

# PUBLICATION

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## So You Want To Sell Your Business...

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This is the first of a four-part series to assist owners of closely-held businesses who are considering a future sale of their business. Today's installment will consider *why* you may wish to sell your business. Subsequent installments will address how to *prepare* for a sale, how to *value* your business for sale and the importance of properly engaging *advisors* with regard to a sale.

The initial question you should ask yourself when assessing whether to sell your business is "What is driving my decision to sell?" These drivers can be professional, personal or a combination of the two, including:

- Retirement
- Desire to transition into other pursuits, such as professional, civic or personal
- Estate planning
- Financial needs
- Health issues
- New levels of competition or other changes in your marketplace, such as changes in laws or their interpretation, regulatory constraints, or evolving technology or practices within your industry
- Your business needs to grow, but you cannot do it alone
- Current or anticipated declines in income
- Opportunity comes knocking, meaning a buyer approaches you with an offer you cannot ignore

The process of selling a business requires a significant commitment of time and money, so it should not be entered into lightly. It is prudent to consider whether your particular goals can be best achieved by a sale of your business or by other means. For example, if your goal is retirement or another form of transition, might it be advisable to develop a succession plan while retaining ownership of some or all of the business? Likewise, estate planning may be best served by bringing in new management while allowing your heirs to collect dividends as the new owners of the business. Without you, will your business continue to grow or will it wither on the vine? If you don't have the means to achieve growth, perhaps bringing in partners with financial wherewithal or the proper expertise will provide those means.

If you have fellow owners, you must consider whether their interests align with yours. Perhaps you wish to retire and another owner wishes to grow the business. Although your reasons differ, a sale of the business, structured to allow your colleague to continue as an employee or owner of the business, may suit both your needs. Your reasons for being interested in a sale of the business need not be identical, but they should be complementary. If they do not correlate, alternative strategies that better suit your particular circumstances should be evaluated.

Let's assume you have determined that a sale of the business is the best means to reach the desired ends of all owners. Understanding all the reasons behind the decision to sell will help you prepare for the sales process and set reasonable expectations. For example, if your impetus to sell is declining income from operations, it is likely that potential buyers will identify and weigh this risk when assessing both their level of interest and the price they are willing to pay. If immediate financial needs or health issues require a prompt sale, your negotiating position will be weakened and you may have to accept a lower price or greater risk in order to complete the sale quickly. If changing market conditions are driving your decision, strategic buyers likely are

aware of these same concerns. They may seek a lower price as a result, or they may instead see a synergistic benefit that will give them a "leg up" on the competition, thus justifying a premium for the sales price. A business properly poised for growth may also demand premium pricing.

The reasons for selling your business may also help in determining whether you want the transaction to be a sale of assets, a sale of stock or a merger. These types of transactions have different tax consequences. Knowing your goals will help you select the optimal transaction structure while assessing your ability to limit or defer adverse tax consequences and other risks. Also, do your goals require receipt of all or most of the purchase price right away, or can you seek a higher price by receiving some of the proceeds later, either in the form of a promissory note or an earnout? Different payment structures also have different tax consequences and levels of risk and reward, so knowing the reasons behind the sale will help you assess your tolerance with respect to such matters.

Lastly, understanding the goals that drive the sale of a business will make you a better negotiator. It will help you to focus on those key terms of the deal that will have the greatest impact on whether you reach your goal. It will also provide guidance as to when and whether you should walk away from a deal, and provide you and your advisors the tools needed to negotiate more effectively.

Once you determine the reasons for selling your business, you should next consider the picture you want to present to potential buyers. In other words, how best to prepare and package your business for sale. We will address this issue in our next installment of this *Client Alert* series.