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Insights

Three Minute Update - Doing a Deal: Practical Considerations Before the Sale of Your Business

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In every business, the point in time will come when owners would like to retire or perhaps enter into a new line of work, and selling your business makes the most sense. This decision is not easy to make, as you will need to consider several key elements to the potential transaction while dealing with the emotional aspect of letting go of your business, whether you started it from the ground up, it has been in the family for years or you just recently bought it.

Before you get to that point, it is essential to make sure your business is in decent shape and attractive to any potential buyer. As such, we have put together our top three considerations for every business owner before selling their business.

1. Put together your team of advisors.

Once you have decided to sell, the first step is to gather your team of advisors. For many business owners, you likely have never sold a business before (and you likely won't ever again). As such, you only have one shot at getting it right, so it is imperative to make sure you surround yourself with trusted and experienced professionals. Before diving into the most significant transaction of your life, carefully review whether your current accountants and attorneys have the experience needed to advise you on the sale of your business. If they do not have experience with acquisitions, it makes sense to supplement your existing team with others who do. Typically, your team of advisors will include a transaction attorney, an accountant, and a business sale advisor (sometimes called an investment banker), but the team could also include a valuation advisor, business broker, or your personal financial advisor. To the extent you already have potential successors or buyers identified, a broker or sale advisor may not be as necessary.

Hiring a team of experienced professionals will help you navigate several complex items to consider in a transaction, including: how to structure the deal to achieve your objectives while also limiting your indemnification obligations, tax and personal liability post-closing; narrowing down potential buyers that fit your goals of "what's next" for the business; when and how to disclose information along the sale process; being creative in ways to retain key employees; and working through integrating your company with the buyer. Having a team of specialists can help you navigate options to make sure you act in your best interest while speeding along the process to get you to the closing table and money in your hand.

2. Identify and prioritize your key goals and objectives.

So you have finally made it to the emotional point of pursuing a transaction and engaging your team. The question is, what is next? At the outset of a transaction, consider what you want to get out of the transaction and what you want to do when it is all said and done. Answering these questions will help you shape what types of buyers make sense for you, your company, and your employees. In thinking through that decision, you should consider some questions: Do I want to continue working after the sale? What level of involvement do I want to have if I do? Do I want to benefit from future success? Do I want to provide security in employment and growth opportunities for my employees? How do I want the legacy of my business to continue? Am I ok with the buyer changing the business name? The answers to these questions could lead to many different preferred avenues, whether that be a sale to a buyer like a private equity firm who may pay top dollar, a sale to a strategic buyer who understands your business and could more easily transition employees, or an ESOP transaction so your employees can shape the future success of the business and share in that upside.

3. Perform preliminary due diligence on your business.

Once you have your team of advisors together (and perhaps even before so), start preparing the business by improving any aspect that makes the business a better prospect to a buyer. One way to do this is to perform preliminary due diligence on your business to identify potential issues that buyers might encounter that could diminish the value of the business in the eyes of the buyer. The more prepared you are and understand where issues may lie, the better off you will be when asking for top dollar for your business. You should review every area of your business to get better organized, fill in the gaps, find ways that you can add value to your business, and demonstrate efficiency.

Commonly sellers will do this by cleaning up their financial statements. Potential buyers want to have confidence in the financial reporting of the company. If you do not have financial statements that paint a clear picture of your company's financial health, it can kill a deal before it even gets started. To the extent your financial statements are not audited, it may also be worth engaging an accounting firm to prepare an independent audit of your financial statements to give potential buyers confidence.

In another common area of due diligence, review all of your customer, supplier, and vendor contracts. You and your team need to understand the rights and obligations under each of your agreements, as they can impact the structure of the transaction (and the value of your company). For example, if many of your contracts require a consent to assignment of that contract, the transaction may need to be structured as an equity purchase. You may want to firm up or renew any agreements with customers, suppliers, and vendors (to the extent it is advantageous). Consider putting agreements in writing with customers if there has been an informal relationship or renew agreements that may have expired. The more you can provide certainty to a buyer, the more attractive your business will look as a potential target.

You should also review several other areas, including the organizational structure of your business, ownership of intellectual property, condition of assets, preparing a list of assets that will be sold, insurance coverage, pending and threatened litigation, and your real estate. When reviewing these items, the ultimate goal is to anticipate what a target buyer will probably ask you about your business. Your advisors will also be able to help you anticipate these inquiries.

Selling a business can be a stressful event, but with the right team in place, owners can maximize their outcomes. This article covers just a few considerations that business owners should consider before selling their business. If you are considering selling your business and need assistance with developing a plan, please contact **Brian M. Heaton**, **Corben A. Lee**, or any member of our **Business, Acquisitions, & Securities Practice**.

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