

## **Selling Your Business**

If you are planning to sell your business you should not be complacent. It is rare that a sale is easy or swift. You must be prepared to deal with circumstances you have never before confronted in your business life. This seller's guide will help you through the delicate selling process, and prepare you for what lies ahead.

WHAT'S TO SELL? What is it about your business that is attractive? And will it be as attractive to someone else as it is to you?

Does your business enjoy a competitive advantage? Does it have a special market niche? Are its physical and human resources particularly valuable? Does the company have certain intangible assets that will survive your departure from the business?

These questions are prerequisites to the determination of the value of the business and its marketability. You must answer them objectively and honestly.

In most cases it will be necessary to seek the advice of professionals before you begin the selling process. You should talk to an investment banker, your attorney, and your accountant. These three professionals represent your "selling team." Their sole purpose should be to assist you in achieving your selling goals.

Your investment banker will advise you as to the value of the business, the possible terms of sale, and the method of offering the business for sale. He will also prepare a selling memorandum and conduct the negotiations on your behalf.

Your attorney will help you to anticipate the legal issues that will ultimately arise, such as the issue of sellers' representations and warranties, many of which may be personal representations of the owners.

It is best to bring your attorney into the process early. If not, he may not have the opportunity to give advice on terms of the transaction. Frequently, these terms have legal implications.

Your accountant will be needed to gather information for the selling memorandum, such as financial forecasts and recasted financial statements that portray the business operations under new ownership. Your accountant or lawyer will also be able to explain the tax implications of the sale, and assist in structuring the transaction to minimize taxes.

It's a good idea to talk to people who have sold businesses similar to yours. An experienced seller can talk to you about some important issues, such as:

- Life after the sale. What can you expect your relationship with the new owner to be like?

- Procedures. What was the chronology of events? What didn't go according to schedule? What surprises were there?
- The structure of the transaction itself.

INVESTMENT BANKERS. An investment banker is a professional, but unlike the medical, law, accounting, and other professions, the investment banking profession has no licensing or professional standards to which its members must subscribe.

Before choosing an investment banker to represent you, follow these simple steps:

- Make inquiries of other professionals, such as attorneys, accountants, and bankers to learn about the investment banker's reputation.
- Choose an investment banker who specializes in your industry.
- Test the morals of an investment banker by asking direct questions. Find out, for example, if the investment banker recommends inflating earnings or omitting the reasons for past losses in the selling memorandum.

Such tactics invite litigation. The honest approach is always the best, and you ought to choose an investment banker who believes the same.

- Test the ability and integrity of an investment banker by talking to people who have negotiated with him. They will know whether they were treated fairly and honestly.
- Be wary of an investment banker who accepts an engagement from you without a thorough investigation of your company.

Except for conglomerates and professional investment groups, most operators don't have vast experience in selling businesses. That is one of the reasons it is important to rely on your selling team. Here is a procedural summary designed to prepare you for what to expect.

- Make sure the other members of your team know everything about the business. Keeping secrets delays the inevitable—an accusation of misrepresentation. Use your advisors to help you determine how to deal with sensitive issues.
- Help the investment banker prepare the selling memorandum. You know more about the business than anyone else does.
- Review the selling memorandum for accuracy, not style. The investment banker should be an expert at presenting businesses for sale.
- Help the investment banker put together a list of potential buyers. Select from the following categories:
  - a. Competitors
  - b. Suppliers
  - c. Investment groups
  - d. Non-related corporate buyers

- Choose from among the many methods of conducting the sale. Each has advantages and disadvantages.

With auctions, the selling memorandum is sent to selected buyers who are invited to bid for the business by a certain date. This has the advantage of being quick, and the disadvantage of being widely circulated.

Through advertising, selling is normally accomplished on a no-name basis until the buyers have been qualified.

Through direct contact, the investment banker contacts potential buyers and invites them to consider the acquisition.

By networking, inquiries are made of other investment bankers, lawyers, accountants, and other intermediaries. This is sometimes done through formal or informal affiliation of these professionals, on a national or international basis.

- Prepare for prospective buyer visits. Make sure the premises look good. Having a clean operation is characteristic of a good business. Furthermore, little faults may be interpreted as symptomatic of serious problems.

Insist that the investment banker take the tour of the premises before any outsiders do. The investment banker's observations will help determine what changes and improvements need to be made.

- Inform key personnel about the impending sale. Many owners are anxious about doing this for fear the people will find new jobs. This rarely happens. And if they find out about the sale through unofficial sources, they are more likely to feel insecure and angry. Being up front with them will reduce the risk of their leaving.
- Allow the investment banker to negotiate the terms. The roles of the owner and the investment banker are distinct. The owner makes decisions but does not negotiate. The investment banker negotiates but does not make decisions.

In addition to the advantage of the investment banker's experience, this system gives the negotiator more power. Since the investment banker cannot make decisions, he cannot give anything away. The owner, on the other hand, is more able (and more likely) to give away negotiating points.

- Be prepared for legal burdens. Many sellers are surprised when they are asked to provide buyers with representations and warranties about the operation.

For example, the seller generally must assert that there is no pending or threatened litigation involving the company. Most buyers want to hold back paying a portion of the purchase price until future events confirm the validity of the representations and warranties.

Find out from your attorney and investment banker how to deal with these issues before the request. Emotional responses to these issues have undermined many deals.

- Don't be surprised when the buyer has a different operating philosophy than you have.

Owners want to sell their companies to people who will perpetuate the companies' traditions. But an owner who tries to find a buyer who thinks exactly as he does will be frustrated.

Finding the most compatible buyer doesn't require someone who possesses your attitudes. Listen to the potential buyer's ideas—not to criticize, but to learn.

- Review each letter of intent, which may be prepared only after long negotiations have resulted in a general agreement on the sale terms. Sometimes, however, the letter of intent takes the form of a first offer. In this event, the seller shouldn't make a yes/no decision based on his first offer. Neither should the seller be offended. First offers are rarely final offers.
- Prepare for the costs. The investment banker expects to be paid at the closing. The amount of those fees should be known in advance. It is also wise to ask your attorney and accountant to estimate their charges in advance. There may be other costs to deal with, such as appraisal fees, search costs, and others. All will have to be paid at or before closing.
- Prepare for life after closing. It will be different. If the seller is working for a new boss, his autonomy will certainly be affected, no matter what was promised. If the seller retires, his life will be even more dramatically affected. Again, preparation is the key.

For most people, selling a business is an inevitable event. Relying upon seasoned professionals to guide you through the process can turn a stressful situation into a series of anticipated steps.

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