Don't trip as you skip to a sale

The biggest day in a business owner's life: the day she sells her company. Ironically, many business owners do not take the proper time to prepare for this life-altering event. Perhaps, when business owners reach such success in life, they develop false confidence about abilities they do not possess. Maybe, they get caught up in the momentum and excitement and forget to keep a professional distance from the buyer. I have seen any number of mistakes made. From my experiences, I have some practical and simple advice to increase the purchase price received, preserve it throughout the transaction process, and ensure a successful close.

1. **Hire good advisors.** Having top-notch investment banking, law and accounting firms to guide you through the process is essential. Of course, you need a seasoned team from each that is truly focused on your deal. Make sure that the team that pitches you is the team that actually works on your deal. You should include the team members in the engagement letter. For example, the investment banking firm could be considered in material breach (and not entitled to a tail fee if terminated and a deal is consummated with another investment banking firm) if key members of the deal team are changed.

2. **Have a good process.** Once you've hired the right advisors, it is important to listen to and trust them. This seems like simple advice but it is the most common mistake I see made by sellers. It is hard for business owners who are accustomed to being in the lead chair to take a back seat to the advisors. It is a buyer's dream to get direct access to the business owner, to develop a rapport and to get the seller to start empathizing with the buyer (particularly, when the seller is also rolling some of his equity into the buyer entity). Business owners should allow their advisors to be the "bad guys." The advisors know all the tricks the buyers will try to pull. You will get a much better deal if you let your advisors do the job you hired them to do. Trust them on content and trust them on timing. If they ask you to go quiet, go quiet. If they ask you to go quickly, go quickly. Pausing at the right time can lead to an increased purchase price. Moving quickly at the right time can feed momentum and preserve a deal that might otherwise die.

3. **Know your sins.** You must always know more about your company and its little problems than the potential buyers. Once you get your arms around all the "issues" with your company, you can strategize a plan with your advisors on how and when to introduce them to bidders. Being on top of an issue can prevent a hit to purchase price or the request for a dollar one specific indemnity. Looking organized and "clean" will give buyers confidence in you and keep them from digging deeper. Before you start your sale process, take the time (with the guidance of your legal advisor) to clean up your company and, for example, update your record books, employment and option documentation (e.g., make sure you are 409A compliant), update expired contracts, obtain missing signatures to contracts and get old liens that relate to retired debt released.

4. **Know your assets.** Make sure you know all items that justify your ideal purchase price. Also, have a grip on what tax benefits arise out of the transaction as a result of retiring options, paying bonuses and accruing other selling expenses. As a seller, these should be your benefits even if they don't arise until a post-closing period. Your accountant and lawyer should work together to quantify the value of the tax benefits. Be smart about every component of the purchase price. Have a supported view on what the working capital peg should be. Be aware of any item that

could potentially be deducted from the purchase price proceeds you will receive. With your lawyer's guidance, develop a view on which items you will push onto the buyer. For example, the buyer might try to reduce the purchase price by ordinary course bonuses accrued through closing. You will want to head that off at the beginning of negotiations.

5. **Have your own house in order.** Before you sell your company, be sure to have trusted tax and financial advisors help structure whatever estate, tax or other planning that might work for your particular situation. Be aware if a particular sale structure will be more punitive to you from a tax perspective than another. I witnessed a deal fall apart when the seller didn't appreciate his tax position and the impact it had on his ultimate proceeds. His proposed remedy for the issue was a non-starter for the private equity buyer. Had he known this at the beginning of the process, this factor would have pushed him towards a strategic buyer.

These five pieces of advice are where I most commonly see private company sellers trip up in their sale process. If you follow the above advice as a business owner, you will not trip as you skip into your new role as a business seller. ■

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