

Tax, Retirement & Estate Planning Services

Buy-sell insurance guide

A guide to general insurance provisions
for buy-sell on death and disability



General insurance provisions

The clauses below contemplate corporate-owned insurance. Where a structure does not use corporate owned life or disability insurance, a lawyer must modify the clauses to reflect personally owned insurance.

These clauses offer a sample of the variety of topics relevant to both life and disability insurance funding that can help legal counsel prepare a shareholder's agreement that includes a buy-sell on death or disability. **A shareholder agreement with life and disability insurance provisions is an important legal document and all parties to the arrangement should be guided by the advice of their own legal counsel. Any agreement reached should be drafted by a lawyer with knowledge and experience in the subject area. The general specimen clauses provided are distributed on the understanding that Manulife Financial is not rendering legal, tax or other professional advice.**

The guide is divided into two parts. The first section relates to provisions for buy-sell funding using life insurance. The second section deals with disability insurance. At the end of the Guide, a list of Manulife support material is provided for further reference.

Life Insurance Provisions – Buy-sell on death

Corporate ownership and beneficiary

The corporation shall apply for, own, be the beneficiary of and maintain in good standing, the life insurance policies listed in the attached Schedule “A”. (Schedule “A” should be attached to the agreement noting all particulars regarding each policy).

Corporation to pay premiums

The corporation shall pay the premiums on the insurance policies as they become due and payable during the term of this agreement. The corporation shall also give proof of premium payment to any shareholder who requests in writing whether the insurance coverage is in good standing.

No premium payment made

If any premium is not paid within twenty (20) days after its due date, any shareholder has the right to pay the premium and be reimbursed within twenty (20) days of paying it, according to the terms of this agreement. If a dispute arises because of unpaid premiums, any shareholder may invoke the dispute resolution mechanism within this agreement. (It's recommended that a dispute resolution mechanism clause be included in the agreement).

Exercise of dividend option

The corporation shall at all times have custody of, and be the owner and beneficiary of, all life insurance policies outlined in the terms of this agreement. The corporation can exercise all rights, including the right to exercise any dividend options, that the life insurance policy(ies) contains.

No encumbering the policy

The corporation shall not borrow against, or pledge, or otherwise encumber in any manner, the life insurance policy(ies) without the written consent of all the shareholders.

Purchase of additional insurance

The corporation shall have the right to purchase additional insurance in the future on the lives of any or all of the shareholders for the purpose of this agreement, naming itself as beneficiary. This agreement shall include any additional policy(ies) of insurance taken out to provide for increases in the fair market value of the corporation's common shares.

Placement of insurance

Each shareholder must consent to the requisite applications for insurance being made on his/her life and agree to assist and cooperate in obtaining and maintaining life insurance at the time of signing this agreement and as necessary at any time in the future. This includes attending physical examinations, answering all questions, executing any consents, directions and instruments and other things that may be necessary to place the insurance coverage.

Collection of proceeds

Upon the death of a shareholder, the corporation shall proceed to make a claim for, and collect the proceeds of, the life insurance policy(ies) issued on the life of the deceased subject to this agreement. The corporation shall record the addition of these proceeds in the capital dividend account of the corporation, in accordance with this agreement.

No action to collect proceeds

The corporation shall be under no obligation to institute any action to recover the proceeds of any policy, unless indemnified by the surviving shareholders for all expenses and lawyer's fees connected with recovering the proceeds.

Life insurance not included in fair market value (FMV)

Any proceeds recoverable by the corporation on the life of a deceased shareholder shall not be included in a determination of the FMV of the common shares owned by the deceased shareholder.

Termination of agreement – right to assignment

If this agreement terminates before the death of any shareholder, then each shareholder is entitled to an assignment of the policy(ies) of insurance on his/her life if the shareholder makes a payment to the corporation within ninety (90) days of the termination of this agreement. The amount of that payment must be equal to the greater of: (i) the cash surrender value of the policy, plus any dividends on deposit, plus any side account, less any indebtedness, under the policy, and (ii) \$10.00. If the right to an assignment is not exercised within ninety (90) days of the termination of the agreement, the corporation has the right to dispose of the policy.

Departing shareholder – right to policy

If any shareholder disposes of his/her shares under the terms of this agreement during his/her lifetime, that shareholder is entitled to an assignment of the policy(ies) of insurance on his/her life if, within ninety (90) days after the disposal of his/her shares, the shareholder makes a payment to the corporation. The amount of that payment must be equal to the greater of: (i) the cash surrender value of the policy, plus any dividends on deposit, plus any side account, less any indebtedness under the policy, and: (ii) \$10.00.

Note: If the shareholder does not exercise the assignment of the policy, the policy will have to be dealt with by:

- having the remaining shareholders determine what should happen with the policy
- disposing of the policy to an interested person
- allowing the policy to lapse
- continuing to have the corporation maintain the policy by paying the premium.

Surviving shareholder – right to policy

Upon the death of the second-to-last remaining shareholder, the last surviving shareholder is entitled to an assignment of the policy(ies) of insurance on his/her life if, within ninety (90) days of the death of the second-to last remaining shareholder, the last surviving shareholder makes a payment to the corporation. The amount of that payment must be equal to the greater of: (i) the cash surrender value of the policy, plus any dividends on deposit, plus any side account, less any indebtedness on deposit, and; (ii) \$10.00. If the right to an assignment is not exercised within ninety (90) days of death of the second-to-last remaining shareholder, the corporation shall continue to own and maintain the policy.

Consistency in agreement

All of the parties to this agreement shall take every step necessary to ensure that the life insurance ownership and beneficiary designation shall remain consistent while this agreement is in effect.

Disability Insurance Provisions – Buy-sell on disability

Corporate ownership

The corporation shall apply for, own and maintain in good standing, the disability insurance policies listed in the attached Schedule “A”. (Schedule “A” should be attached to the agreement noting all particulars regarding each disability policy).

Corporation to pay premiums

The corporation shall pay the premiums on the disability policies as they become due and payable during the term of this agreement. The corporation shall also give proof of premium payment to any shareholder who requests in writing whether the disability coverage is in good standing.

No premium payment made

If any premium is not paid within twenty (20) days after its due date, any shareholder has the right to pay the premium and be reimbursed within twenty (20) days of paying it, according to the terms of this agreement. If a dispute arises because of unpaid premiums, any shareholder may invoke the dispute resolution mechanism within this agreement. (It's recommended that a dispute resolution mechanism clause be included in the agreement).

Purchase of additional insurance

The corporation shall have the right to purchase additional disability insurance in the future on any or all of the shareholders for the purpose of this agreement. This agreement shall include any additional disability policy(ies) taken out to provide for increases in the fair market value of the corporation's common shares.

Placement of insurance

Each shareholder must consent to the requisite applications for disability insurance being made on him or her and agree to assist and co-operate in obtaining and maintaining disability insurance at the time of signing this agreement and as necessary at any time in the future. This includes attending physical examinations, answering all questions, executing any consents, directions and instruments and other things that may be necessary to place the disability coverage.

Collection of proceeds

Upon the disability of a shareholder, the corporation shall proceed to make a claim for, and collect the disability proceeds of the disability insurance policy(ies) issued on the disabled shareholder subject to this agreement. The disabled shareholder shall co-operate as required to assist and enable the corporation in making a claim for disability proceeds. This includes attending physical examinations, answering all questions, executing any consents, directions and instruments and other things that may be necessary to place the disability coverage or make a claim under such policies.

No action to collect proceeds

The corporation shall be under no obligation to institute any action to recover the proceeds of any policy unless indemnified by the shareholders who are not under disability for all expenses and lawyer's fees connected with recovering the disability proceeds.

Disability insurance not included in fair market value (FMV)

Any disability proceeds recoverable by the corporation on the life of a disabled shareholder shall not be included in a determination of the FMV of the common shares owned by the disabled shareholder.

Termination of agreement – right to assignment

If this agreement terminates before the disability of any shareholder, then each shareholder is entitled to an assignment of the disability policy(ies) on his/her life if the shareholder makes a payment to the corporation within ninety (90) days of the termination of this agreement. The amount of that payment shall be determined between the corporation and the individual shareholder and any dispute arising as to the amount shall be dealt with by way of utilizing the dispute resolution mechanism within this agreement.

Departing shareholder – right to policy

If any shareholder disposes of his/her shares under the terms of this agreement during his/her lifetime, that shareholder is entitled to an assignment of the disability policy(ies) on him or her, within ninety (90) days after the disposal of his/her shares, the shareholder makes a payment to the corporation. The amount of that payment shall be determined between the corporation and the individual shareholder and any dispute arising as to the amount shall be dealt with by way of utilizing the dispute resolution mechanism within this agreement.

Remaining shareholder – right to policy

Upon the death of the second-to-last remaining shareholder, the last surviving shareholder is entitled to an assignment of the disability policy(ies) on his/her life if, within ninety (90) days of the death or departure of the second-to last remaining shareholder, the last surviving shareholder makes a payment to the corporation. The amount of that payment shall be determined between the corporation and the individual shareholder and any dispute arising as to the amount shall be dealt with by way of utilizing the dispute resolution mechanism within this agreement.

Consistency in agreement

All of the parties to this agreement shall take every step necessary to ensure that the disability insurance ownership and contractual obligation of payment of the benefit shall remain consistent while this agreement is in effect.

Other support material:

Tax Topics:

- Buy-sell agreements
 - [An overview of funding with life insurance](#)
- Buy-sell agreements
 - [Criss cross purchase method \(without trustee\)](#)
 - [Criss cross purchase method \(with trustee\)](#)
- Promissory note method
- [Corporate redemption method](#)
- [Hybrid method](#)
- Disability Buy-sell – [Provisions and Funding](#)

Publications:

[Canadian Taxation of Life Insurance](#)