HAYNES BOONE

UT LAW CLE - ANNUAL LLCS, LPS AND PARTNERSHIPS PROGRAM 2022

Preparing a Closely Held Business for Sale



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Reason for Sale

There are a number of reasons the owner or owners of a business may make the decision to sell. To name a few:

- Death or divorce
- The desire of the owner to retire
- A change in the future plans of one or more of the owners
- Lack of succession planning
- Disagreements in management due to disputes
- A change in the risk profile of the business or the owners
- A need for liquidity
- A strategic decision to sell

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Understand the Reason for the Sale

- Single most important matter is to fully understand what is motivating the sale. The sales process is tough and can be emotional.
- With every step taken the client should consider, and reconsider, if the sale is accomplishing the intended goal.
- Sometimes, the best decision is the decision to not sell at all.
  - Step back, re-assess and re-confirm
  - Avoid “dysfunctional momentum”

Expectations: The Client Should Establish “Expectations”

- Economic value
- Level of continued involvement in the business
- Exposure to a non-compete
- Sales risks on continuing liabilities or relating to seller-financing
- Employee issues
- Post-closing earnouts
- Risks relating to securities as a part of the sales consideration
- Issues relating to real estate as a part of business operations

Issues to Consider When Setting Expectations

- Are expectations in alignment with the market?
- Is the anecdotal information creating false expectations?
- What factors cause the transaction to differ from market expectations?

Special Considerations: Obligation to Work with Business Post-Sale

In many transactions one or more owner may desire or be required to remain with the operations post-sale. This can be useful for making a smooth transition between ownership groups.

- Continued employment
- Consultant or independent contractor relationship

If this type of an arrangement is contemplated:

- Determine which owners will be required to provide services
- Willingness to remain active
- Period of time
- Terms and conditions under which they desire or are willing to do so

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