

PUBLICATION

So You Want To Sell Your Business... PART 4 of 4 – Engaging Advisors to Assist in the Sale

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The time has come. You have well-thought-out reasons to sell your business. You have put your business in the best possible position for sale. You are ready to devote significant time and money to the sales process. Market conditions indicate that buyers will pay a fair or above-average price within your industry.

Potential buyers have already armed themselves with the experts they need to assess your business and negotiate a deal. Have you engaged the help you need? This installment, the last of this client alert series, addresses who to engage when selling your business and how such advisors may assist you.

The two advisors you should always engage are an outside accountant and legal counsel. It may also be in your best interests to hire a finder (also called a broker, investment banker, etc.) and/or an appraiser.

A firm that has been serving as your business' independent accountant for many years is normally your best bet as an accounting advisor. They already know your business, its financial statements, tax returns and internal control policies. Since most potential buyers begin assessing their interest in your business by conducting a financial analysis of it, an accountant should be engaged early in the sales process.

Similarly, if you have consistently been using one firm as outside legal counsel, this firm likely is in the best position to assist you efficiently with a sale. You will, of course, need to confirm that lawyers within the firm have experience in representing sellers in the sale of the business and, preferably, experience with business transactions in your particular industry. You should not share any confidential information with potential buyers until a confidentiality agreement (also known as a nondisclosure agreement, or NDA) has been signed. Also, a letter of intent (also known as a term sheet) is often drafted early in the sales process. It is prudent to have your legal counsel advise you with regard to these initial documents, as such advice can protect your proprietary information, reduce the cost and time it takes to sell your business, and place you in a superior negotiating position.

Many sellers hire a broker to find and negotiate with potential buyers. Brokers can aid you in assessing the credibility and financial wherewithal of potential buyers. For example, they may be able to identify "bottom feeders," or competitors who are more interested in learning about your business than buying it. They can also assist in preparing a selling memorandum or organizing an auction process in order to create a competitive environment that will result in a higher purchase price and better terms. In many cases, brokers can complete this preliminary work, including weeding out undesirable buyers, without revealing the identity of the seller. On the other hand, if you have the means to contact a sufficient number of interested buyers and are willing to perform the necessary marketing and negotiation functions, you may elect not to retain a broker. Additionally, keep in mind that some businesses command so low a purchase price that broker fees may be untenable.

Appraisers may be hired, either by sellers or buyers, to assist in setting a purchase price. If you and your buyer are confident that you understand the value of your business, an appraiser may not be necessary. Please also be aware that some brokers, for a fee, will assist you in determining whether the sales price for your business is fair, without retaining a separate appraiser.

You may have already entered into engagement letters with your current accountant and legal advisor. In any event, you should have engagement letters with all advisors retained to assist you with a sale of your business, and your lawyer should review the engagement letters on your behalf. You should investigate the experience of all advisors before engaging them.

In addition, it is beneficial to introduce your advisors to each other as early as possible and to inform them of the importance of coordinating their respective efforts for your benefit. For example, early cooperative efforts between accountants and lawyers can streamline the due diligence process, and coordination between brokers and lawyers can positively affect your negotiation strategies. Effective cooperation among your advisors can reduce your overall transaction costs and result in superior deal terms.

This series has presented a general overview of only some of the issues that will arise with respect to the sale of a closely-held business. For additional information, please contact Lauren Anderson or any of the attorneys in the Firm's Corporate Finance and Securities Group.