

SAMPLE DOCUMENT

PARTNERSHIP PURCHASE AGREEMENT - ENTITY PURCHASE PLAN AND INCOME CONTINUATION PLAN

Unless agreed to the contrary, a partnership dissolves at the death of any partner. A business continuation agreement permits the business to continue

– Sample for the use of legal counsel only –

This is an Agreement between [*Names of Partners*] (the “Partners”, or individually, the “Partner”) and [*Name of Partnership*] (the “Partnership”), a Partnership organized under the laws of [*Name of State*]. The Partners (including any persons who later become a party hereto) and the Partnership are sometimes referred to as the Parties. This Agreement is effective as of the date when all of the Parties have signed it.

BACKGROUND INFORMATION

- A. The following are all of the partners of the Partnership. Each Partner owns an interest in the Partnership in accordance with the table below.

<u>Name of Partner</u>	<u>Percentage Interest</u>
_____	_____ %
_____	_____ %
_____	_____ %

- B. The Partnership is now engaged in the practice of [*Profession*].
- C. The Partners believe that it is in their best interests if a deceased Partner’s interest in the Partnership is purchased by the Partnership.
- D. The Partners want to pay income to the estate or beneficiary of a deceased Partner.
- E. The Partners want the Partnership to continue after the death of a Partner under the management of the surviving Partners.

This sample document is intended only as guidance for the client’s own legal counsel. The document is general in nature and does not reflect the specific circumstances of any individual or situation. The document does not constitute tax or legal advice and cannot be used to avoid any penalties that may be imposed on a taxpayer. It is intended that the client’s legal counsel will modify the document where necessary to satisfy the client’s objectives and the requirements of any applicable federal, state or local law. Northwestern Mutual does not guarantee the effectiveness of this document and is not responsible for any tax or legal consequences resulting from use.

SAMPLE DOCUMENT

- F. The Partners entered into a partnership agreement with respect to their rights and duties as partners (the “Partnership Agreement”) on [Date of Partnership Agreement].
- G. The Partnership has acquired or will acquire insurance on the lives of the Partners to provide for the obligations imposed by this Agreement.

Therefore, the Parties agree as follows:

1. **Restriction on Transfer.** No Partner shall transfer, assign, pledge, sell or convey his interest in the Partnership, now owned or later acquired by him, without the written consent of all of the other Partners.

Comment: See Forms ___ and ___ for clauses permitting a partner to transfer his partnership after first offering it for sale to either the partnership or to the other partners. If such a clause is to be included, the agreement should, nevertheless, preclude a partner from transferring his partnership interest to anyone other than a licensed professional.

2. **Purchase of Insurance.** The Partnership shall purchase insurance on the life of each Partner in an amount equal to the value of such Partner’s interest in the Partnership and name itself as beneficiary of the policies. Such policies shall be listed on Schedule A hereto. All policies and the amounts and proceeds received therefrom shall be held by the Partnership for the purposes of this Agreement. The Partnership shall have the right to purchase additional insurance on the life of any Partner whenever, in the opinion of the Partnership, additional insurance may be reasonably required to carry out its obligations under this agreement. Any additional policies shall be listed on Schedule A hereto and shall otherwise be subject to the terms of this agreement.

The Partnership shall pay all premiums on any insurance policies it elects to purchase pursuant to this Agreement and shall exhibit proof of payment to the all the Partners within fifteen (15) days after the due date of each premium. All sums so expended shall be treated as a partnership expense. The Partnership shall be the sole owner of the policies issued to it, but shall not, during the term of this agreement, modify or impair any of the rights or values under such policies.

Comment: This section makes no provision for the payment of premiums if the Partnership fails to pay a premium. The Partners might want to include a provision authorizing the Insured to pay such premium if the Partnership doesn’t, with the requirement that the Partnership reimburse the Insured for such payment together with interest.

3. **Disposition of Partnership Interest Upon Death of a Partner.**

(a) **Purchase by Partnership.** At the death of any Partner, the Partnership shall purchase all of the Partnership interest owned by the deceased Partner. Any such Partnership interest purchased by the Partnership shall be divided among the surviving Partners in the proportions in which they share in the profits and losses of the Partnership. The books of the Partnership shall be adjusted to reflect this transaction.

(b) **Price and Terms.** The Partnership interest of any deceased Partner purchased and sold under this paragraph shall be purchased and sold in accordance with the provisions of paragraph 4 of this Agreement. The estate of any deceased Partner (and/or any successor in interest) shall be

SAMPLE DOCUMENT

bound to sell the Partnership interest owned by the deceased Partner, pursuant to this paragraph.

4. Price and Terms for Purchase and Sale of Partnership Interest.

NOTE: OPTION 1 PRESCRIBES A PURCHASE PRICE THAT IS BASED ON BOOK VALUE. OPTION 2 PRESCRIBES A FIXED PRICE.

[OPTION 1]

(a) Price. Unless modified according to this Agreement, and except as expressly provided otherwise, the price to be paid upon the purchase and sale of Partnership interest pursuant to the provisions of this Agreement shall be the sum of the following: (1) the capital account of the deceased Partner as shown on the books of the Partnership as of the end of the last fiscal year before his death, including his proportionate share of the cash surrender values of all policies of insurance owned by the Partnership, and (2) the deceased Partner's share of the partnership profits less the deceased Partner's share of partnership losses, computed from the beginning of the fiscal year in which his death occurred to the last day of the month in which such death occurred, adjusted for all contributions and withdrawals by the deceased Partner during such period.

[OPTION 2]

(a) Price. Unless modified according to this Agreement, and except as expressly provided otherwise, the price to be paid upon the purchase and sale of a Partnership interest in the Partnership pursuant to the provisions of this Agreement shall be \$ _____ [Value of Partnership] times the deceased Partner's percentage interest in the Partnership as of the date of the deceased Partner's date of death.

Comment: *In the case of a specific dollar amount as the value of the partnership, consider requiring a periodic update of that value.*

Comment: *In some cases, the partners might want to have the value of their interests determined by an appraisal. If this approach is to be used, the drafter should address how the appraiser(s) will be selected, the necessary qualifications of such appraiser(s), the standard to be used by the appraiser(s) to determine value, whether valuation discounts should be applied (e.g., minority discount, lack of marketability), and who will pay appraisal fees.*

5. Income Continuation.

(a) Payments. Starting with the first day of the month following the month of the death of a Partner and continuing for a period of twelve (12) months, the Partnership shall pay to the personal representative of the estate of a deceased Partner, an amount equal to ___% of the net profits which the deceased Partner would have received had he remained alive and continued as a Partner. Such payments shall be made when they would have been made had the deceased Partner remained alive and continued as a Partner. The personal representative of the deceased Partner may instruct the Partnership to pay the income payable under this paragraph to the person legally entitled thereto under the will of the deceased Partner or under

© 2019 The Northwestern Mutual Life Insurance Company, Milwaukee, WI except that client's legal counsel is authorized to use, amend and modify this sample document in his or her own practice.

SAMPLE DOCUMENT

the applicable laws of descent and distribution. For the purpose of the foregoing computations, the books of the Partnership shall be accepted as correct, and all computations shall be made and certified by the accounting firm servicing the Partnership at the date of the decedent's death, and when so certified, shall be binding and conclusive.

(b) **Status of Recipient of Payments.** The recipient of any income continuation payment made hereunder shall be a general, unsecured creditor of the Partnership. Such recipient shall have no interest in the Partnership or in the assets or liabilities of the Partnership.

6. **Right of Surviving Partners to Continue Business.** It is the intent and purpose of this Agreement to permit the Partnership to, subject to payment of the payment of the purchase price as herein provided, continue the Partnership business. The surviving Partners shall be free to conduct the Partnership business under the same name and at the same address. They shall assume all Partnership obligations and shall indemnify and save harmless the selling Partner and his successors in interest from such obligations.

7. **Termination of Agreement.** This Agreement is the entire understanding among the Parties and shall terminate upon the first to occur of the following events:

(a) **Revocation of Agreement.** A written agreement to revoke this Agreement, signed by all the Parties (but such termination shall not extinguish the rights or obligations of the Parties arising out of any event occurring before such termination).

(b) **Termination of Partnership.** The bankruptcy, receivership, or dissolution of the Partnership (but such termination shall not extinguish the rights or obligations of the Parties arising out of any event occurring before such termination).

(c) **Sole Ownership.** All Partnership interests owned by one Partner.

(d) **Death.** The death of all the Partners within a ninety (90) day period, with the effective date of the termination of this Agreement being the date of death of the first of such Partners to die.

8. **Purchase by Insured Upon Termination.** If this Agreement terminates pursuant to paragraph 7, each living Partner shall have the right, for thirty (30) days following such termination, to purchase any policy of insurance insuring his life owned by the Partnership which is specifically designated for the Partnership's obligations under this Agreement for a price equal to the fair market value of such policy, as determined under Treas. Reg. § 1.83-3(e) (or any successor provision).

Comment: Some parties might want to exclude the above paragraph that provides a partner with the right to purchase a policy on his own life, as some legal authorities suggest that an insured's right to so, even if never exercised, could amount to an incident of ownership. See, e.g., Rev. Ruls. 79-46, 1979-1 C.B. 303 and 75-70, 1975-1 C.B. 301. On the other hand, other legal authorities have found no incident of ownership in similar situations. See, e.g., Smith, 73 T.C. 307 (1979); Morrow, 19 T.C. 1068 (1953); and Infante, T.C. Memo 1970-206 (1970).

SAMPLE DOCUMENT

***Comment:** The above paragraph refers to an income tax treasury regulation to determine the policy's fair market value. This regulation technically applies to transfers of policies from employers to employees, not sales of policies, but it is nonetheless used here because it is the most recent treasury regulation addressing the valuation of life insurance, along with identical provisions in the regulations under §§ 79 and 402. Rev. Proc. 2005-25, 2005-1 C.B. 962, provides a safe harbor valuation formula, which many parties will likely want to use. As an alternative, parties could look to the older gift tax valuation formulas found under Treas. Reg. § 25.2512-6. Under either the gift tax or income tax formulas, with traditionally-valued permanent policies with no surrender charges, the fair market value will generally be close to net cash value.*

- 9. Specific Performance.** Interests in the Partnership cannot be readily purchased or sold on the open market and for that reason, among others, the Parties will be irreparably damaged if this Agreement is not specifically enforced. If any dispute arises concerning the sale or disposition of an interest in the Partnership pursuant to this Agreement, an injunction may be issued restraining any sale or disposition pending the determination of such controversy upon application to a court of competent jurisdiction by any Party to this Agreement. If any controversy arises concerning the purchase or sale of such interest in the Partnership, the same shall be enforceable in a court of equity by decree of specific performance. Such remedy shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which the Parties may have.
- 10. Amendment.** This Agreement is the entire understanding among the Parties and may be altered or amended only by subsequent written instrument signed by all the Parties.
- 11. Persons Bound.** This Agreement is binding upon the Partnership, the Partners, their heirs, legal representatives, transferees, successors and assigns, who shall execute all documents necessary to effectuate the purposes of this Agreement.
- 12. Benefit.** This Agreement is for the benefit of the Parties, their heirs, executors, administrators, successors, assigns and transferees.
- 13. Notices.** Each Partner and the Partnership, through its authorized representative, shall give prompt notice to the other Partners and the Partnership, as the case may be, of all offers, acceptances, refusals, and exercise of options made pursuant to this Agreement. All notices, writings, offers, acceptances, refusals, payments, or agreements given or required to be given under this Agreement shall be made in writing and sent by registered or certified mail, return receipt requested, to the principal business office of the Partnership and to the last known address of each Partner appearing on the books of the Partnership. Any such notice or other writing shall be deemed given and received upon the expiration of three days following such mailing with proper postage affixed.
- 14. Execution of Other Documents.** The Parties agree to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Agreement.
- 15. [Name of State] Law.** This Agreement shall be governed by and shall be construed and enforced in accordance with the laws of [Name of State].
- 16. Headings and Gender Neutral.** Any headings are inserted solely for the convenience of reference and are not a part of this Agreement, nor shall they affect its meaning, construction or effect. Any pronoun reference to masculine or feminine shall be read as to accommodate the gender of the Parties.

SAMPLE DOCUMENT

17. Prior Agreement. This Agreement revokes all previous agreements among the Parties to the extent they are inconsistent herewith, including the Partnership Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the Partnership by its duly authorized representatives, on the day and year written opposite the signature.

[NAME OF PARTNERSHIP]

By: _____
Managing Partner

Date: _____

Attest: _____

Date: _____

PARTNERS

_____ (SEAL)

Date: _____

_____ (SEAL)

Date: _____

_____ (SEAL)

Date: _____

SAMPLE DOCUMENT

SCHEDULE A Insurance Owned By Partnership

Life Insurance Policy Number

Insured

Death Benefit