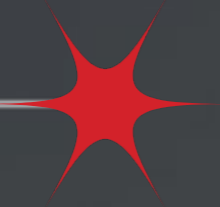




# Module 3: Business Continuation





# Disclosures

The information presented here is not intended as tax or other legal advice. For application of this information to your specific situation, you should consult an attorney.

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Presented by...

# Keali Jo French, JD, MPAcc



**Role:** Provide guidance to clients and financial professionals on effective Estate Planning through the review of trust documents, tax strategies, and business succession plans.

**Bio:** Keali Jo's journey in financial and legal services began with roles in Accounting and Finance, where she excelled in tax preparation and budget management for a prominent state entity. Fueled by her passion for Estate Planning, Contracts, Tax law and Business Planning, she pursued a legal education, specializing in these fields during her tenure at law school. Throughout her academic and professional journey, Keali Jo showcased unwavering commitment and skill, undertaking an internship for Estate Planning here at Ameritas and actively participating in her alma mater's Estate Planning Clinic. Now, freshly graduated with a J.D. and in preparation for the bar exam, she joins Ameritas as a JD Consultant. With her diverse background and a comprehensive approach, Keali Jo is poised to offer custom solutions, ensuring clients navigate legal intricacies with confidence and clarity.

**Education:** Juris Doctor from University of Nebraska Law, Master of Professional Accountancy from University of Nebraska – Lincoln, Bachelor of Science in Business Administration (Major: Accounting; Minor: Finance) from University of Nebraska – Lincoln

# Agenda

 Business Continuation Planning

 Buy-Sell Agreements

- Cross Purchase
- Entity Purchase
- Wait-and-See Buy-Sell
- Buy-Sell LLC

 *Connelly's Impact*



# What is it?

A plan to ensure that a business owner transfer that business in a way they see fit, when they see fit



## Is the Plan Effective?

- ✦ Has successor management been identified and trained to operate the business?
- ✦ Would the business generate a sufficient return for the owner and/or owner's family?
- ✦ Is there a strong desire to establish or to continue family involvement in the business?

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# Is the Plan Effective?

- ✦ Is a willing buyer for the business available?
- ✦ How much is the business worth?  
**marshall**
- ✦ How will the business be disposed?  
**stevens**
  - Sale: Buy-Sell Agreement
  - Liquidation
  - Inheritance
- ✦ Do key employees have incentives to stay and work for the new owners?



# What is a Buy-Sell Agreement?

# What is a Buy-Sell Agreement

A legal document restricting the right to dispose of a business interest to specified parties under specified terms



# How is it Funded?

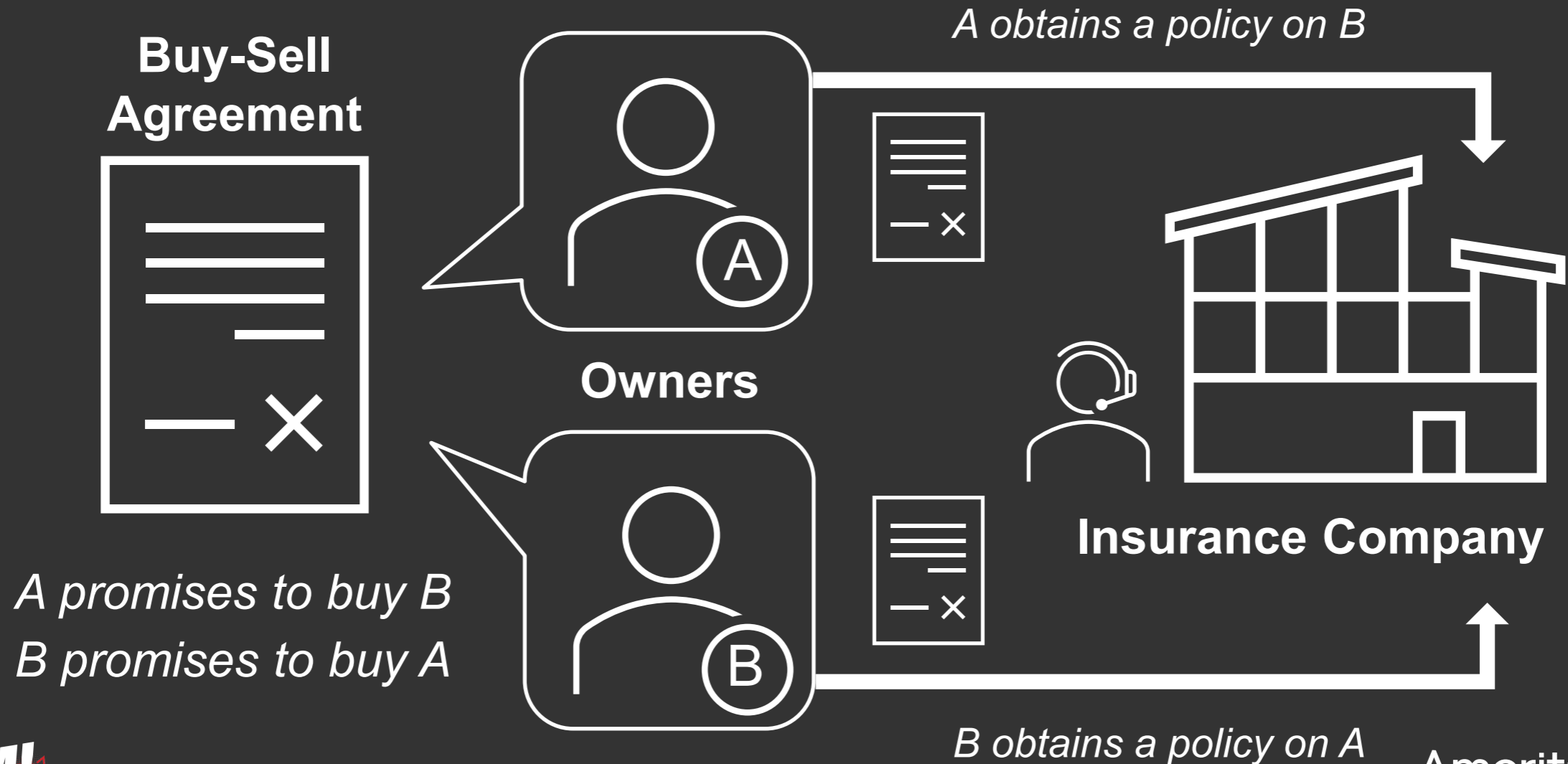
- ★ Cash, accumulated assets, or sinking fund
- ★ Loan
- ★ Installment purchase
- ★ Insurance funding
- ★ Combination

# Types of Buy-Sells

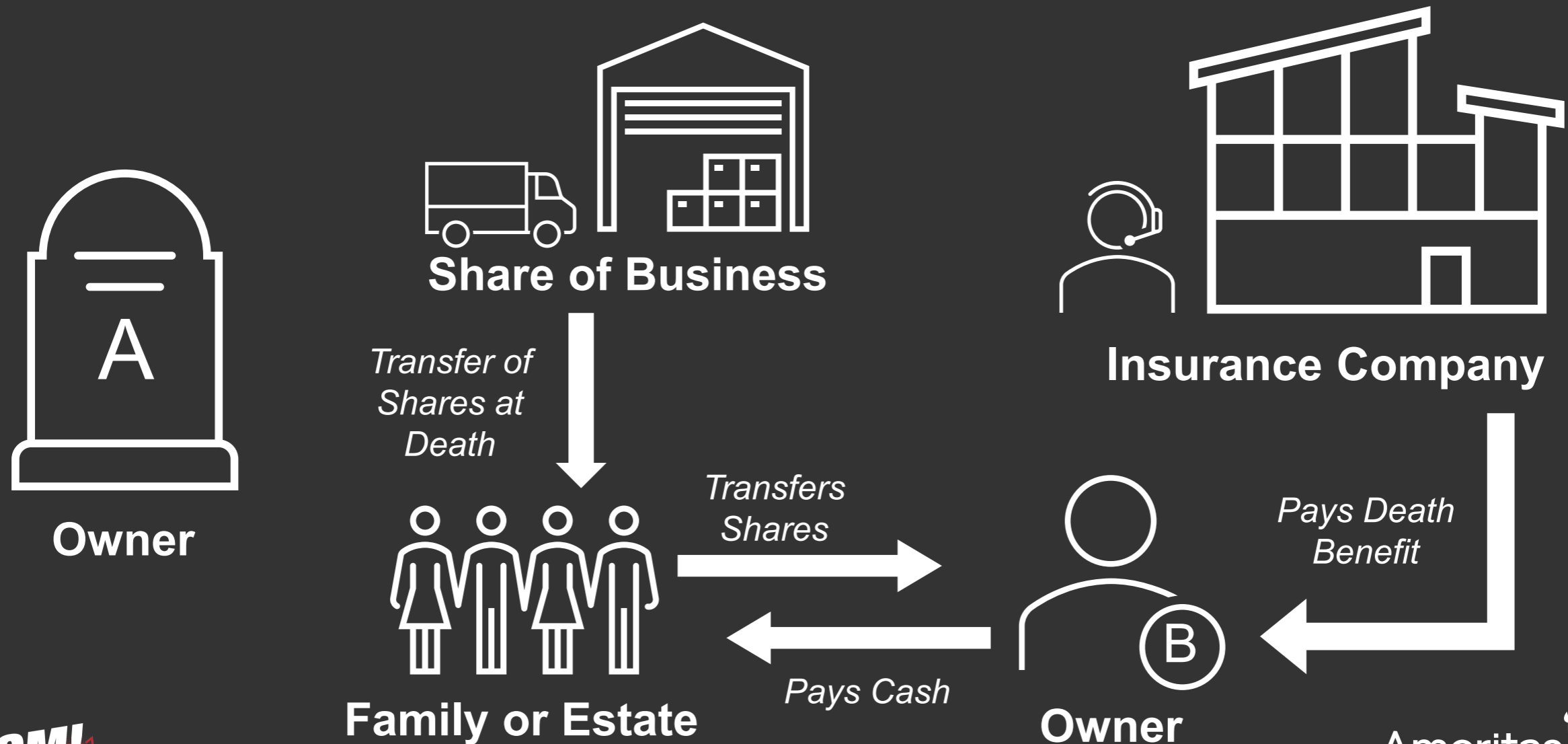
- ★ Cross Purchase Agreement
- ★ Entity Buy-Sell Agreement
- ★ Wait-and-see Buy-Sell
- ★ Buy-Sell LLC



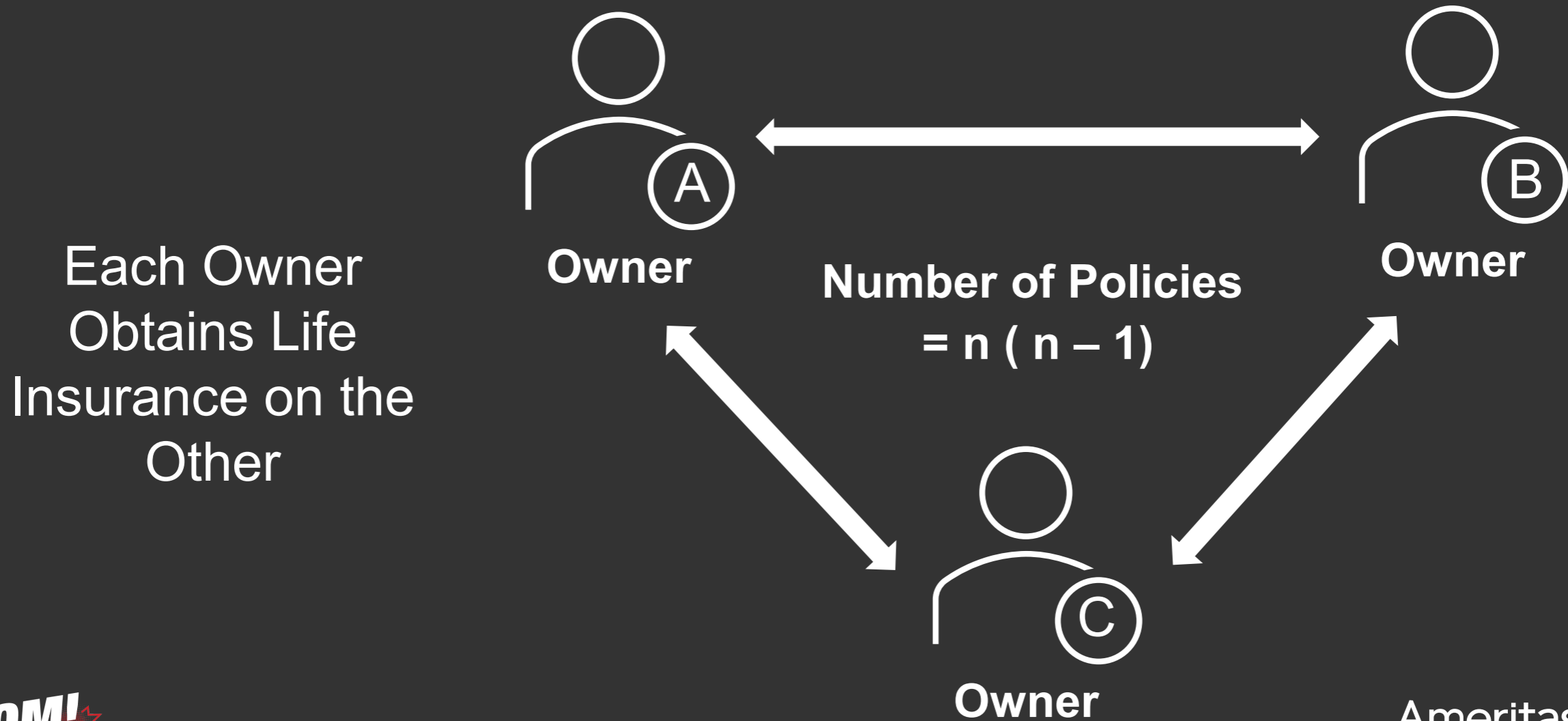
# Cross Purchase – During Life



# Cross Purchase – Upon Death



# Cross Purchase – During Life

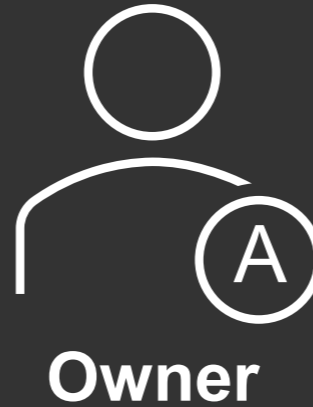


# Cost Basis Step-Up



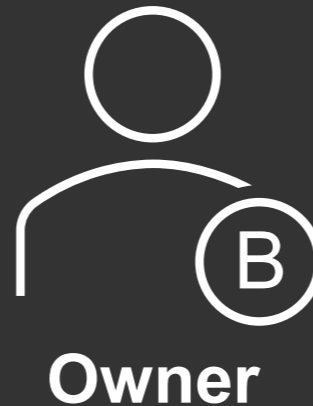
Business

**FMV = \$5M**  
**Basis = \$2M**



**Capital Appreciation**  
**\$1.5M**

**Original Basis**  
**\$1M**



**Capital Appreciation**  
**\$1.5M**

**Original Basis**  
**\$1M**

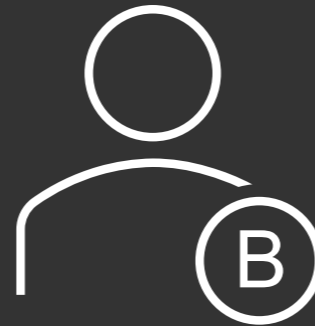
# Cost Basis Step-Up

FMV = \$5M

Basis = \$2M



Business



Owner



Owner



A's Transferred Interest  
\$2.5M

Capital Appreciation  
\$1.5M

Original Basis  
\$1M

# Cost Basis Step-Up

FMV = \$5M

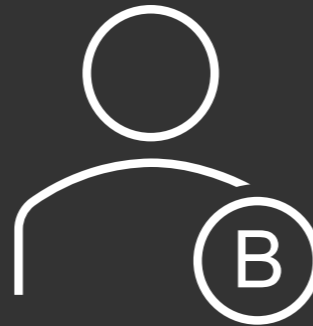
Basis = \$2M



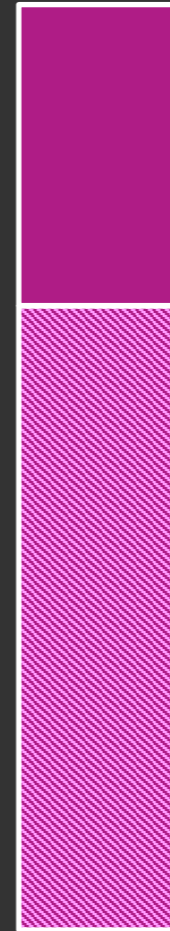
Business



Owner



Owner



Capital Appreciation  
\$1.5M

New Basis  
\$3.5M

Stepped-Up Basis  
\$2.5M

+

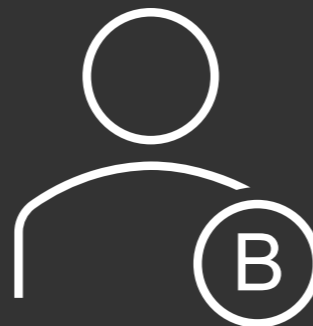
Original Basis  
\$1M

# Cost Basis Step-Up

FMV = \$5M  
Basis = \$2M

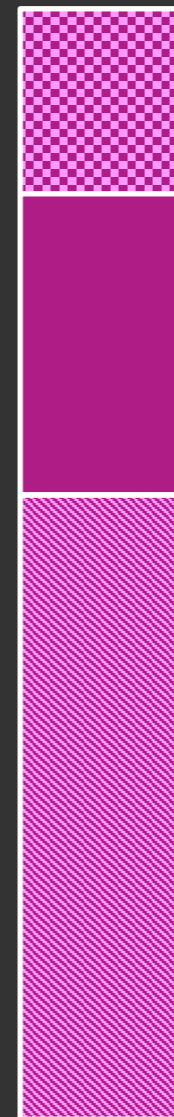


Business



Owner

Sales Price = \$6M



Premium from Sale  
\$1M

Capital Appreciation  
\$1.5M

New Basis  
\$3.5M

\$6M

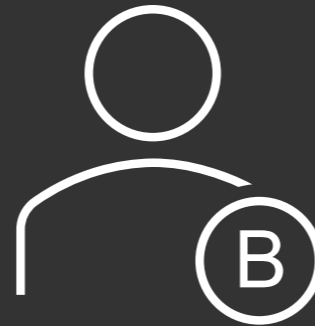
# Cost Basis Step-Up

FMV = \$5M

Basis = \$2M

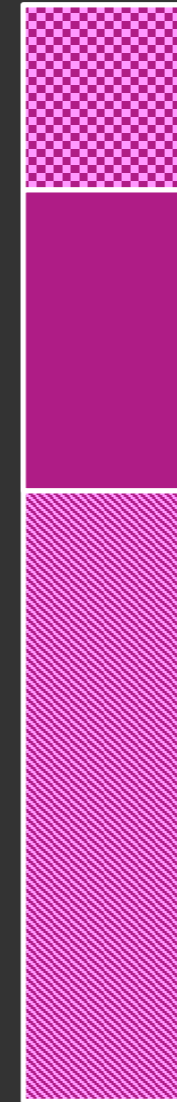


Business



Owner

Sales Price = \$6M



Premium from Sale  
\$1M

Capital Appreciation  
\$1.5M

New Basis  
\$3.5M

*Taxable  
Gain on  
Sale*  
**\$2.5M**

# Cost Basis Step-Up

FMV = \$5M

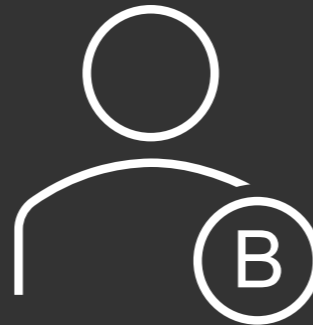
Basis = \$2M



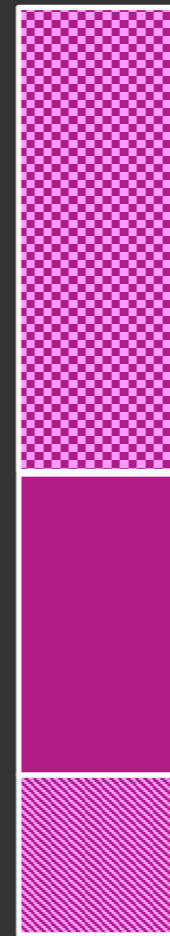
Business



Owner



Owner



A's Transferred Interest  
\$2.5M

Capital Appreciation  
\$1.5M

Original Basis  
\$1M

# Cost Basis Step-Up

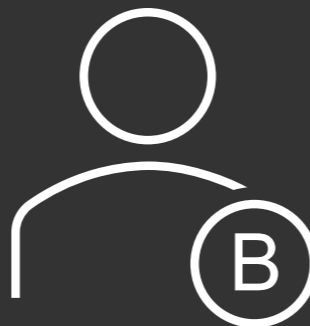
FMV = \$5M  
Basis = \$2M



Business



Owner



Owner



Capital Appreciation  
\$4M

Original Basis  
\$1M

Original Appreciation  
\$1.5M

+

A's Transferred Interest  
\$2.5M

Original Basis  
\$1M

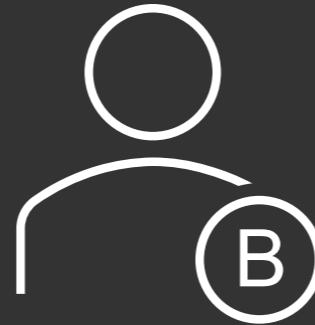
# Cost Basis Step-Up

FMV = \$5M

Basis = \$2M

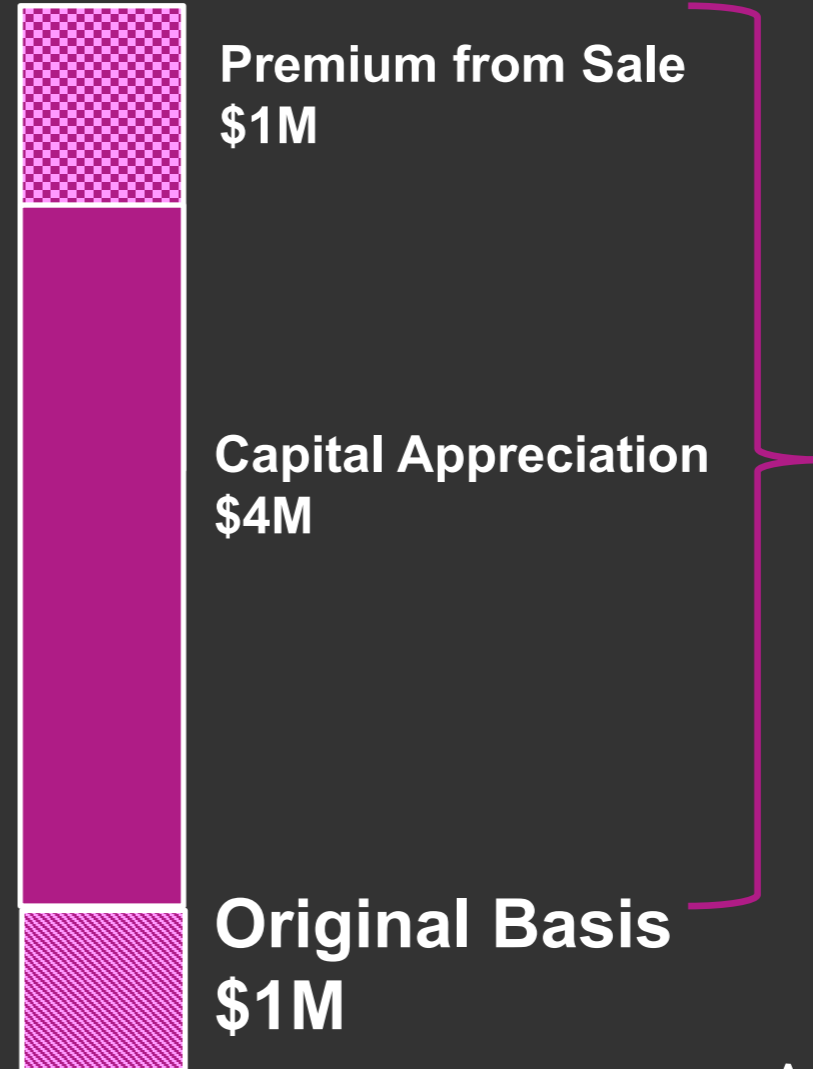


Business



Owner

Sales Price = \$6M



*Taxable  
Gain on  
Sale*  
**\$5M**

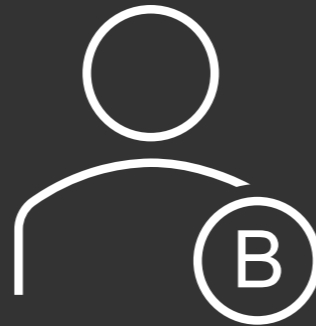
# Cost Basis Step-Up

FMV = \$5M

Basis = \$2M



Business



Owner

Sales Price = \$6M

*Taxable Gain on Sale*

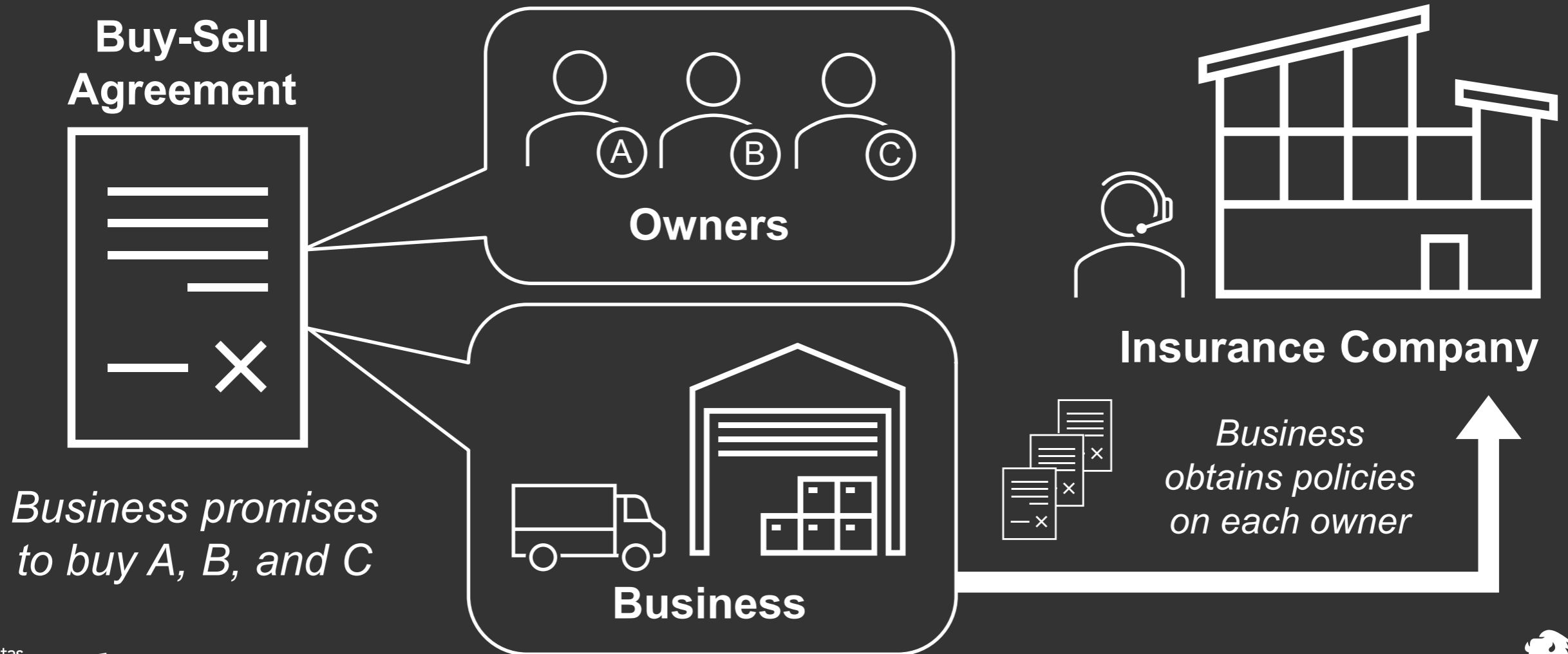
Basis Step Up

**\$2.5M**

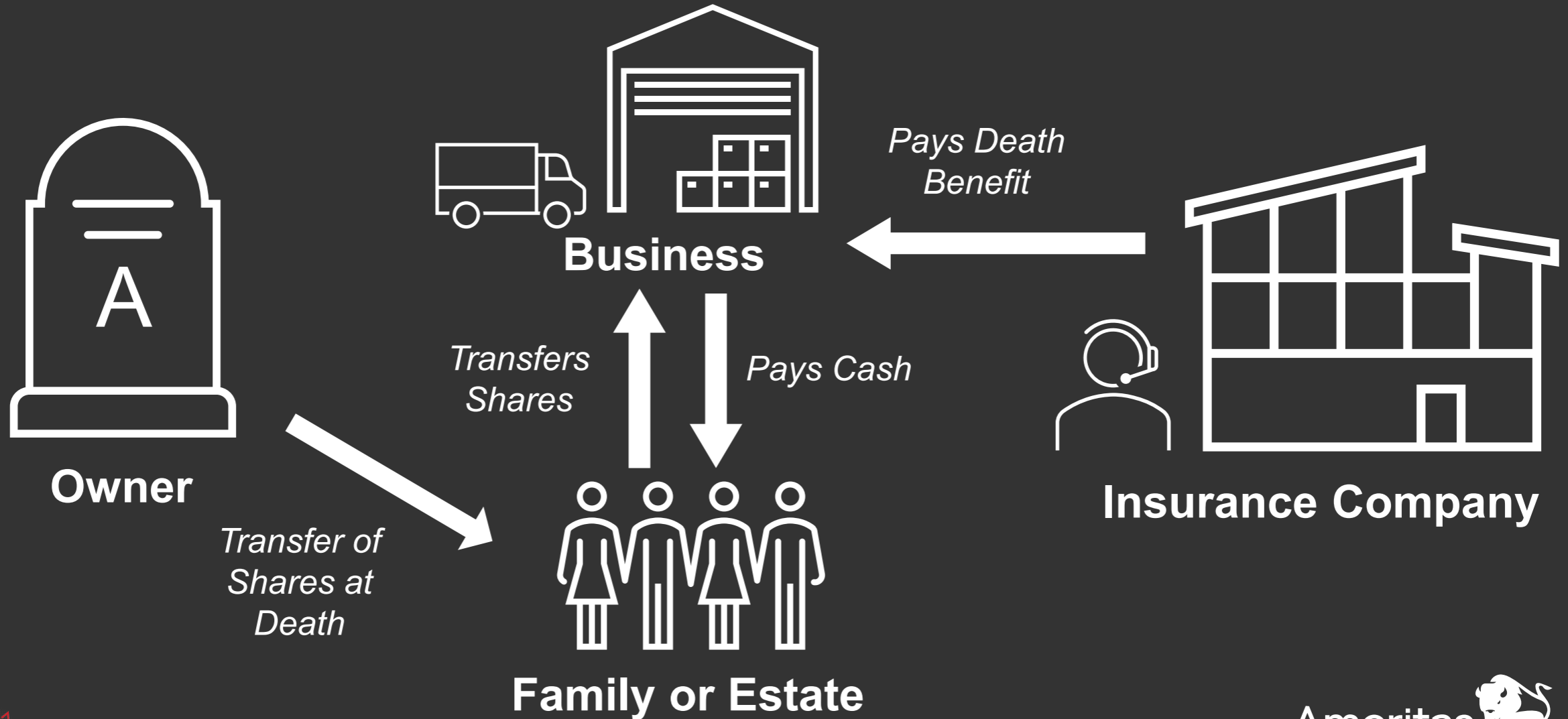
No Basis Step Up

**\$5M**

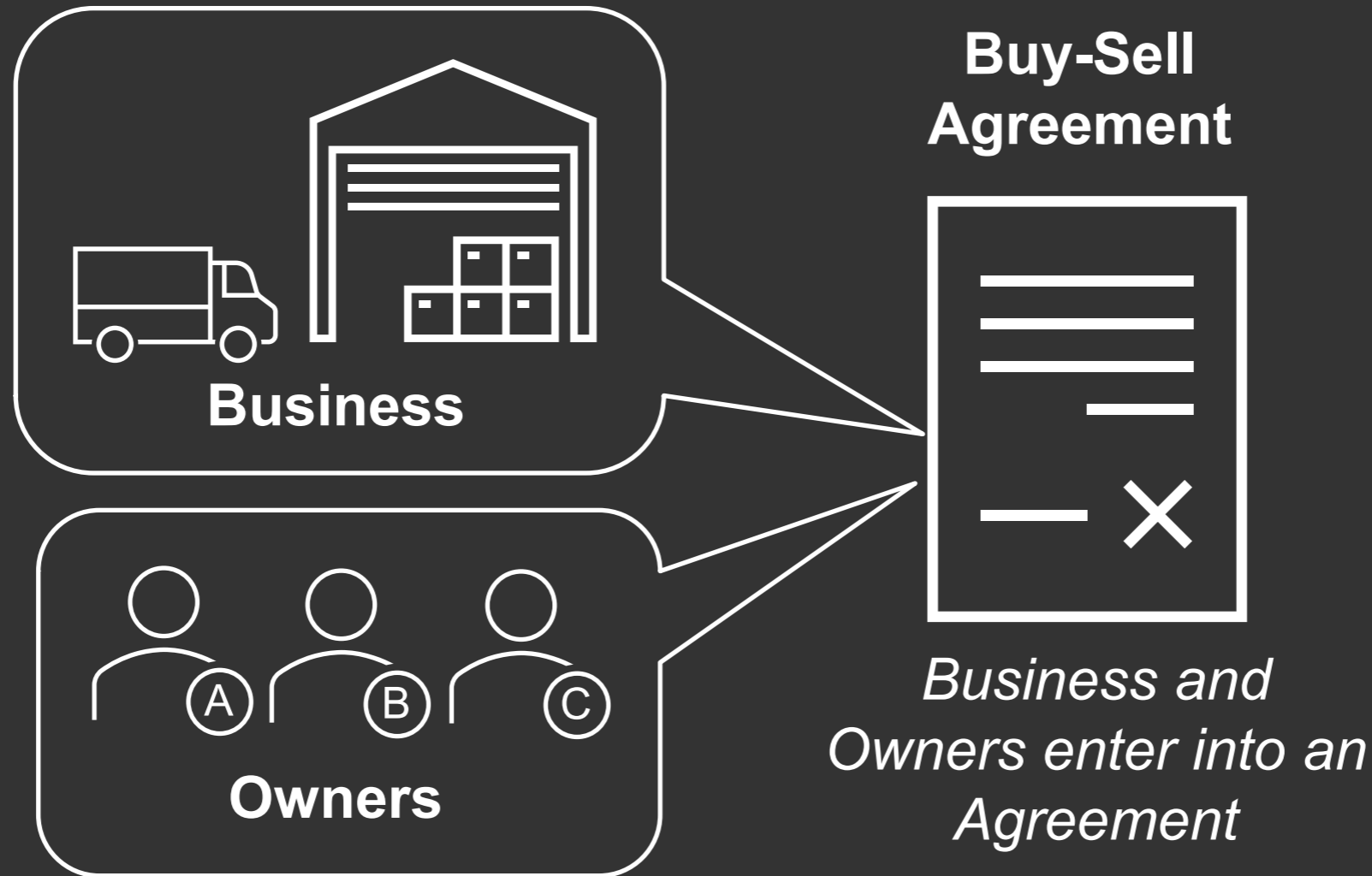
# Entity Purchase – During Life



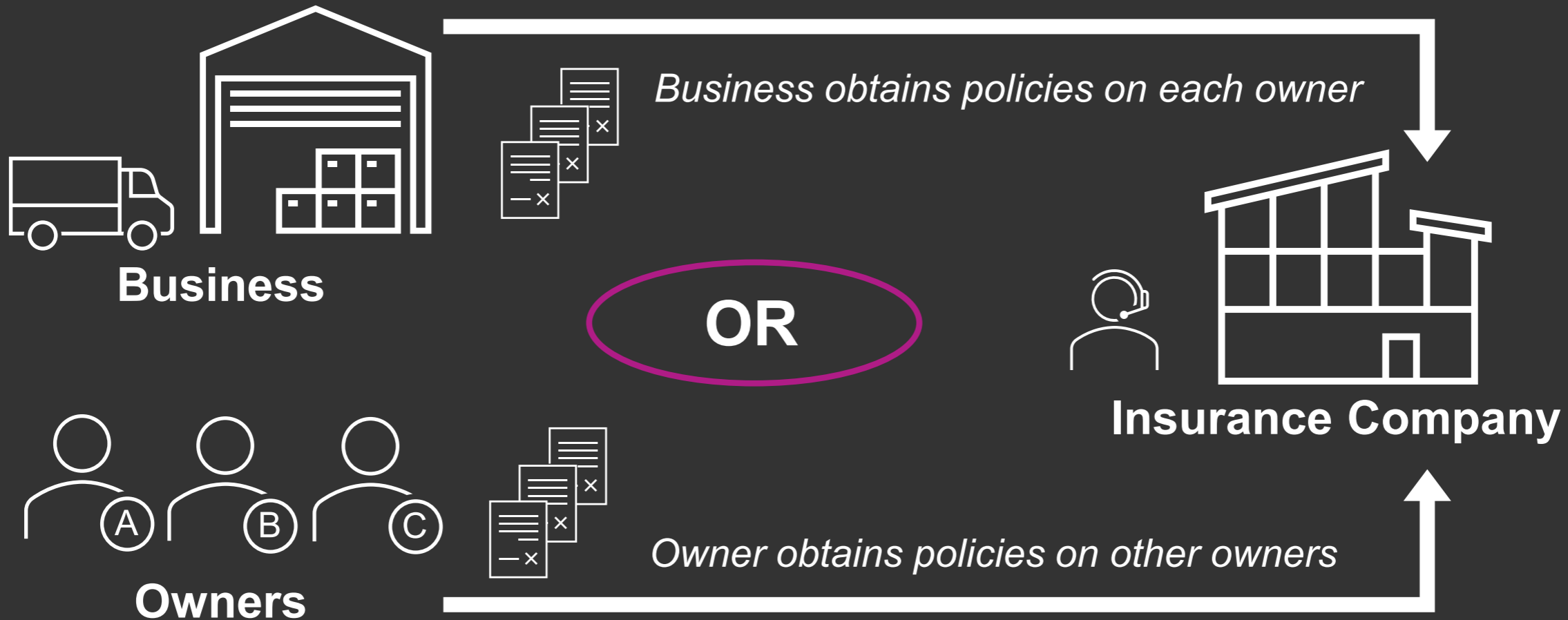
# Entity Purchase – Upon Death



# Wait & See – During Life



# Wait & See – During Life



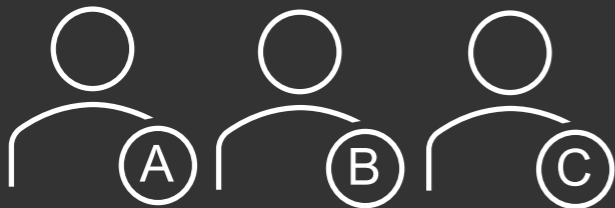
# Wait & See – Upon Death



**Business**

**Option 1:**

*Business option to purchase*



**Owners**

**Option 2:**

*Shareholder option to purchase*

**Buy-Sell Agreement**



# Wait & See – Upon Death



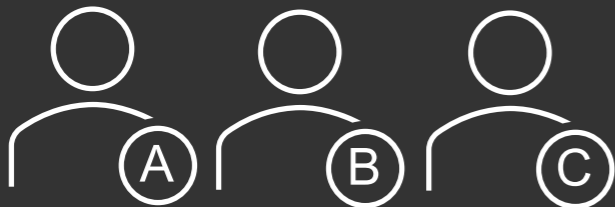
**Business**

**Option 1:**

*Business option to purchase*

**Option 3:**

*Business obligation to purchase*



**Owners**

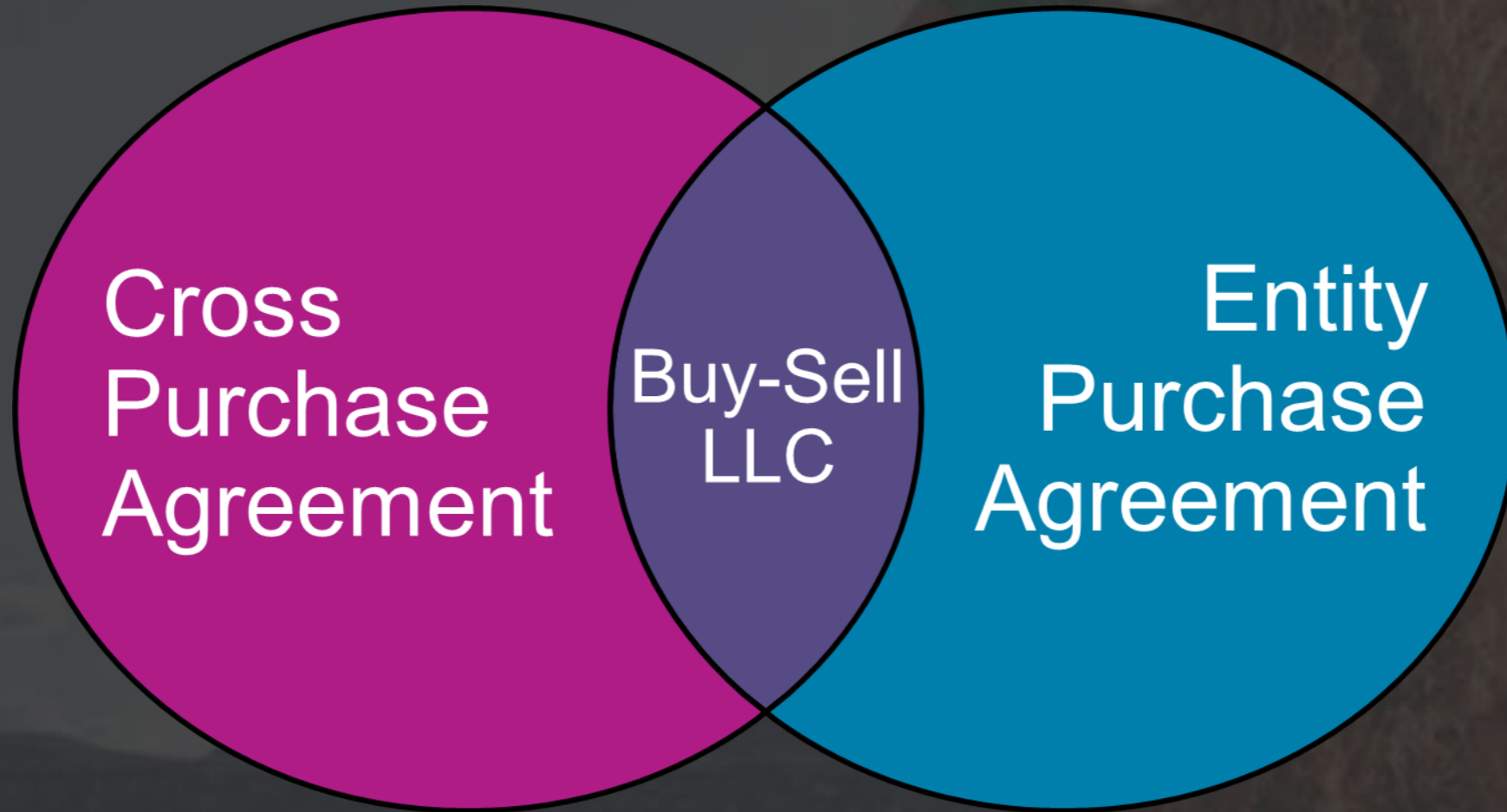
**Option 2:**

*Shareholder option to purchase*

**Buy-Sell  
Agreement**



# Buy-Sell LLC

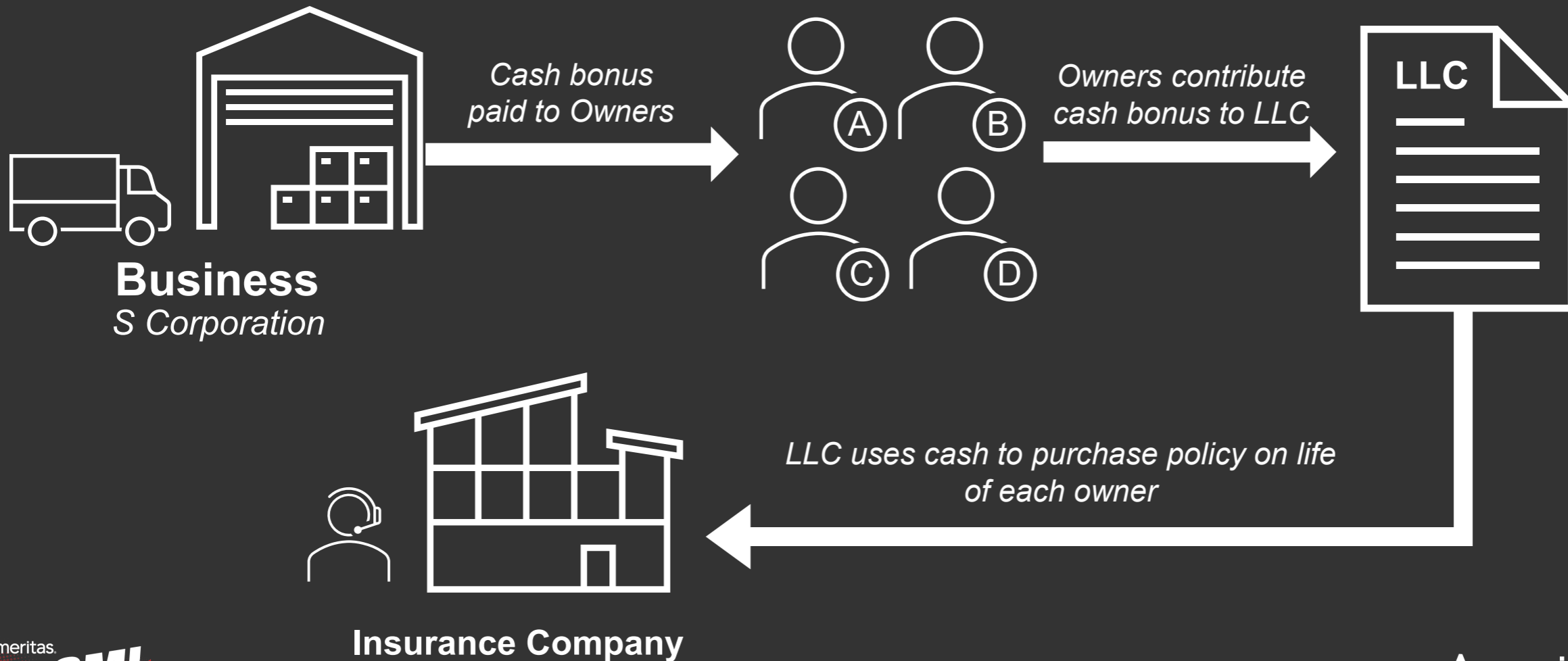




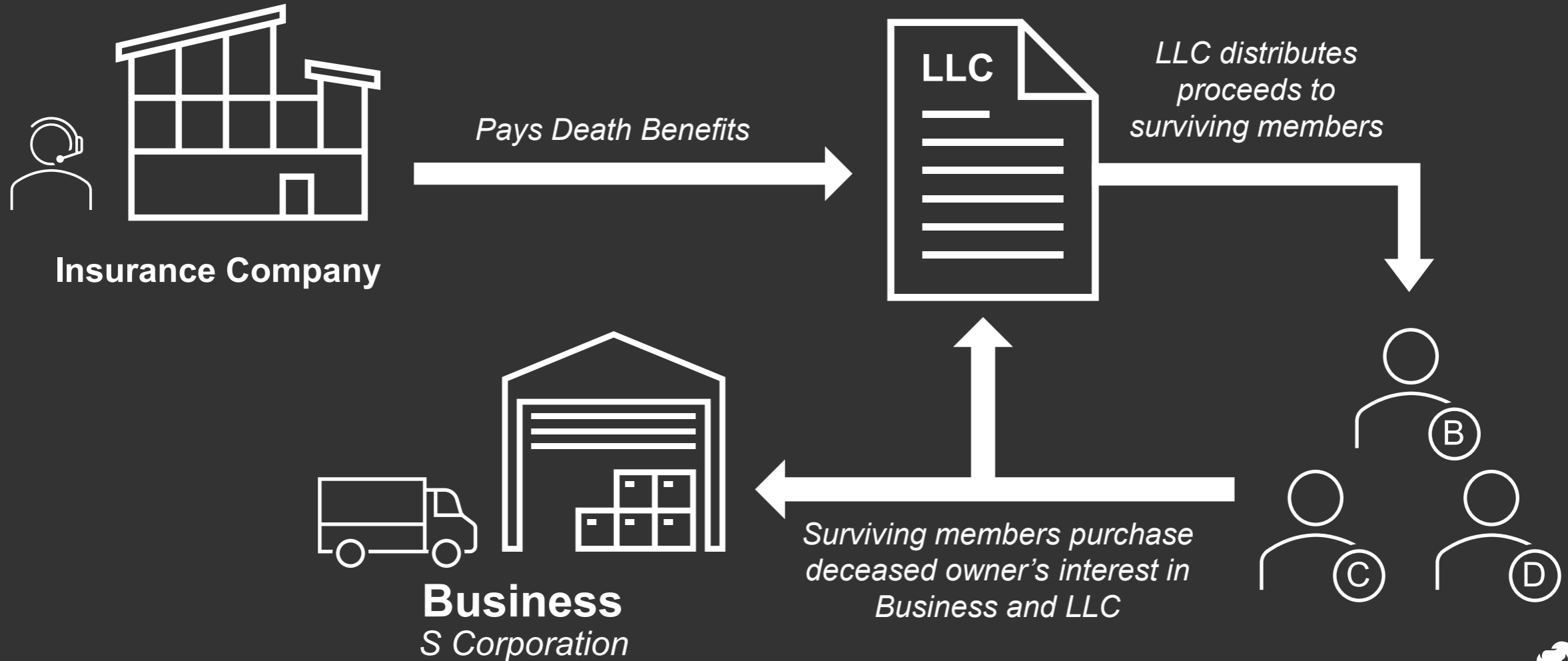
# Advantages

- ★ One policy per owner
- ★ Step-up in basis for surviving owners
- ★ Policy can be distributed to retiring owners

# Buy-Sell LLC – During Life



# Buy-Sell LLC – Upon Death



# Buy-Sell LLC Lifetime Exit

Partners retiring from Buy-Sell LLC could receive the policy on their life as part of their LLC share and use it for retirement





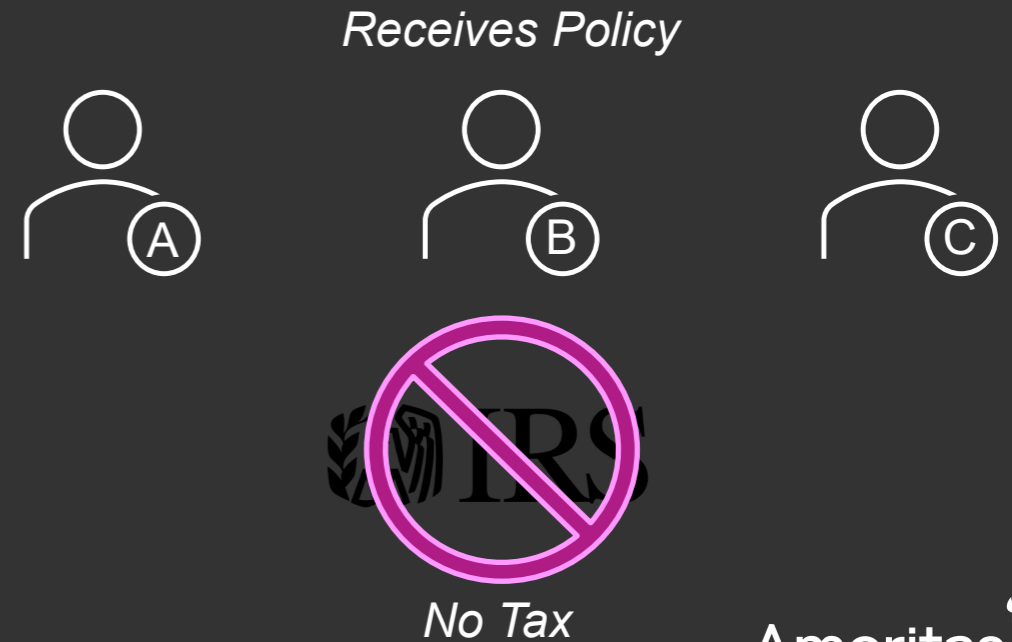
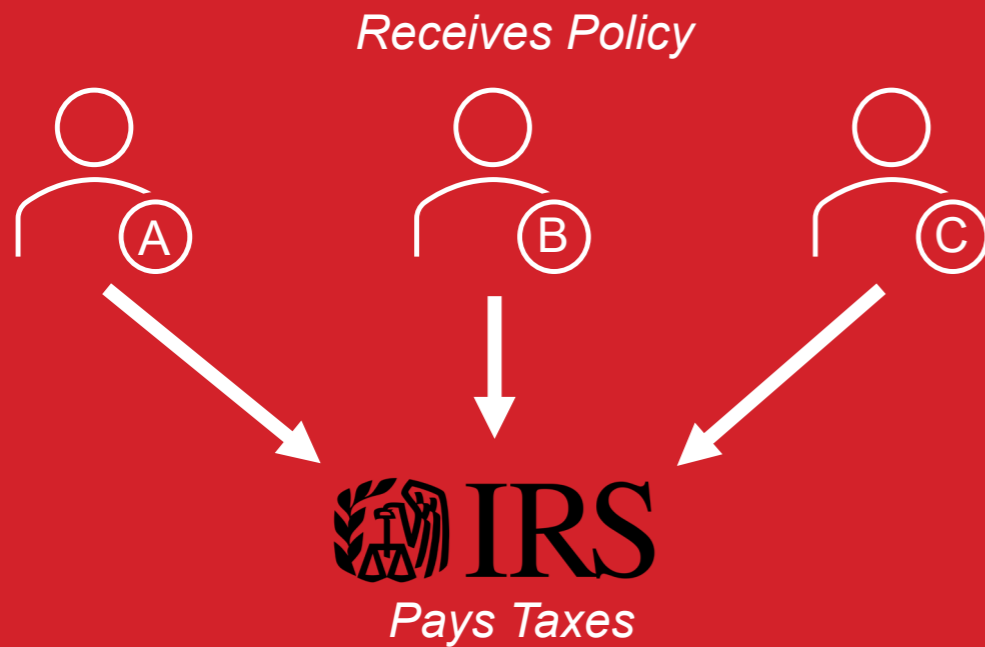
# Buy-Sell LLC Lifetime Exit

## Policy distribution from S Corporation

S Corp – 3 shareholders with equal ownership

## Policy Distribution from Buy-Sell LLC

LLC – 3 shareholders with equal ownership



# Considerations

- ★ Possible estate inclusion
- ★ Existence of a bona fide operating LLC
- ★ Exposure of life insurance to creditor claims
- ★ When a pre-existing LLC is used, the entity must account for assets/liabilities that will differ from policy cash values at distribution
- ★ Important to comply with COLI best practices



# Let's Talk *Connelly*

# Let's Talk *Connelly*

The rules of the game are the same, only now there is a consequence if you break them

## **The Rule:**

You must include the FMV of assets held by you at death in your taxable estate

## **The Exception:**

If you have a valid buy-sell agreement, you may use the purchase price in the Agreement

# Let's Talk *Connelly*

## The Exception:

A valid buy-sell agreement:

1. Bona fide business arrangement
2. Not used as a testamentary transfer between family members for less than full and adequate consideration
3. Can be arrived at in an arms-length transaction
4. Binding during life and after death
5. Fixed and Determinable Price

# Coming Soon

## Module 4: Wealth Management

May  
6th





# Contact Us

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**Advanced Planning Dept.**

(800) 319-3903 opt #2

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**Module 4: Wealth Management**

May 6<sup>th</sup> Noon ET



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