BERNSTEIN SHUR

Getting Ready to Sell a Business

Contents

Notice

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Initial Considerations

Introduction

Whether you have been in business for many years or just a short while, the decision to sell a business is one that can leave many people feeling overwhelmed. This booklet was written to highlight some of the larger aspects of planning for and putting a deal together to sell a business so that business owners walk into negotiations feeling prepared and ready for the transaction ahead.

Most business owners will have experience in selling large assets, usually a home, before they encounter a sale of their business. This experience, however, tends to create a misconception that selling a business should be as streamlined a process as selling a home. Nothing could be further from the truth.

When selling a home, the owner is selling an entire asset, including the land, foundation, buildings, etc., for a single payment. In contrast, businesses are complex systems that are capable of being divided in numerous ways. For instance, if you were to envision your business as a house, you would need to expect that some buyers might be willing to purchase the entire parcel outright (house and land), while others might want to purchase only the house and relocate it, leaving the land and foundation with the seller.

Other purchasers might be willing to purchase the house and land but might want to have the heating system removed before closing if they deem the current system old and dangerous. As you can see, the ways that a buyer analyzes how it wants to divide up the purchase price in relation to purchasing different assets and liabilities of the business can create different transaction structures with varying levels of complexity. For this reason, business owners looking to sell a business should anticipate that the sale process is something that they will have to actively shape and negotiate.

Initial Considerations

Most advisors who work with business owners on selling their businesses – whether they be business brokers, lawyers, accountants or personal wealth managers – will tell you that it is best to start preparing to sell your business at least 5 years before the actual sale.

Why?

1 The first reason is money

If you have an opportunity to look at the current value of your business before a sale becomes imminent, you can strategize with advisors on steps to take to increase the value of the business and get the best purchase price possible.

2 The second reason has to do with preparedness

Preparedness has three main components–owner preparedness, management preparedness and legal preparedness.

Owner preparedness

Owner preparedness focuses on both the mental energy that the owner is willing to put forward in order to maximum the value of the business before sale as well as the owner's readiness to step back from the business once the sale occurs. Owner preparedness is a huge hurdle.

Management preparedness

Management preparedness involves making sure that the best people are in the right positions for managing both the sale and transition of the business. Management preparedness can also include improving operating standards for the business and abandoning "bad habits" – both of which should be done well in advance of someone coming in to scrutinize how well and efficiently the business is run.

Initial Considerations

Legal preparedness

Legal preparedness focuses on whether existing documentation about the business conforms to good business practices. Are there personnel files for each employee with signed offer letters, performance reviews, confidentiality agreements, etc.? Have trademarks been properly registered and maintained? Does the business have an updated employee handbook? Are all shareholder loans properly evidenced with promissory notes?

To the extent that you can demonstrate to a buyer that the business has taken its legal obligations seriously all along and is not simply creating a paper trail right before sale, you have the opportunity to create goodwill with a potential buyer that can help move the transaction along later.

Legal preparedness will also aid in a smooth due diligence process (discussed later), which in turn can reduce negotiating time and costs of the transaction.

If you find yourself considering a sale of your business over a shorter period than 5 years, that's okay. If the business has been run efficiently and responsibly all along, the transition into the sale process can be done more quickly to meet the needs of the parties.

Assembling the Right Team

For most business owners, the sale of a business only occurs once.

Even serial entrepreneurs who may have started and sold several businesses have only a handful of experiences with selling a business and will not have the expertise to adequately analyze a potential sale from tax, legal, regulatory or accounting viewpoints, in addition to having an understanding of what is normal within his or her industry.

For this reason, a team approach is best and as the business owner and leader of the team, you'll want to choose your team carefully.

Who should be a part of your team of advisors? The makeup of the team will vary from business owner to business owner based upon that owner's own comfort level with handling different aspects of the sale process.

Roles and advisors that should be considered are as follows:

Financial Planner

If you don't already have a solid understanding of how the sale of your business impacts your overall financial and retirement strategy, a conversation with a trusted financial planner is a good place to start.

Knowing how much money from the sale needs to land in your pocket to fund the next chapter of your life will greatly inform which offers you decide to pursue and when. If the sale of the business will not improve your personal financial situation, then it is good to have a strategy for what comes next before the sale so that issues such as non-competition agreements can be carefully drafted to allow you to pursue new opportunities.

Assembling the Right Team

Valuation Expert

If your business works with a regional or national accounting firm, then your accounting firm likely has a group that does business valuations. If they do not, then you may want to seek out a third party business valuation expert.

A business valuation is a set of processes and procedures that are used to estimate the current value of your business if it were to be sold. The valuation expert will look at a number of factors, both internal and external to the business, such as past sales of similar businesses within your industry, your company's financial statements, customer concentration, etc.

A business valuation can cost several thousand dollars and can take several weeks to prepare, so if you have already been presented with an offer to buy your business, you may not have time for this. However, if you are still in the evaluation and planning stages of selling your business, a business valuation can be a very useful tool in analyzing whether:

1 The current value of the business supports your personal financial strategy

2 There are steps that can be taken to try to increase the value of the business

EXAMPLE

If the valuation report were to identify factors that negatively impacted the business value, such as customer concentration or aging receivables/bad debt, a business owner can employ new sales or operational strategies to improve those conditions before his or her intention to sell is made known to the public.

Interested in Learning More?

For the full book, email Kristin at **kmendoza@bernsteinshur.com** and she’ll be happy to connect with you and provide you with the full resource!

Meet Kristin

KRISTIN MENDOZA

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With almost 20 years in practice, Kristin has always had a passion for working with tech startups and business owners. With her familiarity with the industry—from attending law school in San Francisco specifically so she could be near Silicon Valley during the Dot Com boom, to working with software engineers—Kristin has the insight to break down transactions and legal issues into smaller modules, steps and action plans more easily understood by non-lawyers. She then takes this approach to guide clients through private offerings, acquisitions and various other complex transactions throughout the business life-cycle.

Kristin knows the challenges of starting and operating new businesses. After 14 years in corporate law, she made the leap to start her own firm where she operated a boutique business law practice for startups and small businesses while developing an innovative new business model and client fee structure. As a small business owner, she's lived the experience, and can advise entrepreneurs throughout the process with thoughtful, seasoned counsel and put them on the path to success.

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