

Dealer Transfer Series: After the Transfer-Rules of the Road for Working Together

Completing a dealer transfer is hard work and often compressed into a short amount of time. For those involved in a merger, you might think of it as planning for a wedding ... a lot of work culminating in a single day in which your life significantly changes. But once the day is over, the real hard work begins ... how do you work together and maintain a productive business relationship over the course of many years? Reaching agreement on how you and your future partners will work together is a critical part of any merger and should be documented in an agreement before the wedding day. The good news is that bringing up this topic between dealers is much easier than asking your future spouse about a pre-nuptial agreement! In your dealership, these agreements have many names. They are commonly called "Shareholders' Agreements" or "Buy-Sell Agreements". If your dealership is in a limited liability company, your LLC Agreement or Operating Agreement may serve the same function. No matter what you call it, each of these agreements should cover two main topics:

- Future ownership transfers and valuation
- Rules for working together between now and the future transfers

My next article will focus on future ownership transfers. But before you get there, you need to decide how you will work together until the next transfer. Relationship dynamics between the owners is a key factor in establishing the rules for working together. In our experience, there are three primary relationships that drive how these rules are established:

- **Majority Owner** – If there is a single majority owner, the agreement can be really simple. The majority owner will retain control over virtually all decisions unless the minority owner(s) negotiate specific rights to approve certain decisions as part of the merger.
- **No Majority Owner** – If there is no majority owner (which often occurs in mergers of more than two dealerships or a second merger), the minority owners need to decide whether they want to deviate from a "majority rules" decision-making process. For example, if there are three owners with 30% and one owner with 10%, will two 30% owners be able to take any action or will a 70% vote be required to ensure that at least three owners approve? Will the voting requirement change depending on the type of decision
- **Professional Management** – If the dealership is run by someone other than the owners with the most significant voting interests, agreement should be reached on when the professional manager must seek approval of the investors.

In addition to the impact of the ownership structure, there are many common operating issues that arise in all types of ownership relationships and should be discussed when preparing your Shareholders' Agreement:

- **Majority/Minority Sale Protections**
 - Does the majority owner have the right to sell the entire business? Or can the majority owner sell his stock and require the minority owners to sell their stock, too?
 - Do the minority owners have the right to sell their stock on the same terms as the majority owner?
- **Composition of Board of Directors** – Identifying who will serve on the board is important

because the board will make (or have the authority to make) most critical decisions about the dealership. An option being used by some larger ownership groups is to appoint an independent director with a business background (perhaps in a related industry) to help foster consideration of different perspectives and better ensure that decisions are made more objectively.

- **Key Issues Subject to Owner Approval** – It is common for ownership groups to decide that certain issues require approval by all owners or a “super-majority” percentage of owners. Common decisions falling into this category include:
 - Terminating key management
 - Closing/opening a dealership location
 - Cancelling a contract with a major manufacturer
 - Changing compensation for owners that are employees

Keeping an organization and ownership group working smoothly after a merger is hard work. However, those groups that have a full discussion about decision-making structures and key decisions before the merger occurs will be in a much better position to succeed by being able to focus on how the business interacts with its customers and fends off its competition instead of its internal relationships.