

When You're Selling Your Company: Key Choices, Key Moves

by Howard W. Fisher and Daniel R. Siburg, CPA, CVA

After careful consideration, you have decided to sell your company and turn your equity into cash, diversifying your personal wealth. Two basic types of transactions are available: asset purchase or stock purchase.

An asset purchase is the most common form of a business sale transaction involving small- to mid-sized companies. The buyer acquires only certain assets of the seller's company, primarily inventory, equipment, everything related to production and distribution, along with any related intellectual property including trade names, logos, Web sites, copyrights, patents, and trademarks.

Asset purchase transactions, when compared to stock purchase transactions, offer better tax benefits and liability protection to buyers and as a result generally provide a higher price received for sellers.

To accomplish a stock purchase, the seller's company must be a corporation of some type versus a sole proprietorship. The buyer acquires the all of the company stock and as a result assumes all assets and liabilities, including any unknown contingent liabilities of the business, along with the stock ownership. A stock purchase usually provides tax benefits and liability protection to the seller. A stock purchase fails to provide the buyer with the tax benefits of expensing the tangible assets as part of the standard operation of the business. As a result the purchase price may be 25% or more lower than it would be in an asset purchase.

If a business is prepared for a sales transaction, as discussed in earlier installments of this newsletter series, the sales process generally takes 6 to 18 months from start to finish. If the business is not ready for sale, it will take much longer—possibly 18 to 36 months to prepare and then 6 to 18 months to sell the business.

Teamwork Tips

To support the sale of the business, a seller needs both an internal and an external team.

The internal team should include only the people in the company who absolutely need to know that the business is for sale, their role being to provide key information, respond to due diligence inquiries, and help the business sale transaction efforts. The internal team generally includes the

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chief accountant, key sales and marketing personnel, the president, and owners. Arrangements should be made to compensate the internal members of the team for their extra efforts and staying to complete the transaction.

The external team should be comprised of people who will support the sale of the business with technical expertise, as needed. These can include legal counsel, an estate planner, a CPA and tax accountant, and an advisory services firm.

We strongly advise using an attorney who has transaction experience or who specializes in business transactions. The elements of a business sale transaction are important to transact correctly. Using an advisory services firm is also usually wise. Unlike the owner, who may never have done a business sale transaction before, an experienced advisory services firm does them constantly. The advisory services firm will guide the sales process forward, is objective about the company's market value, and helps both buyer and seller move through technical and emotional issues.

If you decide to work with an advisory services firm, you can expect the firm to provide you with knowledge of the marketplace; visit your offices to get a thorough understanding of the company and the management; review history and opportunities; prepare an offering memorandum; research and contact potential buyers; handle getting non-disclosure agreements, information requests, product reviews, financial information; help review and provide guidance with a letter of intent, due diligence, and legal documentation; and negotiate the sale and its value while you continue to run and grow your company in the interests of getting the best price for it.

Additional Options

Although selling a business to an outside buyer is the most common method of ownership transaction, other exit strategies are available to owners. These include:

- Wind down the business and close the doors. Small businesses operating as sole proprietorships often choose this option, which involves letting inventory sell down without spending any more money on marketing, and taking a small profit until sales end. Obviously, this method provides minimal terminal value to the owner.
- Transition the business to the next generation. Many businesses have been passed from generation to generation. This can be a successful strategy when the next generation is interested in and knowledgeable about both the specific business and has the skills necessary to run a business. However, it can place a large psychological burden both on those who bequeath their companies and assume that operations will not change and on those who inherit the companies and feel judged according to expectations they may not share.
- Use an employee stock ownership plan (ESOP). This requires selling stock in your company to your employees over a period of time, usually several years. The business's

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cash flow is commonly used to pay for the stock. Generally, it also involves getting an independent valuation of the business on an annual basis until the stock ownership transfer is complete. If the business increases in value as the employees are purchasing it, the amount the seller will receive for stock will also increase, causing problems if the business cannot afford the additional cash drain. If the value of the business decreases, the value of its stock is reduced for both seller and employees, and the seller faces the risk that the business may fail, with payments for stock limited to those already received.

Whichever exit strategy an owner chooses, however long and complex the exit process is, what happens next can be just as exciting and rewarding as owning a company can be.

In some cases the sale of the company is the key event that allows the owners to have adequate resources to enjoy their retirement. In other cases it may provide the capital to allow any number of interests to be pursued in a new career.

This article completes a five-article series describing exit strategy considerations. Our Web site also provides the prior four articles for your review.

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The Fisher Company is a consulting firm specializing in the areas of financial and operations consulting, business development, and mergers and acquisitions for the media industry. We invite you to call us to discuss your current business needs or to schedule a future appointment.

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