Five Common Mistakes Business Owners Make When Selling Their Business

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With the mergers and acquisitions market as hot as it's ever been, many owners of mid-size companies are considering selling their most valuable asset – the company that they've spent years building from scratch. However, there are a few mistakes that I frequently see made by owners selling their companies.

#1: Failing to Prepare for the Diligence Process in Advance

It's critical to bring your advisors into your process at least six months before you go to market. You'll want your advisors to do two primary things: prepare your own "quality of earnings" report and conduct reverse legal due diligence. A quality of earnings ("QOE") report is an analysis of your financials that you can think of as financial due diligence. At its core, it's an analysis of whether your income is "real" or somehow inflated. That's not to say that a QOE is there to catch fraud, but rather to analyze whether you've made all the appropriate decisions in preparing your financials and are worth the price you're trying to get. Reverse legal due diligence is the same concept, but for non-financial matters. A good legal team can spot and highlight issues in advance and help you to either solve the problem so that it isn't a problem by the time the buyer comes to the table, or create a tight, crisp answer as to why the supposed problem really isn't.

#2: Not Getting Advisors with Deep M&A Experience

Financial and legal advisors with deep M&A experience are critical to a successful deal. M&A is its own specialty and has its own rhythm, terms, concepts, and even lingo. You are selling the most important asset you have, while trying to maximize price and minimize your post-transaction exposure. Do your advisors know the M&A space? If you ask them, for instance, "what are RWI premiums running these days?", or "can we get a walk away?", or "are we giving them a strong or weak materiality scrape?" – do they know how to answer? Those concepts (and dozens of others) are highly specific to the M&A process. Good advisors are not cheap, but bad ones are far, far more expensive in the long run.

#3: Taking the First Offer that Comes Along

Over the years, I've watched hundreds of companies exchange hands, and there is a ton of variability in pricing. A company that one buyer thinks is worth $60MM might be valued at $75MM by another. And that second firm might be willing to go to $85MM just to get the deal done. If you just pick the first offer that you receive without testing the market, you're missing out on a ton of value.

#4: Signing an LOI Without Having an M&A Lawyer Review It

Once a price is in mind, the buyer will send over a letter of intent ("LOI"). The buyer wants basically two things in the LOI – a price, which is "subject to further diligence", and exclusivity. The price – and the possible adjustment to that price – we've covered above. The exclusivity piece, though, is critical to understanding the process. Although the LOI is non-binding as a whole, there will be some binding terms, one of which is usually exclusivity. Before the buyer starts to spend significant time and money, they'll usually want a commitment from the seller that you're not working with other potential buyers. Therefore, the buyer will ask that the seller agree to deal exclusively with the buyer for a period of time (30 to 90 days). If that's all that's in an LOI, the seller has missed their best chance to negotiate favorable deal terms. Once you sign exclusivity, you're off the market – the buyer has you locked up. There are a ton of possible suitors out there – make them give you the best deal you can possibly get. If you sign an LOI without bringing it to an experienced M&A lawyer to negotiate specific terms into the LOI, you won't know what you're missing out on until it's too late.

#5: Being Impatient

Deals take time – that's just an unavoidable fact of life. Every deal goes through four stages. Getting to the LOI, everyone loves each other – stage one. Then the reality of diligence and how hard it is set in, and that's stage two. Stage three is when you're despairing that the deal will never get done and you just want to give up. But then your experienced M&A advisors help to pull the deal through, leading you to stage four – a giant check. Don't panic, get impatient, or cave at every request of the buyer. If the deal is a good one, it will take time. Just be patient and let it happen.