

# Unincorporated Entity Owner Buyouts from the Inside Part 2: Drafting the Purchase Agreement

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## **To Redeem or Not to Redeem?**

- “Redemption” – conceptually limited by TBOC to partner’s withdrawal matters, not defined for LLC interests
- “Withdrawal” – unilateral action by the seller that carries consequences for the company
- Style reacquisition agreements as purchase/repurchase agreements

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## Drafting the Core Elements

- Recitals
  - a formal statement or setting forth of some matter of fact, in any deed or writing, in order to explain the reasons upon which the transaction is founded
  - Helps third-party reviewers to understand the nature of the transaction in question
  - Can potentially be used to make written representations for the buyer/seller

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## Drafting the Core Elements

- Picking an Effective Date
  - Mutually agreed upon by the parties
  - Reflects the original agreement to the transaction
  - Tied to some specific event, such as the execution/closing date
  - Specific or retroactive dates?
    - Ok if not detrimental to a third party
    - may or may not be accepted by the IRS

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## Drafting the Core Elements

- Consideration
  - Detail the form/method of payment, timely delivery of the payment, etc.
  - Depending on the included payment assets, consider including:
    - Disclaimers
    - Expanded definitions
    - Disclosures/waiver of disclosure
    - Promissory note/security agreement
    - Escrow/escrow agent
    - Post-closing performance window
  - Avoid post-closing price adjustments if possible

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## Drafting the Core Elements

- Closing
  - Intent is to provide certainty regarding the actual exchange of items between the seller and buyer
  - Separate closings are not always necessary
    - Can perform a “sign and close” instead
  - Generally choose a closing date that is later than the effective date
    - Allows time for representations and warranties information discovery
    - Allows time for buyer/seller to satisfy their representations and warranties, and to obtain all necessary sums or proofs of payment
    - But watch out for conflicts with retroactive effective dates

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## Title search: Unincorporated Entity Owner Buyouts from the Inside Part 2: Drafting the Purchase Agreement

Also available as part of the eCourse

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