

INSURANCE AND BUY/SELL AGREEMENTS

WEATHERING THE FUTURE TOGETHER



NEW ZEALAND TRUSTEE SERVICES 

partners in protecting today's success for future generations



**WE CAN'T PREDICT THE FUTURE,
BUT WE CAN PROTECT IT**

WEALTH PROTECTION FOR SHAREHOLDERS OF PRIVATE COMPANIES

For many New Zealanders, an important component of their wealth is their private company and the shareholding they and/or their Trust owns in it. The private company plays a key role in generating income for today's lifestyle and for providing capital on retirement.

Shareholders of companies need to plan to manage problems that can arise if any one of them dies or becomes seriously disabled. Importantly they need a plan in place to enable an orderly transfer of ownership and control of the business and a fair transfer of value between the shareholders. As the Company grows in value the insurances in place could well be inadequate, hence the requirement for annual and comprehensive reviews of both the Buy/Sell Deed and the insurance cover in place.

This is why a Shareholder Protection Plan is important. The key mechanism within the plan is the Buy/Sell Agreement. Its aims are to:

1. Protect the value of the shares held by an owner who is forced to leave the business
2. Provide the remaining owners with the ability to easily acquire the shares, to have control of the business and the capability to make key decisions about running the company.

New Zealand Trustee Services Limited and Perpetual Guardian are ready to help guide shareholders through the process with a collaborative one-team approach with insurance advisors and other preferred advisors.

GREATER CERTAINTY FOR SHAREHOLDERS

The role of the Shareholder Protection Plan is to protect the wealth of a business owner when they lose their voice due to critical illness or death by creating greater certainty that:

1. Business owners and their families will receive fair value that reflects what the business owners have put into the business.
2. Assets used as security for business activities are released from those obligations when the business owner or family is forced to sell their interest in the business.
3. Risk of business interruption is mitigated ensuring business continuity.

This is achieved by providing advice to business owners on:

- Buy/Sell Agreements
- Estate (Succession) Planning

And by providing the structures to support the Shareholder Protection Plan:

- Professional Trustee Services
- Independent Stakeholder Services

WHAT COULD GO WRONG WITHOUT A FORMAL SHAREHOLDER PROTECTION PLAN?

Without a formal shareholder protection plan, shareholders and their families are exposed to serious risks such as business interruption, failure or bankruptcy.

In the circumstance of a serious disablement or death, shares will pass to the affected owner's estate. A family may want to get the capital out of the business as quickly as possible and for the highest price possible. This conflicts with the remaining shareholders who will want to buy at the lowest price and minimise the debt taken on, to purchase the shares. They will want to get on with running the company and be in control of key decisions. This may be constrained by the appointment of a new director, which a family may have the power to appoint on their behalf.

Without a prior Agreement in place it is likely the selling shareholder will be forced to accept a price lower than expected and the remaining shareholders will be required to obtain cash from either within or outside of the Company to obtain control of the company.

Unlike shares in a publicly listed company, shares in a small privately held business are relatively illiquid and following the loss of one of the shareholders, interested buyers are often only the current shareholders.

Valuing small private companies can be difficult in these circumstances as it is not easy to compare them to the standard indices used on the share market. It's also difficult because advisors from different industries have differing methods for determining the value of private companies. This is where an Independent Stakeholder can assist with an objective point of view.

Therefore, if shareholders have not prepared for the death or serious disablement of an owner critical issues can arise for all involved parties.

WITHOUT A SHAREHOLDER PROTECTION PLAN: WORST CASE SCENARIO

Bryan and John have been in business together for 20 years. They have a great friendship and have discussed the issues surrounding the death or incapacity of one or both of them and the effect this will have on their respective families. They agree to put in place insurance cover based on a 'willing seller, willing buyer' basis. They also decide that the implementation of a Buy Sell Agreement is not required. The total value of the Company is \$4,000,000. Therefore Bryan and John take out life cover for \$2,000,000 each. For simplicity they agree that Bryan will own John's life cover and John owns Bryan's. The 'hand shake' agreement between both Bryan and John is simple- should one die the insurance will be distributed to the deceased's family and the shares of the Company will pass in entirety to the surviving business partner.

Bryan subsequently dies and John receives the \$2,000,000. John has now lost his best friend and the value of the Company is certainly not worth \$4,000,000 as one of the key people has passed. Instead of honoring the 'hand shake' agreement John decides that as the owner of the life cover, he will retain the \$2,000,000 and he will assign the shares of the Company to Bryan's widow. With

both key people now removed, these shares have little to no value.

John moves to the Gold Coast and retires. Bryan's widow has nothing apart from worthless shares in a Company that will probably be liquidated. Bryan's 20 years of work in this Company has resulted in no financial gain for his family. This totally contradicts the 'end goal' agreed to by both Bryan and John. However without a binding Agreement in place and the correct ownership of the Life Policies held by an independent entity, this 'worst case scenario' will result more often than not.

This scenario can clearly happen even with insurance. What would happen if no insurance is in place at all? In this instance how would John raise the \$2,000,000 to pay to Bryan's widow? Would this bankrupt John or the Company or both? Or would this end up in a legal dispute that could last years?

Remember, if you do not take ownership of this issue, your family will be left to pick up the pieces and effectively fight for their rights. Is this something you want as your legacy to your family?

HELPING SHAREHOLDERS PREPARE FOR THE UNEXPECTED

New Zealand Trustee Services and Perpetual Guardian have the expertise to help shareholders of privately owned companies put in place a robust Shareholder Protection Plan to manage the problems caused by the death or serious disablement of a co-owner.

We will work with the shareholders to:

- a. Facilitate the terms and preparation of the Buy/Sell Deed
- b. Ensure appropriate advice is received in relation to the insurance – this will of course be provided by an expert in the field of Business Insurance
- c. Ensure the estate plan of each shareholder is up to date so that the shares are able to be acquired in a timely manner

We will also provide a professional Independent Stakeholder through our specially formed company New Zealand Trustee Services (Stakeholder) Limited to 'own' the insurance policies on the terms and conditions of the Buy Sell Deed.

HOW A SHAREHOLDER PROTECTION PLAN WORKS

A Shareholder Protection Plan works by establishing an upfront arrangement between the shareholders to formalise how the shares of a deceased or seriously disabled owner will be sold and bought. It includes the following elements:

- A Buy/Sell Agreement formalising the terms for the purchase and sale of shares on specified events such as the death or serious disablement of a shareholder.
- A valuation of the company and an agreed future valuation methodology.
- Insurance on the lives of the key shareholders equal to the value of the shares held by them and/or their Trust.
- An Independent Stakeholder company to hold the insurance policies on trust to ensure that the funds from a claim are used for their intended purpose and that the terms of the Agreement is met before finalising the share transfer process.
- Annual meetings to ensure relevancy and to check if any changes of circumstances or legislation affect possible outcomes of the plan.

THE ROLE OF INSURANCE IN A BUY/SELL AGREEMENT

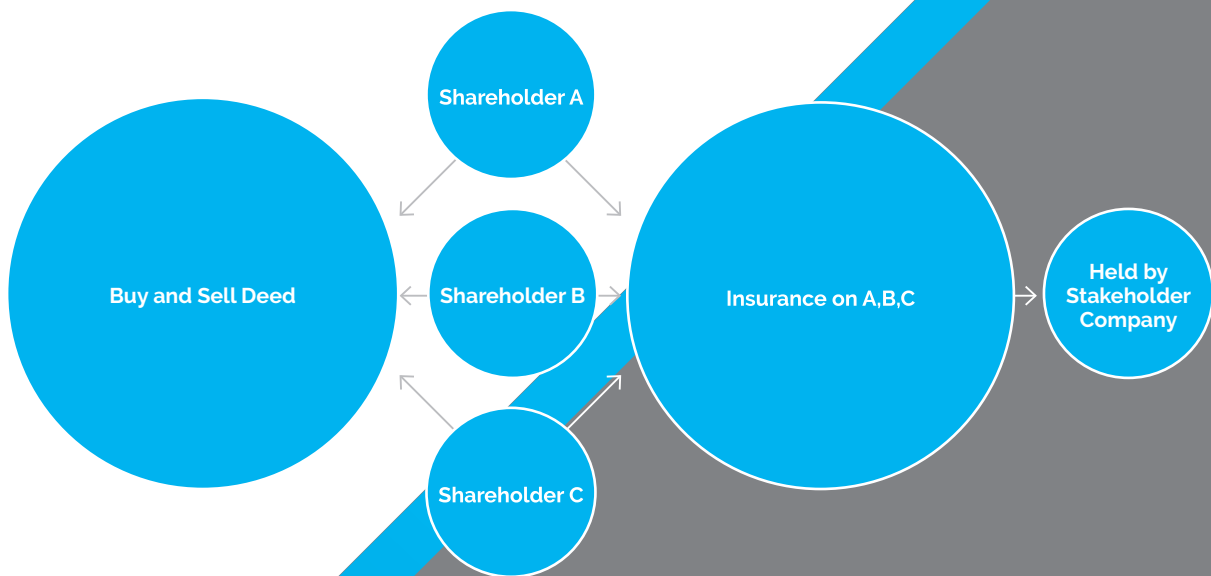
- Insurance provides the cash to meet all or part of the price to buy the selling owners share. This avoids the buying owner using their own cash reserves.
- It reduces the chance that the buying owners have to increase their debt and thereby expose their personal assets.
- Creates greater certainty for the seller that there are funds available to complete the transaction.
- Enables assurance for when the funds are paid to the selling owner.
- Assists the owners to plan and quantify their personal risk needs.

Who else should be involved?

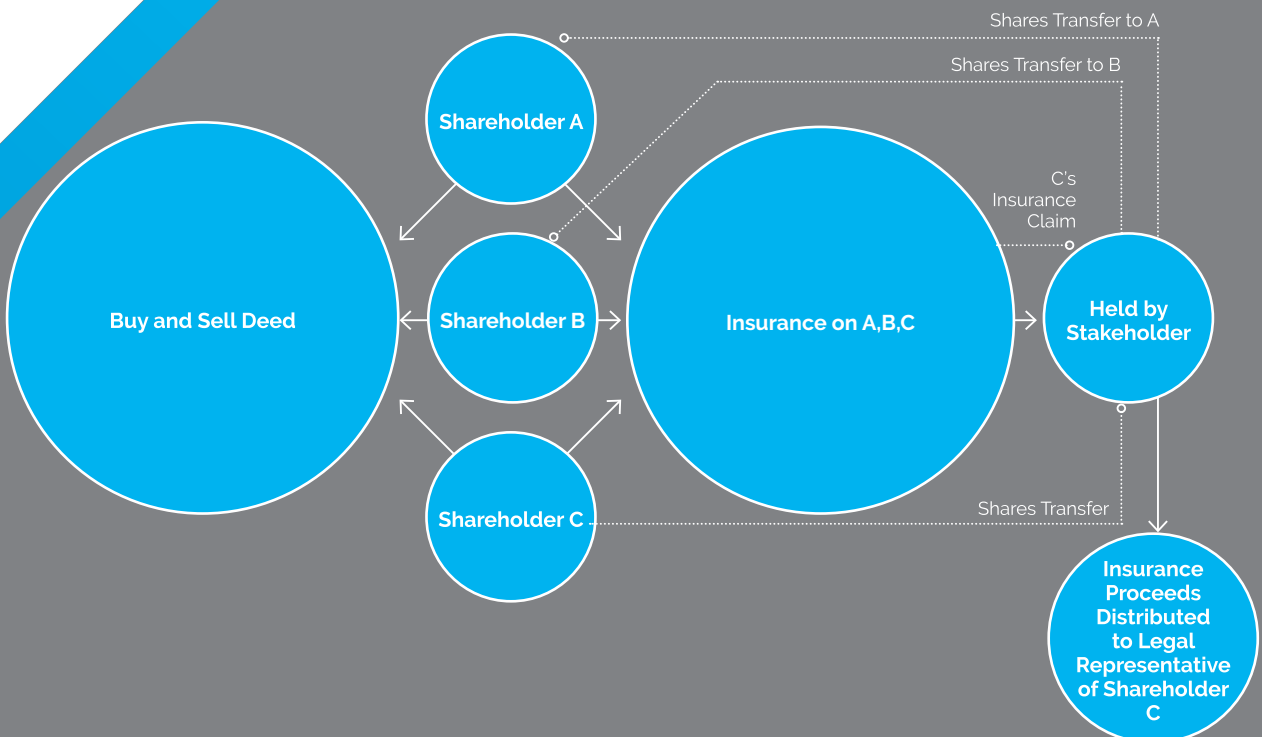
- Accountant
- Financial Advisor
- Insurance Broker
- Mortgage Broker
- Trust Professional

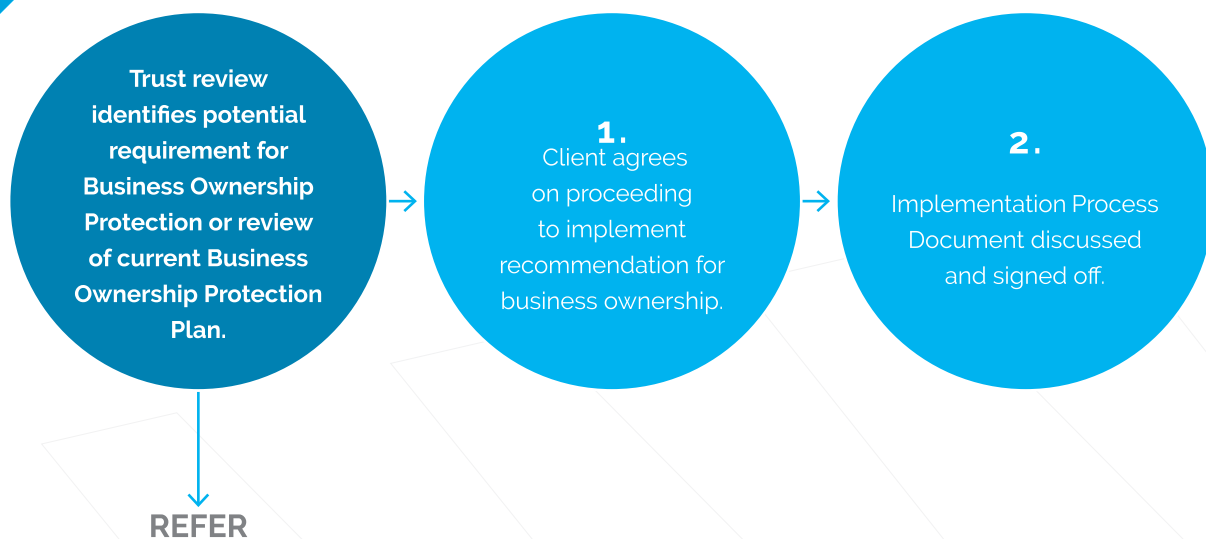
DUAL SUPPORT FOR SHAREHOLDERS

EXAMPLE: Shareholder Protection Plan Framework

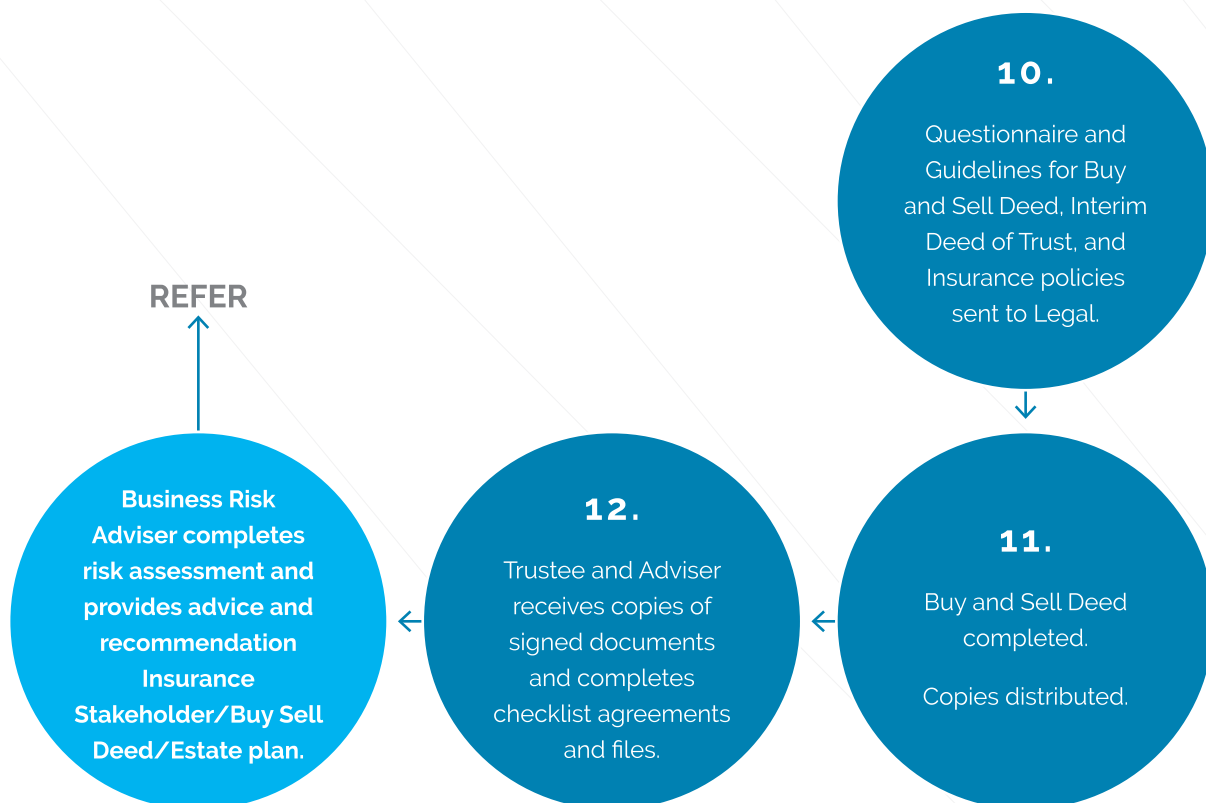


EXAMPLE: Death Of Shareholder C





A COMPREHENSIVE APPROACH





WHAT TO EXPECT IN THE BUY/SELL PROCESS

SHAREHOLDER PROTECTION PLAN

Shareholder Memorandum of Intent

A Memorandum of Intent is agreed upon between Business Owners prior to the completion of a formal agreement to ensure that shares will be distributed fairly should any problems arise in between putting in a formal agreement in place.

Memorandum of Request

A memorandum of request is made by Business Owners to the Stakeholder(s) to apply for Business Insurance policies and to act as an interim Trustee of those policies pending completion.

Declaration of Trust

A Declaration of Trust document is prepared to provide for the period of time between the application for business ownership insurance and the completion of the formal documentation including the shareholder Buy/Sell Agreement and the stakeholder deed on which the insurance policies are held.

Buy/Sell Questionnaire

A detailed questionnaire covers details such as company structure, any legal documents and valuation of company for share purchase purposes. It allows the Buy/Sell Agreement to be completed with details in full.

Plain Language Proposal Document

When the draft Buy/Sell Agreement is prepared, a plain language proposal document is issued to ensure clarity of intent for the shareholders.

Buy/Sell Agreement

The official Agreement is then signed and reviewed annually along with associated Insurances. This reviews the value of the business and insurance to ensure any changes that have occurred during the year are reflected in the Agreement

INDEPENDENT STAKEHOLDER

New Zealand Trustee Services (Stakeholder) Limited is a company specially formed to hold stakeholder appointments primarily where a Buy/Sell Agreement is in place. It is the sister company of New Zealand Trustee Services Limited which is a Professional Independent Trustee and acts in a large number of Trustee Appointments throughout New Zealand.

WHY USE NEW ZEALAND TRUSTEE SERVICES (STAKEHOLDER) LIMITED AS A PROFESSIONAL STAKEHOLDER?

The Role of the Independent Stakeholder

- To take assignment of the insurance policies and to deal with them in accordance with the Buy/Sell Agreement.
- To lodge insurance claims if an insured event occurs and to hold the proceeds on Trust until the transfer of shares is effected.
- To apply the proceeds of the insurance in accordance with the Buy/Sell Agreement.
- To facilitate the transfer of the ownership in the business and to action the transfer when all the conditions have been met.
- Obligations and rights are defined in the Declaration of Trust.

Key Benefits of the Independent Stakeholder

An Independent Stakeholder is expertly positioned to manage succession and business continuity for shareholders and their families should death or disablement occur.

The Independent Stakeholder ensures:

- The appropriate formal agreements are in place to ensure that Buy/Sell Agreements are completed.
- The funds are in a safe place in the event there are complications with administering the business owner's estates, such as unmet insurance claim triggers.
- No intermingling of insurance funds with the business entity's funds so the funds are not accessible to creditors.
- No intermingling of insurance funds with other owners' personal property. This facilitates the transfer of ownership in an orderly process.

**CALL OUR WEALTH PROTECTION
SPECIALISTS ON 0800 698 787 TO ARRANGE
A ONE-ON-ONE CONSULTATION.**

HOW TO REACH US

New Zealand wide with flagship branches in Auckland, Christchurch and Queenstown.

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