

# 2017 GUIDE TO BUSINESS LAW & Accounting

## PREPARING FOR A SALE

### Practical Considerations in Selling Your Business

For most family-owned private business owners, selling a business is a monumental event. These businesses represent much more to their owners than a means of wealth production. They represent the traditional family trade, years of multiple generations under the same roof, a gathering place, a struggle, a sense of personal pride and accomplishment, and usually something built out of nothing with tremendous value trapped inside it. It is always better to consider the realities of selling your business well before you need to do it. As there is no “one size fits all” model of running a business, the process of selling one is similarly diverse. Asking yourself a few simple hard questions in considering whether to sell can make all the difference in the end result.

#### Is Your Business Marketable?

Often private companies are the creatures of decades or even generations of decisions, inputs and strategies that made perfect sense at the time they were implemented. Changes in ownership, incentive compensation arrangements, key employee incentive programs, and other similar programs or directives can be effective in producing growth but can potentially complicate a sales transaction. Ask yourself, what are the aspects of my business that are easily explained to a stranger? Conversely, what aspects of my business are unique or nuanced? The easier a buyer can understand how your business functions, the more efficient the sale process will be. Obviously, the ability to convey how a business works is not the only valuation factor, but from a practical standpoint, if you can't explain how your business works to a buyer, you will not maximize the potential saleable value of your business. Think critically about where you and your team can focus efforts before a sale process to streamline the way you do business.

#### Are You Ready to Sell?

Timing is everything. Market trends, available and capable buyers, and supply and demand are critical factors in determining what price a business will fetch. More importantly, is the timing right for you and your family? Selling the family business is an understandably emotional decision. Consider whether you have a family succession plan to continue the business or a key em-



#### PROFESSIONAL OPINION

#### Daniel W. Collins

Senior Associate  
Harter Secrest &  
Emery LLP

ployee with the skills and capital required to acquire the business. Ask yourself if you would regret selling? Maybe you are not getting the same joy out of the business you once were and don't feel motivated or excited. Have you become disassociated with the business and rely heavily on key individuals to run the operations? Some owners might feel less inclined to make key investments in their business to maintain competitiveness. Others simply reach a point in their lives where they have different goals, aspirations and priorities. Whatever your reasons are, make sure you understand them fully and that you have conversations with the people close to you before deciding if the time is right to sell.

#### Who Is Your Team?

So, you are ready to sell, that's great! Now who can you trust to help? Selling a business is different from running a business. It requires coordination within your family, select key employees already within the business, and key outside professional advisors. Assembling the right team and surrounding yourself with people you trust, who understand your business, your family and the process of selling a private business, is critical. Your team should include an experienced M&A attorney, a broker or investment banker who understands the market and your potential buyers, an accountant who understands your business and accounting methodologies, and the people on your internal team necessary to gather, organize and provide critical information about your business to a buyer in a timely organized and clear manner. No one sells a business by themselves. Take the time necessary to carefully consider who should be on your team.

#### Prepare For Battle

The intensity of the sale process and the scrutiny with which buyers will review your

business cannot be overstated. Today's market is flush with professional buyers. They are big fish who swim fast and will not hesitate to move on to another target if they sense your house is not in order or your team is not up to the task. Don't underestimate the intensity of the process. Talk to your team of key advisors and have a realistic sense of the timing and how that timing could impact the ongoing operation of your business and your family. Get out in front of any potential issues that could prevent or delay a transaction by preparing your business for sale before the paper starts to fly. We highly recommend that you conduct a pre-sale due diligence process with your transactional counsel allowing your attorneys and accountants to obtain, organize and review the very same historical information that a buyer will most likely request. This can be of critical importance in maximizing transaction value and in avoiding a situation where a professional buyer simply moves on to the next acquisition target after discovering an issue your team is ill-prepared to explain or address.

#### Expect the Unexpected

No matter how prepared you are, something unpredictable will happen. The world of M&A can be as fluid as the business world itself. Something may happen that is not ideal and not planned for. You might lose a key customer, receive an audit notice in the middle of your sale process, or reach a point of impasse with your buyer. Remember your goals and your vision and why you started this process in the first place. Trust the advice of your professional team and most importantly, your gut. Selling your business at the right time and for the right reasons is a journey well worth taking. Arriving at your goal, whether that is time with your family, relaxing at the vacation home, touring Europe or a new business venture, will be well worth your efforts! ■

#### Daniel W. Collins

Senior Associate  
Harter Secrest & Emery LLP  
585-231-1322  
dcollins@hselaw.com  
hselaw.com