

Thinking of selling your business?



Jason M. Klein | Tuesday, June 4, 2019

Selling your business can be both an exciting and stressful time. One of the ways to reduce your stress level is by being organized prior to engaging with an investment banker and/or potential buyer. This blog post offers four tips on how to be best prepared when selling your business.

Prepare a form confidentiality/non-disclosure agreement

Before providing any type of business information to a potential buyer, make sure to have them sign a confidentiality/non-disclosure agreement. The confidentiality/non-disclosure agreement should cover what type of information is considered confidential, how long the information is considered confidential, and rights and remedies available to you in the event that the recipient of said confidential information breaches the agreement. In the event that the sale does not go through, the last thing you want or need is for a potential buyer to use information obtained from the sale process as a competitive advantage.

Gather corporate records and contracts

Potential buyers will want to see the corporate records and, at the very least, material contracts of the business. Having your business corporate records readily available, which includes meeting minutes, stock or unit certificates, and articles of incorporation and bylaws for a corporation or articles of formation and operating agreement for a limited liability company is a must. Potential buyers will want to know:

- Who are the owners

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- What percentage of the business that each owner owns
- That there are no gaps in the ownership history
- Who are the officers/managers/directors of the business

Other important items to have assembled prior to beginning the deal process are material customer contracts, supplier/vendor contracts, and employment agreements. With respect to the customer and supplier contracts, it is typical to redact customer names and pricing information when providing such agreements early on in the transaction. As the transaction moves closer to the closing and a final buyer is identified, the customer names and pricing information is then released. Digging up old corporate records and finding all of the contracts can be very time consuming. Having as much of this information at the beginning of the process will streamline the sale and allow you to focus on other aspects of the sale as the transaction progresses.

Assemble a team

One of the most efficient and cost-effective ways to get through a transaction is to have a team of people/employees ready to assist with the deal. A common mistake is for a business owner to try to do everything themselves and not get others involved. It is understandable that a business owner does not want their employees to know that a sale may be happening; however, this mistake leads to delays in providing corporate information and tends to result in the day-to-day operations of the business suffering since the business owner is trying to run the business as well as handle the entire deal. Whether it is an office manager, chief financial officer and/or a trusted employee, having at least one other company person involved to assist and liaise with your deal counsel and other outside advisors is an important step to help keep legal costs down and the process moving. Further, having an accountant that is well versed with M&A deals will also be helpful both from a financial diligence aspect and tax aspect.

Consider a transition plan for the management team

Another item to keep in mind when selling your business is how you want to handle certain employees and your management team. Quite often business owners offer transaction bonuses and/or sale bonuses to certain members of the team. The process of selling a business is incredibly time consuming and labor intensive. I have had high level executives, employees and office managers tell me that they felt like they had two full time jobs during the sale process. A way to reward those people that have assisted in the preparation and sale process or to show appreciation for the years put in to the company is to offer some type of bonus. By having a plan ahead of time, your deal counsel can assist in setting up the bonuses in the most tax effective way possible to both the employer and employees.

Selling a business can be time consuming and expensive, but by following the guidelines above can save both time and money. If you have any questions regarding the information above or the sale process in general, please contact the attorney listed below.



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