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Thinking of selling your business? Here's a few things to consider first

If you're thinking of taking the leap and selling your business, or perhaps received an offer you can't refuse, there are several items you may wish to consider before you jump.

First, an analysis of why you want to sell should help clarify many of the issues. Ask yourself the following questions:

- Are you ready to retire and have no immediate successor?
- Do you wish to take advantage of selling at an opportune market time?
- Are you having problems such as keeping up with competitors or health reasons?

Next, you need to know what your business is worth. How much money do you need to retire and maintain your lifestyle? A key step is a realistic valuation in order to help prevent seller's remorse. The person valuing your business should be independent from your business.

You will need to plan who would be a desired purchaser, and whether you are going to try to sell it yourself, or hire someone to help advise you. Too many times owners get submerged in offering, valuing and negotiating a transaction and lose sight of the day-to-day business. How much time and money are you willing to spend in negotiations with each prospective purchaser?

More questions to ask

Once you have completed your planning, next on your list should be a standard transactional confidentiality agreement. You should insist on obtaining a signature prior to divulging your secret information (or any information).



INSIGHT

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InSight features advice on small-business issues from different local perspectives.

Confidentiality cannot be over emphasized.

At the very least, it should contain:

- The person receiving the information agrees to treat such information as secret, confidential and valuable.
- The person receiving the confidential information agrees not to tell anyone other than a few specific people (agents) about it, or use any of the information for his or her own benefit.

• If the transaction falls through, the buyer will return all confidential information to you and agrees not to keep any copies or summaries of such information.

After the confidentiality agreement is signed, the usual course of business will be the execution of a letter of intent, which sets forth the general terms for the transaction including price, timing for preparation of the definitive agreement and the payment of a deposit.

There are two types of intent letters: binding and non-binding. But even if the letter is non-binding, there are some paragraphs you will want to be binding. For example, you will want the confidentiality agreement to continue and be in effect. Also, an

agreement to proceed in good faith may be desirable.

Once you have entered into a letter of intent, the buyer will want to examine certain items to make sure he is getting what he thinks he is buying. Do not be too generous with your secrets at this point. You don't yet have an agreement, so the buyer can walk. Don't share your pricing philosophy or the customer list. All that will come as part of the buyer's due diligence after a definitive agreement is signed. After the agreement is signed there usually is a period of time prior to closing that the buyer can perform due diligence.

Keep in mind that sellers want the transaction to be a stock deal; buyers want the transaction to be an asset deal. With a stock transaction, the buyer acquires all liabilities, known and unknown.

With an asset transaction, the buyer acquires specific assets and only specific liabilities. You will need to work closely with your accountant to see how the tax laws will affect your sale.

Next are negotiations prior to the execution of the definitive agreement: Type of sale, representations and warranties, indemnities, survival, earn-outs, if any, and employment agreements. Once all of these are resolved, you will be ready to sign the definitive agreement.

OK, now you are equipped to jump.

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