

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

K. “Andy” Tiwari

Tiwari, PLLC

PRESENTED AT

30th Annual

LLCs, LPs AND PARTNERSHIPS

July 7-9, 2021

Austin, Texas [Live Webcast]

1

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

2

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

3

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

4

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

5

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

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

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

Also available as part of the eCourse

[2021 LLCs, LPs, and Partnerships eConference](#)

First appeared as part of the conference materials for the
30th Annual LLCs, LPs and Partnerships session

"Unincorporated Entity Owner Buyouts from the Inside Part 2"