<u>DO'S AND DON'TS FOR BUSINESS SELLERS</u>

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If you are thinking that about selling your business, there is a long checklist of things to do to get ready for a sale. Here is a list of some of the things you should consider:

Packaging Your Business for Sale

DO spend time with your accountant to make sure your financials are in acceptable form. Qualified buyers will want to know they can rely upon your financial snapshot and you should expect them to want to dig into the detail of those finances.

DON'T think you can hide all the warts. Understand the problem areas of your business and be prepared to respond to the buyer with why those warts aren't so bad. Be prepared to suggest what they can do to address problem areas and what has prevented you from doing so already.

DO have a non-disclosure agreement drafted and ready so that you protect any information you may need to disclose. Make sure the agreement requires potential buyers to return the information if things don't work out.

DON'T disclose your intention to try to sell too soon or to too many people. A decision to sell can create a lack of confidence in both your employees and customers so do you best to keep any information about the sale as private as possible.

DO look at all the key components of your business and be prepared to address them as part of your package. Real estate, customers, employees including especially key employees, product manufacturing and distribution, marketing efforts, cash flow and debt obligations and competition are all issues you should expect a buyer to ask about so be prepared. The areas where you have the greatest strength become your best selling points. The areas that are challenging are where you need to either make changes or have good answers for why they should not stop the buyer from jumping in.

What Kind of Buyer to Look For?

DO prequalify the buyers if at all possible so that you don't waste time with people who can't afford to buy your business.

DON'T discount your competitors as potential buyers. They are already familiar with the essential aspects of your type of business and may see you as a perfect addition to complement their existing business.

DO consider listing your business direct with internet business selling websites such as Franchise Smart Market for existing Franchises. There are relatively cheap and easy websites out there that can help you test the waters without breaking the bank or committing you to working with just one brokerage agency.

DON'T think that just because someone is a good employee they would make a good owner or business partner. As you know, owning a business is a whole different world than being an employee. If you are considering a current employee as a potential successor, make sure you understand the legal significance of making them a shareholder including the effect on their status as an at-will employee.

DO utilize your professional contacts, bankers, lawyers, accountants, insurance agents, etc. as lead generators for potential buyers. They will often be in a good position to discreetly steer good buyers in your direction. They will be less likely to send you poor leads and more likely to understand what you do and how you do it and locate individuals who would suit your business.

<u>What To Do About Financing?</u>

DO consider seller financing as an option. In today's lending climate, many deals can only get done if they are in whole or in part seller-financed. If you go that route, make sure you are well-secured and think through the issues if you need to take back the business because the buyer fails.

DON'T put too much of the purchase price into an earn-out based upon the performance of the company after you leave unless you really like to gamble. Make sure the earn-out portion is determined by using gross sales or revenue numbers rather than net amounts where deductions could be subject to buyer manipulation.

DO consider the present value of money as opposed to the return you get on financing a purchase. Seller financing is often at a higher interest rate than what a bank will lend for because of the risk involved. Conversely it's hard to find an investment vehicle with decent returns these days. While considering the risk of seller financing, also consider the reward of getting a better than average return on your money if the buyer is successful.

DON'T do any seller financing without personal guarantees from the buyer and his/her spouse. If you leave the spouse out, the danger exists that personal assets can be moved between family members to avoid debt. Take back other security as well if possible including any available real estate, whether or not it is associated with the business.

DO suggest your buyer talk to their accountant about the potential for using their retirement funds as a potential source of investment funds.

What Do You Need to Know About Sale Documents?

DO understand the differences between an asset sale and a stock sale. Generally a stock sale will have favorable more tax consequences for the seller while most buyers will want an asset sale to avoid unknown or unforeseen liabilities.

DON'T assume your broker is protecting you legally. If you are using a broker, they will often have standard documents that may or may not be good enough. While many brokers are very sophisticated in business transactions, they aren't lawyers and you shouldn't rely upon them for that role.

DO talk through your deal with a lawyer before you are ready to sell. Your lawyer should help you understand what you will need and don't need and avoid potential missteps that could derail the deal. Whether or not you use your lawyer to draft the sale documents, you want to talk through the sale beforehand so that you know exactly what you need to be doing. It's well worth the cost of an hour or so of his or her time.

DON'T assume that all purchase agreements are the same. Make sure you understand everything you are signing and, if you don't, get a lawyer.

DO use a sounding board. Find someone who doesn't have an interest in your deal as a sounding board for your transaction. A business coach is a good example of someone who won't benefit by your sale that could ask good questions about whether the deal is one you really want to make.