

Structuring the Sale of Your Business

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Prior to selling your business you will have dozens of questions surrounding the sales process including: confidentiality issues, business worth, both asset allocation and preservation, tax liability, and deal structure. In order to anticipate the terms and deal structure you'll need to determine what's most important to you and your family. Are you focused on price or yield? Quick timelines? Cash at closing? How important are terms of the transaction?

Another very important question- do you have any significant investment assets outside your business? Over 80% of business owners say 'no' and consider the sale of their business to be their retirement. Obviously, the terms negotiated during the transaction are critical to both the sale and your retirement.

Many times a professional can favorably structure the sale of a business if there is clarity on two issues: how long you plan on working, and understanding your cash requirements for the future. For example, if you need immediate cash your sales structure is entirely different than if you wish to work part-time or stay on with the company after the sale. Owning the real property along with your business also gives you a myriad of sales and security options.

Quite simply, terms drive deals. By negotiating the terms carefully most sellers can walk away with a deal that is comfortable as well as profitable. How the deal is structured will be based on several factors including: the legal structure of your business, the types of assets you are selling (real property and/or business assets), the type of sale (asset vs. stock), tax liability after the sale, a small amount of seller financing (which a lending institution may require), amount of down payment at closing, and your plans immediately following the sale.

These factors and more will be part of the equation. Every business owner has a unique situation which needs careful assessment. In many cases however, (unless you own a C corporation) most legal and accounting professionals will encourage an asset sale. In the case of a C corporation, you may structure the sale as a stock sale to avoid double taxation (corporate and shareholder taxes). However, if your professionals structure the sale and the asset allocation carefully you may be able to carry out an asset sale without incurring extra tax liability.

Nonetheless, if you own a company where stock has been issued, a stock sale can be formulated. This will create greater caution in the mind of the buyer along with a higher level of due diligence, due to added liability.

Keep in mind that when structuring a sale, you must be prepared to negotiate. Rare indeed is the deal that plays out exactly as it was designed. Therefore, you will need to know where you can be flexible and where you cannot.

Be especially wary of changes that will result in higher taxes. Remember, negotiating a deal point in favor of the buyer on one end, affects you as the seller on the other. Therefore, you will need to constantly strike a balance between price and overall yield during negotiations.

Prior to selling consult your advisors and consider all the factors that will affect the sale: the type of business, overall sales process, the amount of debt, preservation of your assets into retirement; any legal issues, and your needs as a seller, both emotional and financial. As I share with my clients who are selling their life's work, "Poor decisions at this level can be costly, so please be aware of every option available." My goal is consistent for every client- "sell right...retire well."

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