Taylor & Morgan's Guide to Selling a Business

Introduction

Selling your business is a huge decision for you to make. The financial implications of the sale make it imperative that you give enough thought to whether or not you really want to sell; and once this decision is made, enough effort in ensuring that you get the right price. A privately owned business is also usually the main source of income for its owner and the sale should garner enough of your attention and interest from this perspective too. In effect, selling your business should not be a spur of the moment decision. In fact, to ensure that the sale price reflects the true value of the business, you should start planning well in advance, a few years before you put your business on the market.

Many business owners tend to overlook the fact that selling the business that they have nurtured and expanded brick by brick is an emotional decision too. After all, you have invested a substantial amount of time and energy into making it a successful enterprise apart from the money that you have spent on setting it up and keeping it running. You have grown with the business, learned some valuable lessons from it, experienced both successes and failures over the years that you have been at its helm.

The sale of your business is a major, life changing event and you need to be aware of this when you make the decision to sell. After the sale, you will no longer have the day to day responsibilities of the business to engage your attention. More importantly, once the business changes hands you can no longer lay claim to its successes in the marketplace. Every business owner has a special bond with his enterprise, a feeling of ownership and possessiveness that can be difficult to walk away from. These aspects should be factored in and clearly understood by you when you decide to sell the business.

Sale or Closure

You have decided that you can no longer manage your business. That leaves you with two options- selling it or closing it down. The size of the business, its profitability, its future prospects, the question of someone else taking over, sustainability aspects, the qualifications that a third party will need to have to run the business- these factors determine whether you should close the business or look for a buyer. These should be factored in when you are making the decision to sell. Keep in mind that there is work to be done whether you are selling the business or closing it down but both these require different kinds of actions to 'prepare the field' for the final closure or sale.

For example, in a closure, you need to intimate your associates and customers of the impending closure, you need to take care of the employees, exhaust inventories and so on. For an impending sale, you need to pay special attention to making the business more efficient and profitable so that it is attractive to buyers and can garner a good price.

Chapter 2: Are you really ready to sell?

There are many reasons why a business owner may decide on the sale option. In fact, every business owner should review the business periodically and assess if divestment would be a better option than continued ownership. Typically, businesses may be sold because of the following reasons:

- The owner intends to retire and he has no heirs to take over or his heirs are not qualified or interested in taking over
- A need for substantial funds prompts the owner to sell the business and liquidate his stake in it
- Several buyers have approached the business owner with competitive offers
- The business owner lacks the funds / resources to take the business to the next level
- The business owner lacks the qualifications / capabilities / skills to develop the business further
- The business owner is not inclined or willing to expand the business and / or make the investment necessary for such an expansion

There may be personal, sometimes emotional, reasons for selling the business too:

- The owner is no longer interested in the business, it does not offer the thrill and excitement that it did during the initial years
- The owner wants to invest elsewhere, to focus on a new venture
- The owner feels that someone more skilled / more qualified / with greater experience can help the business achieve greater heights

External factors could be behind the decision to sell too:

- The market for the business's goods / services is stagnating
- The marketplace has become heavily competitive requiring the investment of more time, energy and effort to keep the business at the same level of profitability
- Government regulations have become more stringent, restricting the business operations
- Supply of raw materials required for the business has been impacted by various factors making operations difficult to sustain

There may be many different reasons why you want to sell your business but the important thing is to be sure in your mind that this is what you really want to do.

What will you do after the sale?

We already discussed how selling your business is a very emotional, life changing event. One of the questions you need to ask yourself before you actually sell the business is what you will do after the sale. Chances are that your life has revolved around your business for a good many years until now. Once you sell it, you are bound to feel 'at loose ends' unless you have another project already in hand. The thought that you are no longer a business owner can actually be quite depressing for someone who has invested a lot of passion, time, money and creativity in nurturing, expanding and growing his own business. Think well because the most valuable period of your life has gone into the business and after the sale you will have nothing to show for it.

Another serious issue is, what you will do for income once you sell your business. As we said earlier, a privately owned business is usually the owner's biggest income source. Before you sell the business, you should have an alternative already arranged to make up for the loss of income. For those who intend to start another business or get employed, this is an easy question to answer. For those who do not intend to work again, the question of finances requires considerable thought before the decision to sell is finalized.

So is the question of what you will do to keep yourself engaged intellectually. If you have been actively involved with the running of the business, overseeing its day to day operations and interacting with employees, customers and business associates regularly, the sale of the business can create a big vacuum in your life. This is another factor to consider before selling your business, so that you do not regret this act further down the line.

So, you have decided to sell. Now What?

After thoughtful consideration of all these factors, you are now sure that selling is the right option for you. The next step is for you to put it all down in writing along with the objective of your sale. For example, are you selling because you are no longer able to handle the daily pressures? Are you selling because you believe the business will not be profitable in the coming years? Writing down your reasons for the sale and your sales objectives ensures that your agenda is clear. This clarity helps you assess the terms of sale objectively and judiciously, ensuring that you do not settle for terms that are not in line with the true worth of the business. It also helps you look for buyers for whom terms that satisfy your sale objectives will be acceptable.

These are a few points to cover when you are putting your sale decision in writing:

- When exactly do you want to sell? Set a deadline for yourself
- What is your reserve price? What is your target price?
- Do you intend to ask for cash payment or will you consider other options?
- Will you continue to be involved in the business in some capacity, say consultancy?
- What will happen to your employees?

Once you have a clear plan of action to follow, it is time to shift the focus onto your business. Now is the time for you to objectively assess the business in terms of its saleability. In this regard there is one very critical question to answer. Is this the right time to initiate a sale? Will your business or you benefit from postponing the sale? The main question is, can you get the best price for your business if you sell right away or should you wait until the circumstances are more conducive?

In effect, your focus should shift from the act of selling to making sure that the sale happens when it can yield the maximum benefits for you. In this respect, there is yet another important question that needs answering- Is your business attractive to the right buyers?

Chapter 3: Is your business attractive to the right buyers?

At this stage of the sale process, it is time for a dramatic switch over in your mindset. As Gurbaksh Chahal, '*serial entrepreneur*' puts it: you don't want to be sold, you want to be bought! Your ideal sale deal happens when it's the buyer who initiates the process, when he is keen on acquiring the business and hopefully, willing to pay the price you quote without any argument. And when is he going to do that? When he finds your business immensely attractive….

So what exactly makes your business attractive to a buyer? The most evident and also the most important factor is that a business that is successful, that has the potential to sustain this success is what is attractive to a buyer. It's simple; when your business is up for sale in the market, it needs to be performing at its best. Making sure that it is working as efficiently, and effectively as it possibly can is imperative, because you then get to demonstrate its full potential to prospective buyers. Remember that buyers are going to be scrutinizing it very thoroughly indeed and it should not just stand up to this scrutiny but pass with flying colors. Only then can you get the best possible price for the business.

Profitability is a chief concern here for your buyer. So ensuring that your business is profitable is very important. However, the buyer also wants to know if the business has the inherent strengths to churn out profits year after year. Apart from showcasing that the business is currently profitable, there are several aspects to consider in ensuring that it is really attractive as an investment proposition. This, among other things, is the focus of this chapter.

Who is the Right Buyer?

The right buyer is the individual who is willing to give you the price you want. This is most likely to happen when the buyer has the basic understanding of the business, its niche industry, the market dynamics pertaining to your business. Then he can appreciate the true worth of your company, visualize where he can take it in the coming years, and grasp the importance of any potential it has to emerge as a leader in the niche segment.

Take a look at a simple example: You are looking for a buyer who can take over your

landscaping business. Seasonal ebb and flow is a core characteristic of this business since several of the services you offer will have increased demand at certain times of the year, e.g.: lawn maintenance and pruning. A buyer who is familiar with the landscaping business understands that your turnover may show fluctuations throughout the year with some months being very profitable and others, not so much. He knows that this is not an indication that the business is unreliable with respect to profitability.

Here are some other aspects to consider when you are shortlisting the right buyers:

- His / her previous business ownership / employment
- Qualifications / skills / education / any special training, experience that makes him suitable to helm your business
- Does he have the finances to actually pay the price you expect? Does he have strong credit to get a loan?
- Does his buying agenda match your selling agenda, particularly with respect to the time frame within which you want to complete the deal?
- Why is he keen on acquiring your business?

Giving the Right Buyers a First Glimpse of the Business

When buyers approach you, initiating a discussion about the sale (or you approach them), you need to give them a brief overview of your business that gives them basic information about it. Typically, this is done through a one page summary giving them a quick idea of what the business is all about as well as the investment proposition you are looking to make. At this juncture you want to be very careful not to reveal sensitive, confidential information about the business because this summary may be circulated among several buyers before you shortlist suitable ones for further discussion. Keep in mind that this summary is just the 'first look' at your business and it serves as a marketing tool for your impending sale.

What your one page summary should NOT contain…..

This one page summary for prospective buyers should not have any confidential details that can be used to damage your business' competitive edge in the marketplace. Detailed information is not a requirement for the summary and neither is information that could be commercially sensitive. In fact, the one page business summary should be handed over to an interested party only after he / she signs a confidentiality agreement that has been whetted by a legal professional. Once he/ she demonstrates serious intent about buying the business, further details can be revealed in stages.

Why 'staging' your business is important

Irrespective of what it is you are trying to sell, one very critical pre-sale activity is to ensure that the item is spruced up and showcased in such a way that it appeals to prospective buyers. Just as you would need some time, effort and money in 'staging' a house that is up for sale, you need to pay attention to doing the same for your business before you get into the selling process.

'Staging' means that you ensure that the business appears at its best with all its positives highlighted so that the price you are expecting seems justified to the buyer. To do the 'staging' in the most effective way, you need to put yourself in the buyer's shoes and look at your business from his perspective and list out the factors that make it an attractive investment. Profitability, potential for growth, solid history of good performance, resilience in poor economic conditions are all factors that can sway a buyer in your favor or against.

Make an objective assessment of what is lacking in your business, what could be a potential deal breaker from a buyer's point of view. Start thinking about what you can do to rectify these issues or bridge these gaps before the sale. There are a few problems that may be rectified with quick fix solutions or even over a few weeks, but there are many aspects that need to addressed over a long term. For example, any buyer is sure to look at the business' historic performance to know whether or not it has been consistently profitable. Consistently high sales figures tell him/ her that the business has sustainable demand.

There is no quick fix solution to make your business's sales turnovers or balance sheet for the last few years appear to be more appealing than it really is. To ensure that your company appeals to buyers and garners its true worth, it is necessary to start thinking about the sale, a good while before you actually put it on the market. Selling a business is definitely not an overnight process that can be done on an impulse. Its needs careful thought and consideration and significant long term planning. So, let's get on with seeing how you can prepare your business for a profitable sale.

Chapter 4: How to prepare your business for a profitable sale

When you decide to sell your business, you want to get the best price for it. To make sure that your buyer understands its true value, it is necessary to prep your business before the actual sale. This chapter tells you how to do that.

From a One Man Show to a Team Effort

A business that is heavily dependent on the efforts, skills and talents of one single person, you, is not a very attractive proposition for a buyer. He cannot be sure that the business will maintain its profitability once you are out of the picture, post sale. If you are the major mover behind your enterprise and you do not intend to play an active role post-sale, you should train a team of skilled individuals who can lead the business after ownership transfers to the buyer. Having a strong, cohesive top management leading the business ensures that the profits do not fluctuate drastically during the sale process or right afterward. Having a capable top management team also means that you can focus your attention on the actual sale instead of worrying about the day to day affairs of the company.

Points to Note when Preparing your Business for Sale

- Every aspect of the business needs to be reviewed and assessed objectively when you have decided to sell it. Review if there are potential problems that may hamper the sale deal- whether it is legal, tax related or accounting related issues and resolve them before you put up the business for sale. Legal problems pertaining to environmental concerns also need to be assessed at this stage. Keep in mind that if your business is involved in any inquiry or litigation at the time of sale, this devalues it to a substantial extent. You may want to wait until the issue is resolved to get a good price.

- The customer base of your business is a critical point of consideration for the buyer. The more customers you have and the longer they have maintained a relationship with you, the more attractive your business appears. While you cannot do much about the duration of relationships with your customers, you can do a great deal about retaining existing, loyal customers and adding new ones to your clientele.   Focus on retaining clients and improving your customer base should be a priority item when you are preparing your business for sale.

- Improving brand recognition in the marketplace is an offshoot of your customer base expansion program. Make sure your business enjoys good coverage of the marketplace and that it has an enviable reputation. Address grievances that your customer have and make sure you leave them satisfied so that the talk about the business in the marketplace is positive. The buyer is sure to verify whether your brand has good market penetration and it enjoys a good reputation here.

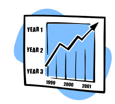
- Ensure that the recurring profits of your enterprise are at maximum levels so that the buyer gains an idea of its full potential. Cut down all non-recurring expenses of the business as much in advance before the sale as possible to show the potential buyer how much the business can actually turn out in terms of profits. These non-recurring expenses include all non-business related ones and proprietor related ones. At the same time, it is also important to cut down costs in every department so that all avoidable costs are eliminated from the books showing a clear dollar to dollar picture of what the buyer should expect to make if he takes over.

- Spruce up your debtors list and make sure all receivables are being paid to you in time so that your business's cash flow reflects an accurate picture of its true net worth. Avoid keeping a lot of inventory because you lock up substantial capital here. The idea is to show a potential buyer how cash rich your business can be and how liquid your assets are. If you have long standing dues

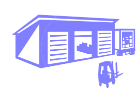
owed to you by customers or sales partners undertake the sustained follow-up necessary to get the money paid well in advance so that you can maximize inward cash flow before you 'stage' the business for sale.

- Position the business with your buyer in view. That means you need to first gain an idea of who your buyer is, what his objectives are and what he will be looking for in your business. Once you know this, you should position your business so that it caters to his requirements. For different buyers, you may need to tweak your one page summary of the business so that the main aspects that concern him/ are of interest to him are highlighted.

- Get your books ready for intense scrutiny. The buyer will thoroughly examine the business's financial, its sales and marketing numbers and more and making sure your books support your 'staging' of the business as a profitable venture is critical. Many business owners make the mistake of putting their company up for sale without getting their books in order first. If you are unable to give the buyer accurate and comprehensive financial statements, it is very likely to raise a red flag in his mind about the viability of the business. After all, he needs to see how the business has fared over the past to outline his expectations on how it could be expected to perform if he does acquire it.



- The prospective buyer will also wants to have a visual once over of your business premises or production facility. Spruce them up, maintain orderliness, get the locations in shape and make sure it does not look neglected, run down or in poor repair. Rusting machinery, abandoned equipment and non-functioning production lines create a very bad impression indeed. Keep in mind, you do not want to sell, you want to 'be bought' and for that you need to impress the buyer favorably so that he feels that your business is a valuable acquisition.



What Kind of Information will Buyers Ask for?

Typically, buyers will ask for information that will indicate the strengths of the business and its potential for sustained profitability and future growth. These financial statements are what you should keep ready before you start calling in the buyers:

- Profit and Loss Statements spanning the previous three year period
- Balance sheet spanning the same three year period
- Tax returns for the same three year period

- Profit and Loss statement for the year to date
- Current balance sheet
- Fixed assets list including equipment, furniture and fixtures
- Comprehensive inventory
- Lease agreements, if any, or commercial property appraisal

These are just the statements and documents you may need to furnish at the very first step when you are still wooing your most likely buyer. When he gets to the due diligence stage, he may want to take a more detailed look that calls for your customer contracts, insurance policies, employment contracts, patents, bank statements and lease agreements (including those for equipment / machinery). Make sure you can pull these up quickly when the need arises.

Marketing your Business-The Blind Profile

You may also want to advertise that your business is up for sale through various channels, word of mouth and the internet. Many buyers do start their search for viable acquisitions online so you may want to create a 'blind profile' to advertise your business without revealing your sale intentions too early in the game.

The Blind Profile does not give out your actual company name or any key details that can help potential buyers identify it. It is just a brief overview of the business, highlighting its most favorable points. The detailed prospectus goes only to the serious buyers whom you have vetted already and found satisfactory. Even then, the prospectus is given only after they have signed a confidentiality agreement with you.

Chapter 5: Valuation and Negotiation

Valuing the business accurately is a challenging task. As the person who has developed the business and seen it grow from success to success, you may have a slightly exaggerated idea of its worth. The buyer's objective is to acquire the business with the least possible financial setback. What seems to be a correct valuation to you may not seem so to the buyer. In fact, the best way to look at it would be to think that your business is worth only as much as your highest bidder is willing to pay for it at the moment. Given that you are likely to be very biased when valuing the company you have built brick by brick, it makes sense to get the valuation done by an outsider.

Your accountant may be the right person to come up with the right valuation for your business. If you do not prefer to involve someone from your own company, hire an independent financial adviser to carry out this task. The following factors are taken into consideration while the price is being determined:

- **Profit potential as indicated by profit growth over the past**

No buyer will base his acquisition decision on the seller’s word that the business has been profitable. He will look through the books and check for himself if the company’s profits and sales have been consistently improving year on year. His assessment of the price you are quoting will hinge on his assessment of these figures and his take on whether he believes this profitability will grow. Any claim that you make about dramatic improvements in profits in the coming years will not be believable unless the past figures support it. This is why your accountant / adviser will also base his valuation on these figures so that the buyer finds the price fully justified.

- **Return on Investment**

A major factor to consider is the return on investment that will be offered by the business. For any buyer this is the basis of his decision to invest and for the accountant / financial adviser this should be a very important factor in determining the price quoted.

- **Market Trends/ Conditions**

If market conditions are poor, the price of your business may need to be pulled down to make it an attractive acquisition even if it has the potential to do extremely well. Your accountant / financial adviser will review the market and compare how other similar businesses are priced before finalizing the valuation for your company. Pricing it far too high in relation to peers or far too low are both not in your best interests.

The question of market trends is also an important factor considered here. If a great deal of interest is being shown in your industry, then your business may be valued higher. This could happen when there is expectation of a boom in your sector or favorable changes in government regulation. For example, if the housing market is expanding significantly, your construction supplies business may garner a good price in the market. When housing is in a slump, its valuation suffers drastically.

- **Advantages Specific to your Business**

Any advantages that may be unique to your business will be factored in when the valuation is done too. For example, your office is located in a prime location or next to a place where a new

highway is coming up, you have recently received a contract from the government or a well-known multinational, your product / service is a unique one that cannot be duplicated. Such advantages have the potential to enhance your price tag quite substantially since these may not be offered by other businesses that are similar to yours in all other respects.

Apart from these the price of the company should factor in the following tangible and intangible assets although they may be difficult to fix an exact price on:

Brand power / goodwill / reputation: Setting an accurate value here may be a difficult thing to do considering that brand power is an intangible asset. However, the company's brand is one of its most valuable assets and it significantly impacts the price and popularity that its products can garner in the marketplace.

Market share: An easier **item** to value, market share shows the business's market penetration and shows how well it has its customers covered. On the other hand, it also tells the buyer how much more of the market there is for him to target. In this way, market share also indicates the business's expansion potential.

Human Resources: Any company is only as good as its employees. Human resource is one of your most valuable assets and factoring this asset into your valuation is very important. After all, if the buyer bought out your company without the existing team to run it, he would have to start from scratch, hire good people, train them and get them to build relationships with your customers. With your employees supporting the business, learning the ropes and keeping the company running as it always has becomes much easier even if the buyer has no prior experience running similar concerns.

Intellectual property: This asset is assuming great importance in recent times and well deservedly too. In fact, IP adds significant value to your business, often exceeding what your physical assets amount to. This is especially true of businesses that are innovative and unique. Valuing your IP may be a challenging task but there are several methods in use for this, for example, calculating relief from royalties, premium sales price, and excess profits.

Clientele: No business can exist without customers and the bigger your customer base, the stronger your business is fundamentally. A business that has a large customer base is far more valuable than a new enterprise that has yet to make its mark in the marketplace. There is another aspect that makes a big difference here- what kind of clients you have. If your clientele includes a number of well-established customers who pay on time and have a long standing relationship, they are far more valuable assets to your business than small time customers who give you their business sporadically.

Geographical location: Location can be a huge advantage for your business. For example, consider a company that depends heavily on import of raw material. If its location near a port cuts down the cost of transporting **the** raw material to the production line immensely, this is a huge advantage. The same goes for a restaurant that is located in prime commercial property right next to numerous offices ensuring a steady stream of diners throughout the week.

Techniques you can use for Valuation

Business owners generally use two different valuation techniques to determine how much their business is worth when they intend to sell. Any of the following may be used:

Return on Investment (ROI)

ROI is not the same as the profit you earn from the business; it is the money you realize based on the net profit yielded by the business. The net profit of your business is the basis of this valuation method. To find out the return on investment that your business offers, this is the formula you would employ: (Net annual profit (less your salary) / sale price) x 100

Discounted cash flow analysis techniques

This technique helps determine how much money can be expected from an investment after adjusting for the time value of money. In this method, the present value of a future cash flow is calculated using future cash flow projections and weighted average cost of capital. This results in a present day value for these future cash flows which indicate whether or the not a sale price you have in mind is reasonable.

An earnings multiple valuation

In this valuation method the Earnings before Interest (EBIT) is typically used for valuation. Multiples are applied to EBIT to determine how much the business is worth. The idea behind this valuation method is that you calculate the value of your company by giving your company's profits a certain multiple. Past profit or future profits (projections) may be used by different sellers, but it is best to use profits from a period of 3 years from the current year to arrive at the value. The multiple used typically ranges between 2 to 5.

Net asset valuation

The assets of the business are the basis of this valuation method. Both tangible (eg: machinery) and intangible (eg: goodwill) assets are taken into consideration for this valuation technique. As we already saw, fixing an accurate value on various assets can be a tough task which is why you need the help of an accountant or a financial adviser. Once you have the total asset value for your business, you have a good idea of how much it is worth.

Cost of Starting from Scratch

A less common method but yet a good one, calculating the cost of establishing the business from scratch is another option that you have. For this valuation method, you should take into consideration the cost of acquiring the equipment and machinery to run the operations, cost of stock, licenses / permits / other regulatory requirements, hiring people and training them, product development, sales related costs, premises lease / purchase, costs associated with establishing a virtual presence.

Once an accurate valuation of your business has been done, you can easily show your buyers why your sale price is justified and your business represents a value for money investment for them. The next stage is when interested buyers carry out their due diligence prior to coming in for the first round of discussion about the sale deal.

Protecting your interests during Buyer's Due Diligence

As we saw earlier, some key details about your business need to be provided to parties who show an interest in acquiring the business. At this stage there may be several potential buyers and it is necessary to give out this basic information to all of them. Clearly, maintaining confidentiality is a critical concern for you. A confidentiality agreement helps you safeguard your business secrets while allowing you to take the sale process further. Keep these aspects in mind in this regard:

- Do not give out detailed information (beyond the initial one page summary) unless the interested party has signed your confidentiality agreement
- Ensure that all your initial discussions take place at your financial advisor's offices or in his presence so that he can advise you on which information to reveal and which to withhold
- Commercially sensitive information can be withheld until you are sure that the buyer has the credentials, the means and a serious intent to buy your business

Negotiating- Hiring a Professional

Negotiation skills are very valuable when you are thinking of selling your business. It is important to present the business in the best possible light, show why your sale price is not only justified but a 'good' deal for the buyer. Hiring a professional advisor is a good idea since they can ensure that you get the market best price taking the negotiations/ discussion forward keeping in mind the buyer's objective in acquiring your business. The advisor can also give you valuable advice on the negotiating tactics, terms of the sale and help you structure the deal too.

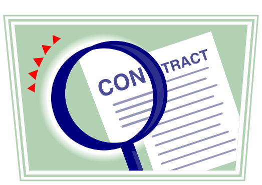
Another very important area where a professional advisor can help you is in telling you whether or not the price you expect is realistic. Based on his recent experiences and his knowledge of the market he can help you set a sale price that is likely to attract investors yet let you make a profitable sale.

Hiring a professional for the negotiations also means that the proceedings can take place with complete objectivity. As the person who has developed the business, you have a substantial emotional stake in it. This can cloud your judgment and cause you to react quickly and strongly during negotiations. As a result you may end up losing a viable buyer. A professional is an outsider who has no emotional connection with the business. This helps him maintain objectivity throughout the negotiations irrespective of how low the buyer's first bid is or what his arguments are for bringing down the price.

Chapter 6: Legal Issues you should keep in mind

A business sale is a complex matter that needs to be supported by the right agreements and documents. Take a look at the key legal issue you will need to pay attention to:

Drawing up the Letter of Intent: This letter is usually drafted by the buyer's lawyer but your attorney may do this too, if required. This documents outlines the fundamental terms of the sale including a list of assets and liabilities that will change hands, the sale price, the deadline for the sale and any terms and conditions for the closing of the deal. The Letter of Intent will also mention whether the buyer will acquire shares or assets of the company. A confidentiality clause is built into the Letter of Intent in addition to making provision for physical inspection of the business's premises / assets, interaction with key employees etc. Another important clause that the Letter of Intent typically contains is one preventing you from selling the business to anyone else for a limited time window, so that the buyer has adequate time to carry out his due diligence prior to making his final offer. This letter may be a binding or non- binding legal document.



Determining the Terms of Sale

The buyer will have some requirements to be incorporated into the sale agreement and so will you, the seller. By mutual agreement you need to arrive at the terms that will be included in your final sale agreement. Typically, the buyer may want the following:

- Warranties / representations about the business operations (condition of equipment, size of customer base, value of inventory etc)
- Clarity about how long your warranty / representation will be applicable after the closure of the sale
- Release from third parties
- Transfer of purchased assets / shares
- Change of ownership to be reflected in agreements / leases etc

To safeguard your interests, the sale agreement should cover releases from third parties to whom the business owes liabilities (for e.g.: suppliers) apart from other terms and conditions.

Escrow

Escrow is a safety measure employed by buyers to ensure that the seller holds up his end of the bargain. The buyer may ask that a certain portion of the sale price agreed upon is placed in escrow (by a third party) for a pre- determined time period (say, 12 months) to make sure that the warranties and representations in the sale agreement are complied with. If any of these warranties / representations prove to be false, his investment is protected to the extent that is in escrow. As the seller, your aim is to ensure that the escrow amount, if any, is kept to a minimum and the escrow period is kept as short as possible so that you can release the full sale price as quickly as possible.

Employees

The buyer may simply take over your place in the organization without making any other changes, meaning that your employees carry on as before. In some cases, the buyer may want you to trim down your workforce before he takes over. If this is so, the matter of giving adequate notice or pay in lieu of notice is an important one to consider. Make sure that your terms of sale specify that the buyer is liable for any costs he will incur in terminating the employment of your existing team.

Non- Competition Agreement

Most buyers ask the seller and, in some cases, key employees to sign a Non Competition agreement. This ensures that you do not compete with him and your old business either directly or indirectly. Discuss non- competition, non- disclosure, and non- solicitation clauses with your legal advisor and get his advice on whether they are fair and reasonable to you before signing agreements. Typically, non- competes agreements are made to stay in force for a period of 5 years, which means you are restricted from carrying out similar business or carrying out an act described as 'competition' in these agreements over this period.

For a checklist of items to be covered in your sale agreement should cover visit this SBA.gov link.

Tax aspects of selling the business

From the taxman's point of view, your business is simply a collection of assets. Each asset or asset class needs to be given a specific value and the loss / gain from it (during the sale) reported to the IRS. The tax treatment depends on the kind of asset sold (capital asset, inventory etc), the type of business (sole proprietorship, partnership etc). Take the help and guidance of tax professionals well in advance when you are preparing your business for sale to make sure you can cut down the dues to Uncle Sam to the maximum.

He may also be able to give you some ideas on cutting down the tax bill at the time of sale. For example, C Corp owners can establish an Employee Stock Option Plan or ESOP to roll over the sale proceeds on a tax deferred basis. Here capital gains are paid when the distributions from the ESOP become due.

Chapter 7: Common mistakes in selling a business

Selling a business is a challenging task and care needs to be taken at every step to ensure that your interests are protected fully and that you get the maximum value for the company that you have built brick by brick. Here are five common mistakes that you should avoid when putting up your business for sale:

1) Not preparing in advance:

Selling a business should not be an impulse decision and preparation well before your desired sale date is incredibly important to make a successful deal. Many key aspects of the business need to be addressed prior to sale and ignoring these undermines the value if your business significantly. Prepping your business for sale also means you have all necessary books in order so that you can quickly show the buyer what he needs to convince him that the business is a sound investment for him.

2) Not taking professional help / Leaving it all to someone else:

Not getting the right kind of professionals where needed to value the business, oversee legalities, review financials and negotiate is a huge mistake that can cut down your sale price substantially. At the same time, hiring a broker to sell the business and leaving the entire process in his hands will end in disaster too. You need to be involved in the sale process right from the beginning to the very end but you also need to accept the guidance and advice of professionals in areas where you lack expertise.

3) Not having a good team to lead the business:

A strong team of leaders in place at your business gives the buyer the confidence that the company will flourish even with an ownership change. Since it is bound to take him a while to assume full responsibility for the company, the presence of a skilled top management team is a big plus from the buyer's perspective because it supports a seamless transition of ownership.

4) Not reviewing buyers:

To buy your business, a buyer needs to have finances, skills, a basic understanding of business ownership and the right attitude. Only entertain talks with those buyers who CAN run your business if they do decide to buy it. Remember, the more buyers you talk to the more the number of people who are privy to at least some sensitive data about your business.

5) Not having realistic expectations:

Realistic expectations with respect to price, sale agreement terms and other terms and conditions is very important if you intend to close a lucrative deal within your set deadlines. Familiarizing yourself with the market trends with respect to business sales helps immensely in this regard.

Planning ahead, doing all your groundwork efficiently and paying adequate attention at every stage of the sale process lays the foundation for a successful and profitable sale of your business. Keep your emotions at bay and understand the market before you start looking for buyers to ensure that you have a clear idea of what to expect when the offers start coming in. Vetting your buyers is equally important and this needs to be done before you give away vital information about your business. Remember, no matter how big or small your business is, you have put in years of work into it and you deserve to get the right price for all your efforts.