

Successfully SELLING A BUSINESS

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You have spent years building your business and you may be thinking that now is the right time to sell. Here are the steps involved in a successful business sale.

1. Preparation

The first step in selling any business is to prepare the business for sale. A potential buyer will want to thoroughly review company documents. You should review and make sure that all your shareholder agreements, customer and supplier agreements, employment agreements and real estate leases are updated, complete and signed.

Prospective buyers will expect to see at least three years of financial statements and records. Be certain your financial statements and the underlying books and records are in good shape. Collect outstanding receivables and dispose of any obsolete or unnecessary inventory. Potential buyers will have greater confidence in the value of your business if outside accountants have reviewed or audited your financial statements.

Engage trusted advisors to properly prepare for a sale. Hire an accounting firm to conduct a "quality of earnings" report to analyze your company's financial performance and to calculate its Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA). Prospective buyers use EBITDA to determine the price they are willing to pay for the business. Engage an investment banker to benefit from his knowledge of the market and his experience selling businesses and coordinating the deal process. Engage a mergers and acquisitions attorney to review your corporate organizational documents and to identify any legal issues and concerns in advance and eliminate problems before a potential buyer is involved.

2. Basic Terms and the Letter of Intent

When a potential buyer expresses interest, the next step is to negotiate the basic business terms of the sale. That will include the purchase price and whether the purchase will be paid in full at closing or whether a portion of the price will be paid in the form of a promissory note, an earnout, and/or a grant of stock in the buying company.

You and the potential buyer will structure the deal as either a stock sale or an asset sale. A stock sale is generally more advantageous to a seller for tax and liability reasons. However, a buyer may insist on an asset sale, and an asset sale may have certain advantages to a seller as well.

After the basic business terms are agreed upon, you and the buyer will sign a letter of intent stating those terms. The letter of intent is legally non-binding. However, it sets forth the due diligence timetable and other details for the parties to follow towards a binding definitive agreement.

As a seller, you should enter into a confidentiality agreement with the prospective buyer which legally prohibits him from disclosing or using confidential information about your company.

3. Buyer's Due Diligence

The letter of intent will provide a period of 30 to 60 days for the buyer to conduct a detailed due diligence review of your company to determine whether he wants to sign a definitive agreement and close on the purchase. During the due diligence period, the buyer will inspect your company's physical premises and its financial books and records. This will include a review of potential legal issues, a review of customer, supplier, employee agreements and relationships, and a review of tax matters related to the business.

4. Definitive Agreement and Closing

Following the due diligence period, a definitive purchase agreement is negotiated and signed by you and the buyer. The purchase agreement sets forth all the details of the transaction, including the purchase price and method of payment, allocation of the purchase price for tax purposes, representations by each party, the seller's indemnification obligations, any conditions that must be satisfied prior to the closing, and the closing date.

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