SELLING THE FARM (OR ANY BUSINESS)

NATIONAL CONCRETE BURIAL VAULT ASSOCIATION

In this newsletter: **5 Ws (and an H too) of Selling a Business**
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November 2021

SELLING YOUR BUSINESS: BEST PRACTICES & MISTAKES TO AVOID

Selling a business is more than putting a sign in the front yard that says, "For Sale." In fact, it isn't even that at all. See below for Poul Lemasters latest NCBVA article and get legal advice on the 5 Ws (and an H too) of selling a business.

The article covers:

- **WHO** should I sell to?
- **WHERE** should I sell?
- **WHEN** should I sell?
- **HOW** should I sell?
- **WHY** should I sell?

If you need any answers to these questions - then the article and Q&A conference call (Friday, December 3, at 11:00am ET) are for you. Register.

BE INFORMED

If you approach selling a business like selling your first car, you're most likely not going to get what you want or should get for your business. Selling a business can be a complicated and timely process that overwhelms many. Typically though, it is because the process is unfamiliar and unknown, that it seems so complicated. Sadly, people that want to sell can get so overwhelmed that they either stop the process or never start in the first place.

The following article is meant to help you understand some of the big questions when it comes to selling. It doesn't cover every issue, but hopefully it will give you an overview of the big questions and issues when it comes to selling a business. And this article is not meant to encourage anyone to sell (make sure you read the 'Why' section below) but just help you understand the overall process so that when you are ready, you can be informed.

WHO?

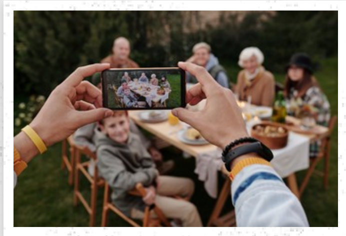
This is sometimes the easiest of the questions, but it can also be one of the hardest.

Who would you sell your business to when the time comes? Typically, there is a short list of those who you may consider and they include:

- Family
- Employee
- Competitor
- Outsider

Each of these comes with benefits and risks and should all be considered.

FAMILY?



When it comes to family, it is typically highest on the list. After all, what better gift to leave then your business - your legacy - to pass onto the next generation. In fact, passing on that legacy is one of the benefits. Other benefits may include ease of transition because they most likely have been involved or are at least aware of the business. This also leads to a level of trust and fairness built into the deal because, hopefully, your family trusts what you are providing and you do not have to overly justify the history of your business.

The downsides of a family? Many times families expect a deal, or even expect to receive it as a gift. Don't get me wrong - this is an amazing gift if you can provide it - but most people sell so they can retire. This means you need money. Which also means you need them to buy it - not simply receive it. Keep in mind that there are tax issues with family transfers as well - and the deal has to fit into a fair deal to avoid certain tax issues. Another family issue can also be who in the family is the buyer. If you have four kids, and only one wants to purchase (or only one is ready to purchase) you have to solve what happens to the other three kids. It may not be a difficult issue, but it can lead to family conflict.

EMPLOYEE?

After the family, many people turn to a loyal or long-time employee. This can be a great option because of their inherent knowledge of the business. By being a part of the business so long - they may know more than you about running the business. There is also a level of trust with them - but mainly between them and other employees. This trust allows a smooth transition and less disruption when the transfer takes place.

Some potential issues with an employee? Many times, employees are not entrepreneurs. Those that work for others for a long time may be meant to be employees and not owners. An owner is a special breed and it is important to make sure they are the right fit and can handle ownership. Also, many owners shield employees from the inner financials of their company. If you go down the road of selling to an employee and it doesn't work out, then they may know more about your financial world than you wanted them too. Lastly, employees may have trouble on the financial side and unable to get the funds for a deal.

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Friday, December 3 @ 11am ET

COMPETITOR?

The competitor is always one that owners seem to be weary of, yet they are many times the best buyer. The reason they are good is that they know what they are getting - because they have competed against you for years. They also are a good fit because they may see and believe there is more value in your business to them than any other buyer. However, the downside to a competitor can include a fear of sharing your inner workings - including potential trade secrets - as well as details about your financial position. There can also be a worry about how the transfer will work out if your current employees do not have a good relationship with the competitor as well. Probably the biggest downside or fear of selling to a competitor is simply pride. Sellers sometimes think when they sell to the competition that they lost, and this gets in the way of a deal.

OUTSIDER?

Lastly, consider the outsider; someone who is either new to your industry or new to your location. The pros of this is that they are neutral. Many times, it is easier to share your business history and financial world to someone you don't know. Also, many times the outsider comes into the game with the funds in hand and they know what they want and have the financial backing in place to get a deal done. It is also easier for the seller to demand more from someone they don't know. With family and friends, we are less likely to ask for the top price. What is wrong with an outsider? You don't know them - they don't know you. It means that you may have to do more to help them see your business is successful and they may demand more financial and historical background. An outsider also may not be welcomed by your employees and may not continue your 'legacy' the way you want. Their neutrality could be a negative for the future.

DON'T FORGET...

In the world of 'who' you sell to, make sure you know and understand what a Confidentiality and Non-Disclosure Agreement is. This is typically one of the first things parties should enter into before you start talking details or sharing details about a potential sale. By having a confidentiality and non-disclosure agreement in place, it can help protect not only the discussions of a potential sale - but also all the information that you share between the parties as well.

WHAT?

So, what exactly are you going to sell anyway? Most people simply think they will sell everything. Ultimately that may be correct, but remember that everything has a value and you may want to structure each part differently to include:

- Business / Real Estate
- People
- Intangibles

BUSINESS / REAL ESTATE

For example, the business, in and of itself has a value and this may be the main piece of what you sell. But perhaps the real estate is not sold immediately and rather leased back to the new buyer for a period of years. Why? For you it could provide some extended income and for the buyer it could also lower the initial cost of the entire purchase. While almost every business deal includes the real estate, just understand that it doesn't have to all happen at once, and you may be able to structure some beneficial options if you keep the two parts separate.

PEOPLE

As far as people, understand that people - specifically key employees - are not sold in a deal directly. But, as the seller, you can help protect key employees with various structures.

including employment contracts and even bonuses for them staying on with the new owner. Many times these are win-win deals because current employees are usually fearful of losing their job when the new owner takes over; but new owners are also fearful that main employees will leave them after the purchase as well. Locking this up in the deal can be beneficial for all parties.

INTANGIBLES

And then there is the intangible which many would list as the goodwill of the business. The goodwill is really the legacy you have built and literally can be you or your name. So, what is it worth? It's a bit more than this article can flush out, but there is a formula and a way to determine the value. What's more important to know is that this value, to be sold, has to be secured. This is typically done with things like consulting agreements and non-competes. Be prepared to enter into a non-compete of some sort if you plan on getting top dollar for the goodwill of your business. However, also know that the current Presidential Office, through the Federal Trade Commission, is trying to put an end to non-competes as they believe they stifle the workplace. While the current discussion on restricting non-competes is just beginning, know that without a non-compete, goodwill value will decrease.

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WHERE?

There are two 'wheres' that are with discussion. They include:

- **Where** do I go to sell?
- **Where** do I get funding to sell?

ATTORNEY VS BROKER

As far as where to sell, many times this will depend on the "Who" do you sell to section. If you keep this in the family, you may just need your local attorney and real estate agent. If you go to an employee, you will most likely need a couple attorneys (most likely, you each will get your own). Outside of those buyers, you may need a business broker. These range from general business brokers to those that work specifically inside a certain business.

Many times sellers are weary of using a broker - and it's mostly because of the fees. But, consider selling a house. While you can do it on your own, the broker not only helps find further - the right broker will also help stage your house - or business - so that the new buyer can see its true worth. The options are all yours, but in the end, you will need someone to help.

FUNDING

The money part - the where is the funding part - is really on the buyer but as a seller you need to understand this process because it will affect you as to how the deal gets done. For example, most deals start with a buyer saying they 'have the funds' to do the deal. When pressed, a buyer will likely say something like, "I have a connection at the bank, and they already told me they can help with the money." Of course they did. And it's partially true. If you walk into a bank and say you want to borrow money to buy anything - the bank will say they can help. It's their job. It's what they are trained to say. Of course the bank will give you money for a deal - the real question is how much - if any - can they give you.

Understand that when it comes to money there are approximately three funding methods. The first and easiest - **private equit**y. This can be in the form of cash the buyer has on hand or investors that have or will simply provide the funds. This is the easiest. With it being cash available - there are no hoops to jump through, and the parties can set their own terms and conditions. While the easiest - this is also the rarest deal.

The next is a **bank loan**. This could be a traditional loan or a Small Business Loan (SBA). Many people think the traditional loan is typical in a deal, but it is not. The traditional loan is typically tied directly to real estate and tangibles, and is limited to around 80% of the appraised value. Typically, this is also less than most deals, because a large part of a business sale includes intangibles - such as goodwill. Enter the SBA loan.

SBA loans are a common funding method for a sale/purchase of a business. One of the greatest benefits of an SBA loan is that they do include goodwill. Many times, people are reluctant to use an SBA loan for fear of the complexity - but in fact SBA loans have come a long way and providers are quite willing to help build an SBA loan package for the purchase of a business. Keep in mind that there are some restrictions and requirements for an SBA loan including the amount of a down payment (typically 10% of the purchase price) and also the maximum amount that can borrowed (typically $5,000,000).

The last common funding option is **owner financing**. Yes, you the Seller can simply carry a note and allow the buyer to purchase directly from you. While a total owner financing transaction is rare (not as rare in family transfers), many deals have some level of owner financing involved to allow the deal to work. Again, this is why the 'where do we get funding' part of the deal does involve the seller and the buyer. Typically, the ultimate funding method will include a mix of the methods listed above.

WHEN?

So when do you sell? You can sell whenever you want, and you can do it on a whim. But, in the perfect world, you want to start the selling process long before you actually decide to sell. The ultimate time-frame - at least 3 years. Why 3 years you ask?

When determining the value of a business the buyer will typically want to see the last 3 full years of business financials. If you decide today, "Wow - this is a great article - I am selling the farm!" then the buyer will want to see all of 2021, 2020, 2019 - and maybe even 2018 since we aren't done with 2021 quite yet. So - what do your financials look like for that time frame?

More than likely they look ok - but could be better. You probably have some personal mixed into business. You may be heavy on some loans; debts; expenses; or miscellaneous items that just aren't clear. You also may be running your business to look like a break-even business for tax reasons. Using your revenue to do more, so the profits are lower - and so are your taxes. But, all of this could mean a lower sale price to the new buyer; and a lower amount that a bank or lender is willing to offer.

Can you fix it? Sure, you will have a chance to prove your true financials and the actual worth - but this means you have to over explain everything to the new buyer. The easier option - start planning ahead when you want to sell. It means getting your accountant to understand that you want to prepare to sell and make sure your financials reflect it. It also means you may want to engage someone - like a business broker - early so they can help you prepare for a sale. They can show you how every dollar that you can save can increase your return by 5 to possibly 10 times.

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HOW?

There is also the how to the sale. Typically, the sale of a business can come in one of two ways:

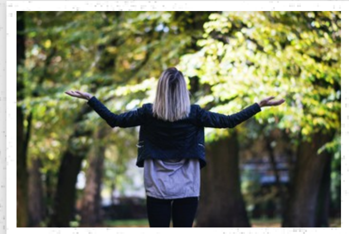
- asset sale
- stock sale

For the seller, if you are corporation (c or s), your ultimate win is usually a stock sale. It gives you the best return and also gives you the most protection. This is because the sale is actually a transfer and the new owner takes everything as it is today - including the debts; the revenue; and the liabilities. Sounds good - but there is a general rule in selling a business. If it's good for the seller - then it's bad for the buyer; and if it's good for the buyer (you guessed it) - then it's bad for the seller. While the stock sale is great for the seller the buyer typically would rather do an asset deal. But don't give up - there are benefits to the buyer in a stock deal. For one, a stock deal is a simpler deal and an easier transition for the buyer. They can just walk in - and take over where you left off.

But, the asset deal is the most common structure and it simply means that all assets, tangible and intangible, are identified and you, the seller, and the new buyer decide what will be sold and bought. Most likely the buyer will leave you with a few personal items that you want to keep plus all the previous liabilities and debts of the company!

For the 'how' and the structure of the sale, this will all typically be laid out in a Letter of Intent (LOI). The LOI is the first document in the purchase transaction, and it lays out everything from what will be purchased; the amount of the purchase; how it will be purchased; plus any special items such as key employees; non-competes; consulting; etc. Keep in mind that the LOI is a road map of the sale. Some parties make the LOI very specific, trying to work out all the finer details while others use it as a broad plan, and allowing the final purchase agreement to work out the details. Both are proper methods and can work. What is common in both methods is that the LOI is typically non-binding. This means that while the parties intend for this to all work out - the LOI is not in and of itself a sales agreement - but rather just the intent to sell. Most LOIs include a time-out provision that simply sets forth if a deal isn't finalized by a certain date - then the offer is void and all parties are free from the deal.

WHY?



So, this is the last big question to understand. And unlike all the other questions and answers, this is a subjective one. And while it is subjective, and any answer can be right - it is also the most important one to understand.

The funny thing about selling a business is this. You may be offered $1 million or $10 million dollars for your business. This may be more than the actual value of your business - yet you may not want to sell it. The reason is because you have to want to sell your business before you actually will sell your business. Many deals never get off the ground because while a seller says they will sell - deep down they don't have a reason why - and then they simply don't sell.

TAKE THE TIME TO HAVE THE REASON WHY YOU WANT TO SELL – BECAUSE IT CAN SHAPE THE PROCESS AS WELL.

In my world, I typically see a trigger point that causes someone to sell. They are always different, but there is one there. It is not simply, "I'm ready to sell." The trigger is something like, loss of a spouse; plan for retirement; a health diagnosis; a fear of taxes; burn out; business problems. The list is long, but there is some underlying reason - a trigger point. There is no wrong reason on the list, but I find that if you do not understand why you want to sell - then it makes it hard to actually sell. Without the why, then the sell is not grounded and you may never be satisfied with any offer. Again, if you love your house and don't want to sell - then someone could offer a million dollars and you'd probably say no.

WANT MORE?

CON CALL AND Q&A SESSION WITH OUR LEGAL COUNSEL

Want to ask a question related to **selling a business**? Join Poul Lemasters, NCBVA Legal Counsel for a 30 minutes NO-CHARGE Q&A session. Feel free to submit a confidential question in advance too, if you prefer.

Friday, December 3 - 11pm ET

Mark your calendar & register. There is no charge to attend, but registration is required.

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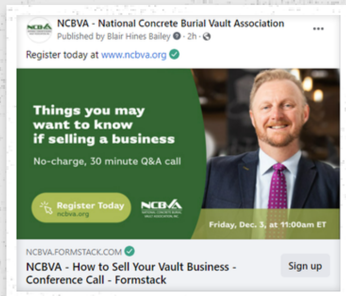

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