BREAKING UP IS HARD TO DO

DENTAL PRACTICE BREAKUPS

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DENTAL PRACTICE BREAKUPS

A. Characteristics

1. Dental and Dental Specialty Practices are Unique from Other Professional Practices Due to the Significant Value of Saleable Goodwill.

2. Breakups Usually Involve Money, Time, Decision-Making Control and/or Employment of Family Members as Dentists and/or Staff.

3. Highly Emotional, Time-Consuming and Economically Costly.

4. Do the Buy-Sell Agreements Provide for Who Stays and Who Leaves in a Voting Deadlock?

5. Is Valuation of the Practice / Valuation Formula in Place?


7. Proprietary Information Regarding Referral Sources and Patients / Restrictive Covenants.

B. Voting Deadlocks – The Close Corporation Agreement as a Tool in 16 States.

C. Buy-Sell Provisions. Exhibit A.

D. Arbitrator Provisions. Exhibit B.

E. Buy-Sell Offer. Exhibit C.

F. Internal Revenue Code Section 355.

G. Judicial Dissolution – When the Shareholder/Member Agreements are Missing Dispute Resolution and Buy-Sell Provisions.


I. Achieving a Fair Resolution for All.

J. Stay Solo.
BUY-SELL PROVISION

EXHIBIT A

8. **Deadlock.**

8.1 In the event of a deadlock (herein called a "Deadlock") by and between the Most Senior Shareholders with regard to a Corporate matter (whether such Deadlock occurs in the Most Senior Shareholders' capacities as shareholders, officers, directors or employees of Corporation), the issue involved in the Deadlock (at the option of any Most Senior Shareholder) shall be decided by the individual set forth in Schedule A, attached hereto and incorporated herein by reference (herein called the "Arbitrator"). In such event, each Most Senior Shareholder shall make a written submission to the Arbitrator which sets forth the Most Senior Shareholder's position on said issue. Within thirty (30) days after the Arbitrator's receipt of said submissions, the Arbitrator shall provide each Most Senior Shareholder with the Arbitrator's written decision (herein called the "Decision") with respect to said submissions. The Most Senior Shareholders acknowledge and agree that except as otherwise provided in Section 8.2, the Decision shall be final and binding on all Parties.

8.2 If any Most Senior Shareholder disputes the Decision (herein called the "Disputing-Shareholder"), the Disputing-Shareholder may (at the Disputing-Shareholder's option) elect to commence a division of the Corporation in accordance with Section 355 of the Internal Revenue Code (as may be amended) and the Treasury Regulations promulgated thereunder (herein called the "Corporate Division"). To exercise this election, the Disputing-Shareholder shall deliver written notice of such election to the other Most Senior Shareholder within thirty (30) days of the Decision.

8.3 In the event a Disputing-Shareholder exercises the election set forth under Section 8.2, the Disputing-Shareholder and the other Most Senior Shareholder shall promptly take all steps necessary to commence and complete the Corporate Division with ninety (90) days of the date of said election.

8.4 In implementing the Corporate Division, the Most Senior Shareholders acknowledge and agree that the Disputing-Shareholder shall be required to relocate the Disputing-Shareholder's dental practice to another business premises and that any restrictive covenants (including, but not limited to, non-competition restrictions) by and among the Parties shall automatically and immediately be deemed null, void and without effect upon the effective date of the Corporate Division.

8.5 The Parties acknowledge and agree to sign all documents and to take all other action necessary to effect the purposes and intentions of this Section 8.
ARBITRATOR PROVISION

EXHIBIT B

12.1 In the event of a deadlock (herein called a "Deadlock") by and between the Manager with respect to a Company matter (whether such Deadlock occurs in the Manager's capacities as members or employees of Company), the issue involved in the Deadlock (at the option of Manager) shall be decided by the individual set forth in Exhibit 12.1 (attached hereto and incorporated herein by reference) (herein called the "Arbitrator"). In such event, each Member shall make a written submission to the Arbitrator which sets forth the Manager's position on said issue. Within thirty (30) days after the Arbitrator's receipt of said submissions, the Arbitrator shall provide each Member with the Arbitrator's written decision (herein called the "Decision") with respect to said submissions. The Manager acknowledges and agrees that the Decision shall be final and binding on them.
BUY-SELL OFFER

EXHIBIT C

13.1 A Manager (designated in this Article as an "Offeror") may (at any time) make a buy-sell offer (herein called the "Offer") to the other Manager (designated in this Article as the "Offeree") by notifying the Offeree in writing of the exercise of this right and stating in such notice the purchase price per Voting Unit and other terms which the Offeror is willing to either buy all the Voting Units of the Offeree or to sell to Offeree all the Voting Units of Offeror with the purchase price per Voting Unit and other terms being the same for both the purchase and sale. Except as otherwise provided in Article 13.2, the Offer shall be irrevocable once the aforesaid notice has been delivered to Offeree.

13.2 Within thirty (30) days after receipt by Offeree of the Offeror's written notice of the Offer, Offeree shall send to Offeror a written notice whether Offeree elects: (a) to purchase from Offeror all the Voting Units of Offeror at the purchase price per Voting Unit and other terms stated in the Offer; or (b) to sell to Offeror all the Voting Units of Offeree at the purchase price per Voting Unit and other terms stated in the Offer. If Offeree shall fail to notify Offeror whether Offeree elects to buy or sell within the time period specified above, such failure shall be deemed to be an election to sell all Offeree's Voting Units to Offeror at the purchase price per Voting Unit and other terms stated in the Offer. Offeror shall be entitled to withdraw the Offer by providing Offeree written notice of Offeror's withdrawal prior to the earlier of (a) the date Offeree provides Offeror written notice of the election to purchase or sell Offeree's Voting Units pursuant to this Article; or (b) the date on which Offeree shall be constructively deemed to have elected to sell Offeree's Voting Units to Offeror.

13.3 The closing of the aforesaid sale shall be held at Company's principal place of business (or at such other place as Offeror and Offeree may in writing agree) no later than sixty (60) days after the expiration of the notice period set forth in Article 13.2 (herein called the "Purchase Date").

13.4 On the Purchase Date, the purchasing Manager (herein called the "Remaining-Member") shall deliver to the selling Member (herein called the "Selling-Member"), unless otherwise stated in the Offer, payment in full for the Selling-Member's Voting Units by certified or bank cashier's check payable to the order of the Selling-Member.

13.5 On the Purchase Date, the Selling-Member shall deliver to the Remaining-Member all certificates evidencing ownership of the Selling-Member's Voting Units, free and clear of all liens and encumbrances. Each such certificate shall be properly endorsed in blank for transfer by the Selling-Member to the Remaining-Member.
13.6 On the Purchase Date, the Selling-Member shall have the right and option to purchase (and assume future premium payments for) any and all life, disability or other insurance policies owned by the Remaining-Member and/or Company (as the case may be) under which the Selling-Member is the named insured for the cash value thereof (if any). Upon payment of the cash value on the Purchase Date or upon the Selling-Member's written request (with respect to any such insurance policies having no cash value) on the Purchase Date, Company and/or the Remaining-Member (as the case may be) shall assign and transfer to Selling-Member all such insurance policies owned by the Remaining-Member and/or Company (as the case may be) to the extent permitted by such policies. The Selling-Member's rights and options under this paragraph shall expire, terminate, cease and become null, void and without effect immediately after the Purchase Date.