies for the cash value, borrow upon the policies, receive cash dividends, pledge or assign them as security for any loan or indebtedness, or otherwise modify or impair any of the rights or values of the policies, except with written approval of all Stockholders.

Article 7: Restrictive legend

Upon the execution of this Agreement, the share certificates subject hereto shall be surrendered to the Corporation and endorsed as follows:

The transfer of the shares represented by this certificate is restricted under the terms of the lifecycle LLC Buy-Sell Agreement dated [DATE OF lifecycle LLC Buy-Sell Agreement], a copy of which is on file in the office of the Corporation.

After endorsement, the certificates shall be returned to the Stockholders, who shall be entitled to exercise all rights of ownership concerning such shares subject to the terms of this Agreement. All shares hereafter issued shall bear the same restrictive legend.

Article 8: Amendment and termination

This Agreement may be amended or terminated by a written agreement signed by all parties. This Agreement shall terminate should any of the following events occur:

- a. Bankruptcy, receivership or dissolution of the Corporation.
- b. Death of all Stockholders simultaneously or within a period of thirty (30) days.
- c. Execution of a written instrument by the parties hereto agreeing to the termination of this Agreement.

Article 9: Valid provision

The invalidity or unenforceability of any particular provisions under this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

Article 10: Notice

All notices required to be sent under this Agreement or in connection with this Agreement shall be in writing and shall be deemed given when personally delivered or mailed, postage prepaid, by certified mail, return receipt requested, addressed in the case of the Corporation, to it at its principal office, and in the case of a Stockholder, to his most recent address as shown on the books of the Corporation.

Article 11: 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 insurance policy. The payment by the insurance company pursuant to the terms of any policies which are subject to this Agreement shall completely discharge the company from all claims, suits and liabilities.

Article 12: Amendment or alteration

Any amendment or alteration of the terms of this Agreement shall not be valid unless made in writing and signed by the parties hereto.

Article 13: Choice of law

This Agreement shall be construed in accordance with the laws of the State of [STATE].

Article 14: Heirs, executors and administrators

This Agreement shall be binding upon the Stockholders, their heirs, legal representatives, successors and assigns.

Article 15: Non-Waiver

No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

Article 16: Headings

Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

Article 17: Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall be one and the same instrument.

Article 18: Acknowledgement (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 voluntarily after receiving advice (or 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 at [CITY], in the County of [COUNTY], State of [STATE], on this [DAY] day of [MONTH], [YEAR].

Stockholder

Stockholder

Stockholder

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

Spouse

Schedule A

The amount of stock in the corporation owned by each stockholder is as follows:

Stockholder	Number of shares

Schedule B

This [DAY] day of [MONTH], [YEAR], the stockholders have determined the value of the stock of the corporation for purposes of this agreement to be \$[PRICE PER SHARE] per share.

Stockholder

Stockholder

Stockholder

Schedule C

Stockholder	Number of shares	Insurance company	Face amount

Specimen Lifecycle LLC Buy-Sell Partnership Agreement

Counsel alone is responsible for the actual wording of the final lifecycle buy-sell partnership agreement. Neither Minnesota Life Insurance Company, Securian Life Insurance Company nor its representatives are engaged in the practice of law; these specimen agreements are intended for illustrative purposes and counsel must draft a lifecycle buy-sell partnership agreement appropriate for his or her client.

This Partnership Agreement is entered into on the [DAY] day of [MONTH], [YEAR], by and between [PARTNER 1 NAME], [PARTNER 2 NAME], and [PARTNER 3 NAME] (hereinafter the "partners").

WHEREAS, the Partners wish to combine their capital and investment skills by forming a partnership to be known as [NAME OF PARTNERSHIP], (hereinafter the "Partnership").

WHEREAS, the Partners are also Stockholders in [STATE] a (n) corporation (the "Corporation").

WHEREAS, the Partners desire to ensure the continuity of the Corporation and the Partnership by providing for the purchase, by the surviving or remaining Partners, of a Partner's shares of the Corporation and the transfer of the Partner's partnership interests in the event of death, retirement, or in the event of a desire of a Partner to sell shares of the Corporation or withdraw from the Partnership.

WHEREAS, the Partners and the Corporation have entered into the LifeCycle Buy-Sell Agreement dated [DATE OF BUY-SELL AGREEMENT] to control the purchase and sale of shares of the Corporation. It is the intent of the parties that the LifeCycle Buy-Sell Agreement and this Partnership Agreement shall work in conjunction to accomplish the elements of those Agreements.

WHEREAS, the Partnership will own and be named as the beneficiary of life insurance on the lives of each Partner, said life insurance is intended to be in an amount sufficient to provide the funds necessary to purchase a deceased Partner's shares of stock in the Corporation and interest in the Partnership.

In consideration of the promises in this Agreement, the Partners bind themselves as follows:

NOW, THEREFORE, IT IS AGREED:

Article 1: Formation of partnership and statement of agreement

The parties hereby form a general partnership under the name of [NAME OF PARTNERSHIP] to invest and accumulate nonqualified assets for the partners' retirement income, ensure the continuous operation and economic continuity of the partners' corporate business interests, manage real estate, and conduct any other general business purpose for profit which the partners deem appropriate. The principal office of the Partnership is and shall continue to be located at [STREET] in [CITY], [STATE], [ZIP], or such other place as the Partners may from time to time determine.

In order to carry out its purposes, and not in limitation thereof, the Partnership is empowered and authorized to do any and all acts and things necessary and incidental to or convenient for the furtherance and accomplishment of its purpose, and for the protection and benefit of the Partnership, including, but not limited to, the following:

- (a) Acquire, receive, distribute, own, and maintain any investment including life insurance policies on the life of any or all Partners.
- (b) Borrow money, issue evidences of indebtedness and otherwise incur obligations in furtherance of the Partnership business.
- (c) Enter into and perform any activity, agreement or contract of any kind in furtherance of the purposes of the Partnership.

The Partners agree that the goals and priorities of the Partnership are generally to produce sufficient profits to provide for the continued operation and existence of the Corporation upon the death (whenever it may occur) or retirement of a Partner and to provide sufficient liquidity for a deceased Partner's estate by insuring a market for the Partner's shares of the corporation and to provide additional income to retiring Partners. The actions of the Partnership shall not be strictly limited to the goals described in this Article, but each Partner shall in good faith take these goals and priorities into consideration.

Article 2: Capital

The initial capital of the partnership shall be contributed in cash by the partners as follows:

Name	Amount	Ownership percentage

A separate capital account shall be maintained for each partner. The partners shall also make additional contributions of capital to the partnership as needed to maintain partnership assets, including life insurance policies owned by the partnership. No partner shall withdraw any part of his/her capital account unless death, disability, retirement or withdrawal from the partnership occurs. Each partner's capital account shall be determined and maintained throughout the duration of the partnership in accordance with the requirements of Section 704(b) of the Internal Revenue Code (IRC) of 1986, or its counterpart in any subsequently enacted IRC (the "Code"), and any of the Treasury Regulations (the "Regulations") promulgated from time to time thereunder.

Article 3: Profit and loss

The net profits of the partnership shall be divided equally among the partners and the net losses also shall be borne equally by them. A separate income account shall be maintained for each partner. Partnership profits and losses shall be charged or credited to the separate income account of each partner. If a partner has no credit balance in his/her income account, losses shall be charged to his/her capital account. Profits and losses of the partnership shall be determined in the manner in which the partnership reports its income and expenses for federal income tax return purposes.

Article 4: Salaries and drawings

No partner shall receive any salary for services rendered to the partnership. Each partner may, from time to time, withdraw the credit balance in his/her income account. Cash value growth within any life insurance policies owned by the partnership shall not be not subject to withdrawal. No additional share of profits shall inure to a partner by reason of his/her capital or income account being in excess of the capital or income account of the other.

Article 5: Interest paid

No interest shall be paid on the initial capital contributions to the capital of the partnership or on any subsequent contributions of capital.

Article 6: Management, duties and restrictions

The partners shall have equal rights in the management of the partnership business, and each partner shall devote a similar amount of time to the conduct of the partnership. No partner shall, without the consent of the other partners, endorse any note, or act as an accommodation party, or otherwise become a surety for any person.

Without the consent of the other partners, no partner shall on behalf of the partnership borrow or lend money, or make, deliver, or accept any commercial paper, or execute any mortgage, security agreement, bond, or lease, purchase or contract to purchase, or sell, or contract to sell any property for or of the partnership other than any property bought and sold in the regular course of its business.

No partner shall, except with the consent of the other partners, assign, mortgage, grant a security interest in, or sell his/her share in the partnership or in its capital assets or property, or enter into any agreement as a result of which any person shall become interested with him/her in the partnership, or do any act detrimental to the best interests of the partnership or which would make it impossible to carry on the ordinary business of the partnership.

Article 7: Special operational restrictions on partners

Without the consent of all partners, each partner agrees not to individually exercise any ownership right or control over any life insurance policy on their life owned by the partnership. Further, each partner agrees not to encumber any policy on their life owned by the partnership without the consent of all partners. Each partner also agrees to waive any and all partition rights with respect to any life insurance policies owned by the partnership on his or her life.

Article 8: Banking

All funds of the partnership shall be deposited in its name in such checking account or accounts, as shall be designated by the partners. All withdrawals from partnership checking account(s) are to be made upon checks signed by at least two partners. If only one partner remains, due to the death(s) of the other partners, then only one partner's signature will be required for banking transactions.

Article 9: Books

The partnership books shall be maintained at the principal office of the partnership, and each partner shall at all times have access thereto. The books shall be kept on a fiscal year basis, commencing [BEGINNING DATE] and ending [END DATE], and shall be closed and balanced at the end of each fiscal year. An audit shall be made as of the closing date, unless waived in writing by all partners.

Article 10: Voluntary termination

The partnership may be dissolved at any time by agreement of the partners, in which event the partners shall proceed with reasonable promptness to liquidate the business of the partnership. The partnership name may be sold with other assets of the business.

The proceeds of such liquidation shall be applied in the following order of priority:

- (i) To the payment of any debts and liabilities of the partnership;
- (ii) To the setting up of any reserve which the partners shall reasonably deem necessary to provide for any contingent or unforeseen liabilities or obligations of the partnership. At the expiration of such period of time as the partners shall deem advisable, the balance of such reserve remaining after the payment of such contingency shall be distributed in the manner hereinafter set forth;
- (iii) Thereafter, the balance of the proceeds, if any, shall be distributed in accordance with the positive capital account balances of the partners, as determined after taking into account all capital account adjustments for the partnership taxable year during which such liquidation occurs, and shall be made by the end of such taxable year (or, if later, within ninety (90) days after the date of such liquidation). For purposes of this sub-paragraph, a liquidation of the partnership shall mean a liquidation as set forth in Section 1.704-1(b)(2)(ii)(g) of the Regulations.

If, following the liquidation of a partner's interest in the partnership (within the meaning of Treasury Regulations Section 1.704-1 (b)(2)(ii)(g)) a partner has a deficit balance in his/her capital account (as determined after taking into account all adjustments to said capital account, including the adjustments for the year during which such liquidation occurs), such partner shall be unconditionally obligated to pay the amount of such deficit balance to the partnership by the end of such taxable year (or, if later, within ninety (90) days after the date of such liquidation), which amount shall be applied and distributed in accordance with the provisions of this paragraph.

Article 11: Retirement

Any partner shall have the right to retire from the partnership at the end of any fiscal year on or after attainment of age [RETIREMENT AGE]. Written notice of intention to retire shall be served upon the other partners at the office of the partnership at least three months before the end of the fiscal year. The partnership shall purchase, and the retiring partner shall sell, the retiring partner's interest in the partnership upon the date stipulated in the written notice.

The purchase price shall be determined in the same manner as stated in paragraph 13 with reference to the partnership's purchase of a deceased partner's interest in the partnership and may be paid in cash or in kind. The net cash value of a life insurance policy on the life of a retiring partner may be adjusted through loans or partial surrenders or additional premium payments to ensure the retiring partner receives value equal to his or her proportional interest in the partnership as determined by his or her ownership percentage. The adjusted life insurance policy may be distributed to the retiring partner in full and complete satisfaction of the retiring partner's ownership interest in the partnership.

The purchase price of a retiring partner's interest in the partnership shall equal the net cash value of the life insurance policy on the retiring partner's life. Distribution to a retiring partner of such policy shall be in full and complete satisfaction of the retiring partner's ownership interest in the partnership.

Article 12: Death of a partner

Upon the death of a partner, the partnership shall purchase, and the estate of the partner shall sell, the partnership interest of the deceased partner. The purchase price shall be equal to the deceased partner's ownership share of the total partnership value immediately prior to the date of death, including the deceased partner's share of the total cash value of all life insurance policies owned by the partnership immediately before his or her death. Payment to a deceased partner's estate or heirs for the deceased partner's partnership interest shall be in cash and shall occur no later than 60 days after the date of the partner's death.

No allowance shall be made for goodwill, trade name, patents, or other intangible assets, except as those assets have been reflected on the partnership books immediately prior to the decedent's death; but the survivors shall nevertheless be entitled to use the trade name of the partnership.

Article 13: Special allocation

Any life insurance death benefit payable to the partnership by virtue of its ownership of a policy on the life of a partner, shall be specially allocated only to the surviving partners. The special allocation will be based on each partner's proportional ownership interest in the partnership determined after the deceased partner's interest has been removed.

Article 14: Distribution of death proceeds

Death proceeds will first be used by the partnership to purchase the partnership interest of the deceased partner. The remaining death proceeds shall be distributed to the surviving partners to be used as funding to fulfill the surviving partner's obligation under the corporate buy-sell agreement dated [DATE OF CORPORATE BUY-SELL]. Such proceeds are to be distributed according to the surviving partners proportionate ownership interest determined after the deceased partner's interest has been removed.

Article 15: Restriction on partnership transfer

Except in the normal course of business financing, no partner shall sell, assign, transfer, pledge or dispose, or otherwise encumber any portion of his or her respective interest in the partnership by sale or otherwise except as provided in this Agreement.

Article 16: Dissolution of partner’s marriage

In the event a partner’s marriage becomes dissolved through usual legal process, and if any former spouse of a partner acquires an ownership interest in this partnership by reason of such legal process and marriage dissolution, then such spouse shall become a party to this Agreement. In that event, the partnership shall purchase, and the new partner (former spouse) shall sell, his or her partnership interest to the partnership. The purchase price shall be determined in the manner described in Article 12 - Death of a partner. Such sale will take place within 90 days of the date of the court’s dissolution order. Payment may be in cash or on an installment basis, not to exceed 10 years. The choice of payment method will be solely determined by a majority vote of the partners.

Article 17: Arbitration

Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by arbitration in accordance with the rules, then obtaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

Article 18: Acknowledgement (optional community property)

Each partner 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 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 at [CITY], in the County of [COUNTY], State of [STATE], on this [DAY] day of [MONTH], [YEAR].

Partner

Partner

Partner

Consent of spouses

We, the undersigned spouses of the partners, 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 partners.

Spouse

Spouse

Spouse

**Employer Owned Life Insurance Policy
Insured's Acknowledgment of Disclosure and Consent**



Minnesota Life Insurance Company - a Securian Financial company
Life New Business • 400 Robert Street North • St. Paul, Minnesota 55101-2098

Employee/Proposed Insured - Information (please print)

Name			Date of birth
Address	City	State	Zip code
Telephone number			

Employer Information

Legal name			
Address	City	State	Zip code
Telephone number			

I, the employee/proposed insured, acknowledge disclosure and consent that:

- The employer intends to insure my life.
- I authorize and allow the employer to purchase such life insurance on my life.
- The maximum face amount for which I will be insured is: \$ _____
- The employer will be the beneficiary of all or part of the life insurance policy proceeds.
- Such life insurance coverage may continue after my employment with employer has terminated.
- I have received this written Acknowledgment of Disclosure and Consent form from the employer.

Signature of employee/proposed insured X	Date
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Employer - please review the following:

- This form must be executed and signed before the policy is issued.
- The execution of this form must involve an appropriate insured under IRC Section 101(j).
- Copies of this Acknowledgment of Disclosure and Consent form are retained by the Employer.
- For survivor life insurance policies, a separate form must be completed and retained for each of the proposed insureds.
- This form and information is not intended as tax, legal or accounting advice. It is provided only as a convenience. Taxpayers should consult with their own legal counsel for guidance in order to determine IRC Section 101(j) requirements and whether a specific planning strategy is suitable for any particular individual.

Securian Financial is the marketing name for Minnesota Life Insurance Company. Insurance products are issued by Minnesota Life Insurance Company.

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**Employer Owned Life Insurance Policy
Insured's Acknowledgment of Disclosure and Consent**



Securian Life Insurance Company

Life New Business • 400 Robert Street North, St. Paul, MN 55101-2098

Employee/Proposed Insured - Information (please print)

Name	Date of birth
Street address, city, state, zip code	Telephone number

Employer Information

Legal name	
Street address, city, state, zip code	Telephone number

I, the employee / proposed insured, acknowledge disclosure and consent that:

- The employer intends to insure my life.
- I authorize and allow the employer to purchase such life insurance on my life.
- The maximum face amount for which I will be insured is: \$ _____
- The employer will be the beneficiary of all or part of the life insurance policy proceeds.
- Such life insurance coverage may continue after my employment with employer has terminated.
- I have received this written Acknowledgment of Disclosure and Consent form from the employer.

Signature of employee/proposed insured	Date
X	

Employer - please review the following:

- This form must be executed and signed before the policy is issued.
- The execution of this form must involve an appropriate insured under IRC Section 101(j).
- Copies of this Acknowledgment of Disclosure and Consent form are retained by the Employer.
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- This form and information is not intended as tax, legal or accounting advice. It is provided only as a convenience. Taxpayers should consult with their own legal counsel for guidance in order to determine IRC Section 101(j) requirements and whether a specific planning strategy is suitable for any particular individual.

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.

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 fifteen years of the contract. You should consult your tax advisor when considering taking a policy loan or withdrawal.

Guarantees are based on the claims-paying ability of the issuing life insurance company.

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

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.

These are general marketing materials and, accordingly, should not be viewed as a recommendation that any particular

product or feature is appropriate or suitable for any particular individual. These materials are based on hypothetical scenarios and are not designed for any particular individual or group of individuals (for example, any demographic group by age or occupation). It should not be considered investment advice, nor does it constitute a recommendation that anyone engage in (or refrain from) a particular course of action. If you are looking for investment advice or recommendations, you should contact your financial professional.

The policy design you choose may impact the tax status of your policy. If you pay too much premium your policy could become a modified endowment contract (MEC). Distributions from a MEC may be taxable and if the taxpayer is under the age of 59 ½ may also be subject to an additional 10% penalty tax.

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 insurance company and does not do insurance business in the state of New York. Both companies are headquartered in Saint 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.

Securian Financial is the marketing name for Securian Financial Group, Inc., and its subsidiaries. Minnesota Life Insurance Company and Securian Life Insurance Company are subsidiaries of Securian Financial Group, Inc.



INSURANCE
INVESTMENTS
RETIREMENT

[securian.com](https://www.securian.com)

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