Business Sale Checklist

Statistics:

Approximately 80-90% of all business enterprises in North America are family owned.

39% of family owned businesses will change hands in the next 5 years

A February 2017 Harris Poll survey indicates that 60% of small business owners (fewer than 300 employees) do not have a succession plan, and have not identified a successor

Only 30% of family owned businesses survive into the second generation

Only 12% of family owned businesses survive into the third generation

I. Succession objectives

Typically, a business owner reflects upon the following objectives:

- Maximize value
- Minimize taxes
- Provide for continuity of business
- Protect wealth
- Provide for future generations

II. Who will you sell to?

- Family members
- Co owners
- Key employees
- All employees
- A competitor
- An unknown buyer

III. Non tax considerations

- Sell or continue business
- Ownership and control
- Timing
- Leverage
- Provisions for your continuing involvement
- Life after a sale

IV. Improving the value of your business before sale

- Assemble your corporate records
- Show a track record of improvement
- Identify areas of future increased earnings
- Consider seller financing

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- Hire a qualified appraiser to asses the business

V. Special considerations for business transition to family members

- Do you have a mission statement reflecting family values and goals and objectives?
- Is there communication and buy in by active family members and non-active family members?
- What are the roles and expectations?
- Have you communicated with key employees?
- Are there employment agreements and non-compete clauses?
- What are the implications of employee benefit plans?
- Have you consulted with professional advisors for accounting, tax, financial, and possibly mental?

VI. Structuring your sale of interest for family or internal sales

A. Redemption structure

- Capital gains to outgoing owner (with S Corp exception)
- Remaining owners have company with no increase in basis

B. Cross purchase structure where owners purchase from one another

- Reflective of terms set forth in buy-sell agreement
- Remaining owners get step up in basis
- Can have structure where first option is to remaining owners and second option is redemption by company

C. Buy-Sell Provisions

- Must have method of valuation: set price, formula, or procedure
- Must have source of payment, whether future revenues, reserves, or insurance
- Trigger events can include death, disability, voluntary transfer, involuntary transfer, retirement, early resignation, divorce, bankruptcy, loss of professional license, termination, dispute, or passage of time
- Buy-sell agreement can also provide for dispute resolution methods, admission of new owners, management contingencies, and incorporation with other succession planning.

VII. Value driving factors:

- Is the business dependent upon the owner?
- Are there established and written processes and procedures?
- Is technology current?
- Is a leadership team ready to address transition, growth, and potential challenges?
- Is the company dependent on a few large customers?
- What are market factors likely to do?

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- Have you taken efforts to eliminate any surprises during due diligence?

VIII. Due Diligence components

Due diligence should include the following, for which you must be prepared as a seller:

- Organizational records
- Subsidiary records
- Capitalization and equity owner information
- Financial statement and records
- Tax matters
- Employees benefits plans, salaries and labor dispute information
- Customers and operations
- Material contracts, agreements, and commitments
- Government regulations and filings
- Insurance and pending or threatened legal matters
- Patents, trademarks and copyrights
- Real property assets
- Environmental exposure and obligations
- Recent analysis or evaluations of the business
- Brokers or finder's agreements

IX. Installment/earn out agreement considerations:

- Turns the new owners into ongoing business partners
- Businesses generally have decreased earning following a transition
- Attempt to have personal guarantees
- Have appropriate acknowledgements of potential risks
- Address structure and ongoing involvement to try to avoid confusion for employees
- Identify the method of review and disclosure of accountings
- Attempt to secure a right of repossession of the business or business assets

X. Closings

Plan for closings on business transitions should include:

- How is ownership transferred?
- How are physical assets transferred (keys, titles, etc.)?
- How are non-tangible assets transferred (accounts, files, computer files, passcodes, etc.)?
- What money is to be exchanged?
- What documents are to signed?
- What licensing must transition?
- What accountings are to be provided?
- How are employees transferred?

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