Business Sale Checklist

This form is intended as a mechanism to heighten awareness of potential issues with your company and your personal finances as they pertain to the sale of your business. This form does not replace the value of an in-person consultation with an attorney to fully evaluate your specific needs and any possible legal recommendations. The legal landscape changes on an ongoing basis, and the issues, time frames, and comments below are simply general guidelines. You should seek personal legal attention for specific advice.

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 business owners 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.

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

- 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 individual buyer
- Private equity
- Strategic buyer

V. Overview of sales process:

- Preparation/reverse due diligence
- Marketing to identify buyer
- Response from potential buyers
- Production of initial information
- Execution of nondisclosure agreement
- Production of more detailed information
- Negotiations
- Letter of intent
- Additional exchange of information
- Asset purchase agreement/stock purchase agreement (with ancillary contracts)
- Completion of due diligence
- Satisfaction of conditions
- Closings

VI. 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
  - Guide financial transactions from a personal perspective
- Internal team members
  - CEO, CFO, CMO, COO, etc.
- Personal and Management Team Counselor
- Other transaction or industry-specific consultants

VII. 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 is the biggest challenge for my company?"
  - "Who are common buyers for businesses like mine?"
  - "How are companies like mine typically valued?"
  - "What should I be doing now to prepare my business for a sale?"

VIII. Improving the value of your business before sale

- Assemble your corporate records and do a legal audit
- Update IT
- Hire a qualified appraiser/business banker to assess the business
- Conduct reverse due diligence (investigate/audit like you were the buyer)
- Show a track record of improvement
- Evaluate the returns of any capital investment

IX. 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?
- Is everyone capable of treating the sale as a professional transition?
- What outside professionals are needed to overcome interpersonal dynamics?

X. Employee Considerations

- 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 guidance?

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

XII. 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?

XIII. Approaching the Sale

- Consider market factors and timeline
- Stock sale or asset sale?
- 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. Marketing

- Have you identified your target market?
- Will you post internet listings?
- Will you hire a business broker/investment banker?
- How are you approaching competitors?
- How are you approaching partners/managers/employees?

XV. Preliminary Information

- Scope of nature of business
- Employees and functions
- Recent growth
- Market factors
- Strategic advantages

XVI. Non-Disclosure Agreement

- Identify reasons for non-disclosure
- Limited disclosures to Advisors
- Buyer must return or destroy materials
- Set a specific duration

XVII. 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)

XVIII. Negotiations

- Negotiate with the key decision-makers
- Ask the how and why questions
- Identify key motivators
- Have a justification for your price
- Know your bottom line.
- Use a professional

XIX. Letter of Intent

- Stock sale vs. asset sale
- Purchase price
- Duration of due diligence
- Tax factors
- C-corp, S-corp, drop down LLC
- Anticipated timetable

- Any specific factors (roll over equity; employment of seller; ancillary documents; etc.)

XX. 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

XXI. Installment/earn out agreement considerations

- Turns the new owners into ongoing business partners
- Businesses may 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 right to demand detailed accountings
- Attempt to secure a right of repossession of the business or business assets

XXII. 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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XXIII. Mistakes to Avoid

- Not knowing what you want
- Forgetting your purpose, your people, and your processes
- Underestimating stress
- Exiting when things are bad
- Forgetting your executive team
- Forgetting about the customer
- Forgetting your family
- Not creating a deal team
- Not getting objective advice
- Letting a good opportunity go
- Prematurely assuming the deal is done
- Trying to keep a secret
- Forgetting to plan your future after your exit