

SUCCESSION PLANNING AND THE CLOSELY HELD BUSINESS: HOW TO MAKE THE SALE AND ENJOY YOUR SECOND ACT

The Reward

You've spent years, possibly a lifetime, creating your business. Its success has been dependent upon you – your vision and your labor. And, now, you've decided it is time for you to move on to your next adventure: it can be to retire and enjoy the rewards you've earned or possibly to start another endeavor that you will nurture and grow. You've earned it. Congratulations!

The Risks

Once you decide to exit your business, it enters a vulnerable period. The first risk is now that you've made your decision, your focus on the business can wane. You must be diligent to guard against this loss of focus, as you need to maintain or increase the value of your business at this time. Don't begin imagining the white beaches of retirement until they are bought and paid for.

Another risk is that your employees, vendors, suppliers, and clients learn of your intentions before you are ready to make them aware. This can cause employees to lose confidence and exit the company, vendors to find alternate sources, suppliers to change terms or stop working with you, and clients to switch to your competitors. Any one or more of these effects could be devastating to the value you've built up in your business.

You also face a financial risk in maximizing the value of your business. There are steps you can and should take to ensure that your business is both protected against your eventual exit and the transition phase under new ownership to assure your legacy.

The Process

Except in emergency situations (i.e., disability, incapacitation or death of the business owner), succession planning and exit strategy is something that should be done in a thoughtful manner. Below is a description of a three-stage process (preparation, implementation and execution) toward realization of your goal. The description is comprehensive and illustrates the need for succession planning to be a very thoughtful process with assistance of counsel.

Preparation

In the initial preparation phase, you need to think about your future plans, assess the present status of your company, and gather documents regarding past actions.

- What is the anticipated date of your exit?
- What income level will you need upon exiting?
- Do you want your exit to be completed in one step or over several?
- Do you have a successor selected?
- What needs to take place for the successor to be ready to assume leadership?
- What is your current business structure?

- Do the entity formation documents have any restrictions on ownership?
- Are there any business licenses, approvals or registrations that need to be approved or transferred?
- Who are the key employees who must be retained for viability?
- Is there a current ESOP or other program in place?
- Who are the key vendors that need to be maintained?
- What suppliers need to be locked in to support new ownership?
- What clients will need to be alerted and transitioned appropriately?
- Do any contracts have change of control provisions that would be triggered?
- What is the present fair market value of the business?
- Is any of that value predicated on your ownership?
- Are you prepared for the emotional challenges of leaving your business?
- Are there any family members who have expectations with respect to your business that need to be handled?
- Do you have at least six months of operating capital saved?

Documents to Gather

In order for your advisory group (discussed below) to help you and give you guidance, and, quite frankly, so that you know what you should expect from the sale of your business, you need to find these documents.

- Five years of personal and business tax returns
- YTD personal and business financial statements
- Legal documents
 - Lease or mortgage of business premises
 - Employee agreements
 - Buy-sell agreements
 - Client agreements
 - Insurance policies
 - NDAs
 - Trademark and/or patent registrations
 - Employee incentive agreements
 - Benefit information (i.e., retirement plan)
 - Will
 - Power of Attorney
 - Health Care Proxy
- Current business plan
- Operating procedures and systems
- Competitor analysis
- Job descriptions for all roles within company (especially yours)

Key outcome – Determining what you want and what you have.

Challenge Point: Would retaining ownership, but transferring management day-to-day control be a better outcome for you? For example, if the business is expected to significantly increase in value over the next 1-5 years, is retention a better outcome? If so, consider creating a board of directors and hiring or promoting a new chief executive officer.

Implementation

Now that you've done the preliminary work, it's time to start working toward your goal. This is the time you ensure you have baked in the value to your company so that you can receive the greatest return on your investment.

- Create an advisory board for your transition
 - Attorney
 - Accountant – Tax & Business Valuation Focus
 - Insurance professional
 - Financial Planner
- Consult with appraisers, brokers and bankers as appropriate
- Create a financial plan for yourself, post-separation
- Create a financial and business plan for your business during the transition and post-separation
- Create an incentive plan for key employees to remain post-separation
- Create a communication plan for all stakeholders – employees, vendors, suppliers, clients and community-at-large – in order to incentivize remaining with successor entity

Key Outcome – Determining if a sale is viable and if so, how you can preserve value in order for the sale to be successful.

Challenge Point: After considering your needs, obligations and future desires, is a sale, retention, merger or liquidation the best strategy?

Execution

All your hard work now comes to fruition as you find your purchaser, negotiate the deal, and exit from the company. If successful, at the end of this process, you have monetized the value of your firm and are enjoying your second act!

- Identify potential buyers
 - Does buyer need training or other support to be successful?
- Negotiate price and payment terms
 - If there is an overlap period, can the cash flow support both you and the successor?
- Conform your estate plan to the sales process

Key Outcome – The sale is completed!

Challenge Point: Have a contingency plan in case a buyer is not found, financing cannot be acquired or sale falls through.

LOVE LAW FIRM loves helping entrepreneurs and small business owners achieve their dreams – especially their dreams of realizing their return on a lifetime's investment. The process may seem daunting, but it is designed to achieve the best outcome for the owner.

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