



Selling Your Company

Guideposts to the process.

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Many businesspeople work long and hard to build a profitable company. Eventually, they may decide to sell it, sometimes as part of a retirement plan. The process of selling a company can be somewhat forbidding, particularly because it is your deal of a lifetime and involves new concepts and complex documents. Accordingly, it helps to know what to expect and to plan ahead.

Make Goals

First, what do you want out of the deal? Of course, a good purchase price for the company. Also, do you want to continue working at the company after the closing? Do you want assurances that longtime employees will still have their jobs? Are you willing to keep some ownership interest or to finance part of the purchase price? The answers will help shape your expectations.

Get Ready

You can take steps to make the company easier to sell. For example, a buyer's first focus will be on the company's financial statements. You may not have needed more than a compilation report from your accounting firm in the past. Consider upgrading to audited financial statements for your most recent fiscal year. Or, con-

sider disposing of company real estate or other assets that might not interest a potential buyer. Most important, build a supporting team, including your lawyer and accountant. Also, your tax adviser will explain that different sale structures will have different tax impacts on you and the buyer and so may affect the purchase price.

Hire an Investment Banker

An i-banker will help analyze your company and help you set reasonable expectations for a purchase price. He or she will identify well-funded potential buyers and may run a mini private auction to get the best price. Also, the i-banker will make inquiries as to which potential buyers are likely to be pragmatic negotiators.

Make Information Available

Potential buyers will want to obtain in-depth knowledge of the company on issues ranging from products and customers to litigation experience and employee benefits. The company may create a data room containing files regarding all matters that potential buyers may want to review. Company executives may be made available to discuss related questions with potential buyers. Make note that potential buyers should be required to sign nondisclosure agreements.

Negotiate a Letter of Intent

When the buyer has been identified, it's time to negotiate a letter of intent, or LOI. This document has evolved into a fairly detailed outline of the basic deal terms, and it is important to identify what is of real importance to you. For example, will you agree to escrow some part of the purchase price for a period after closing? Will there be a time limit for your liability for your representations? Will there be some ceiling on your exposure regarding those representations and a minimum amount of claims, which must be reached before you have liability? If you and the buyer cannot agree on a price, can the gap be bridged by an earn-out provision tied to post-closing earnings of the company? The LOI is the place to address those issues in order to learn if a deal with this buyer really exists.

Draft a Definitive Agreement

This is the binding agreement that will be used to document the sale transaction. The first draft—usually about 70 to 80 pages long—is prepared by the buyer's lawyer. At first glance, it may seem a bit overwhelming, especially as to the representations and warranties that the buyer wants you to make. But remember, it is only a draft that lays out everything the buyer hopes for and is subject to negotiation between the parties. Also, the LOI has already foreclosed some possible pressure points. All that said, working through those matters and agreeing on a final form of the definitive agreement should be a constructive experience assuming both parties are intent on getting the deal done and are willing to be flexible in solving issues.

Close the Deal

After preparing various ancillary documents and addressing other preclosing requirements, the parties sign the definitive agreement and related documents and funds are wired. You've done it. Enjoy! **TBJ**

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