Business Sale Checklist

This form is intended as a mechanism to heighten awareness of potential issues and procedures for a business owner considering any sale of a business. This form does not replace the value of an in-person consultation with an attorney and/or business sale advisor to fully evaluate specific needs and strategies. The market landscape changes on an ongoing basis, and the questions, timing, and comments below are broad considerations not tailored to any specific business or industry. This checklist should not be construed as legal advice, nor does review or use of this checklist constitute retention of any attorney or The Vaughn Law Offices. Anyone desiring a consultation can contact our office at your convenience.

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. Determine your Destination Plan

- Articulate your personal goals
- Decide on your ideal timeline for exit
- Decide upon your destination: publicly traded, franchised, left as inheritance, business sale.
- Best to decide upon your business destination at the inception of your business.
- Best to start preparations for sale 2-4 years in advance of the target closing date.

II. 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

III. Non-tax considerations

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

IV. Who will you sell to?

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

V. Create a Deal Team

- Advisor or investment banker
  Expert who can guide the transaction process
- Attorney
  Specialist who can protect your legal interests
- Board of Directors/ Board of Advisors
  Team who can advise on strategy
- Finance team or accountant
  Specialists who can protect your financial interests
- Wealth manager
  Guise financial transactions from a personal perspective
- Internal team members
  CEO, CFO, CMO, COO, etc.
- Other transaction or industry-specific consultants

VI. Engaging Advisors

- Look for specific answers from advisors to questions like**:**

  "How will working with you add value?"
  "What does success look like for you?"
  "What work have you done with companies like mine? What issues have you encountered?"
  "What's the biggest challenge for my company?"
  "Who are common buyers for businesses like mine?"
  "How are companies like mine typically valued?"

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VII. 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
- Hire a qualified appraiser to assess the business

VIII. 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?

IX. Structuring your sale of interests 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

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- Buy-sell agreements can also provide for dispute resolution methods, admission of new owners, management contingencies, and incorporation with other succession planning

X. Value driving factors:

- Is the business independent from 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 independent of only a few large customers?
- What are market factors likely to do?
- Have you taken efforts to eliminate any surprises during due diligence?

XI. Due Diligence components

Due diligence will likely include disclosure of the following:

- Organizational records
- Subsidiary records
- Capitalization and equity owner information
- Financial statement and records
- Tax matters
- Employee 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

XII. Complete a third-party review of financial results with an accountant

Your pitch book will likely contain:

- Executive summary
- Company history
- Sales process and/or manufacturing capabilities
- Management team structure
- Growth opportunities
- Competitive landscape or industry outlook

- Intellectual property overview and/or company assets
- High-level financials (preferably five years or historical data projections, if available)

XIII. Approaching the Sale

- Consider market factors and timeline
- Brokers or finder's agreements
- Do buyer research and build the buyer list
    - Consider your order and strategy for approaching the market
- Decide on your deal-breaker terms as relates to value and other areas

XIV. Installment/earn out agreement considerations:

- Turns the new owners into ongoing business partners
- Businesses generally have decreased earnings 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

XV. Closings

The 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 be signed?
- What licensing must transition?
- What accountings are to be provided?
- How are employees transferred?

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