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The Business Transfer Newsletter

Exit Deals Happen When Parties Become 'Equally Unhappy'

Business owners who are considering an exit from their business should consider the negotiations that are likely to ensue through the process. This newsletter is written to help owners of privately-held businesses anticipate and prepare for what lies ahead with an exit transaction and, by understanding the other party's concerns, to anticipate how the negotiations will go. This is why, it can accurately be said, that exit deals happen when both parties are equally unhappy. It is our hope that this newsletter provides some perspective to owners so that they are better prepared for their future exit.

Beauty May Not be in the Eye of The Beholding Buyer

When thinking about exiting your business, it is natural to believe that an outside buyer will see all of the potential and beauty that you see in the future of your business. However, your future buyer will likely not have the same perspective as you. In fact, your future buyer's job is not to focus on the beauty that lies within the business – presumably they already see this or they would not be at the negotiation table. Rather, their job is to see what might go wrong with the business once they take over control.

The Seller's Dream vs The Buyer's Nightmare

A business owner selling their business will want to discuss all of the potential in the business and how the next owner will be able to reap the benefits of these opportunities. However, the buyer of a business is looking at the acquisition as something totally different – they are asking themselves 'what is most likely to go completely wrong the day after I take over this company'.

From these divergent perspectives comes two different approaches to looking at a business. The seller wants to discuss opportunities and growth, the buyer wants to discuss operational, financial and legal issues that could crater their investment. So, while one party to the deal – the seller - is seeing and focus on the upside in the transaction, the other party is laser focused on the potential liabilities and downside / risk in the business. From these differing perspectives comes different approaches to looking at your company. There are, in effect, two different 'languages' being spoken within the very same transaction.

Seeking Common Ground and Meeting in the Middle

As buyers advance through their 'diligence' of a company, more and more reasons for being skeptical of a deal will arise. On the other hand, the business owner who is the seller is often busy running their company while also answering an endless series of questions and responding to document requests from the buyer. It is not uncommon for sellers to eventually ask whether the buyer really wants to see this information or are they playing some kind of game? In reality, the buyer is looking for things that aren't broken yet, but may break one day soon.

Articulating Your Personal and Business Goals, in Writing

Given the emotional dynamic of selling your business and dealing with a skeptical, third party buyer, perhaps some of the best advice that can be provided is put down in writing your overall personal and business goals before the selling process begins. Remember that the process of reaching relative unhappiness is one where perspective is often lost . . . sometimes it simply becomes about who will fund the next set of fees and / or who will win the little skirmish. By having your goals written down, you will have a foundation to return to when you are going through this tedious process. If you, as the seller, keep asking yourself 'is the process that you are involved in getting you closer to your overall goals?', then you will be able to maintain some perspective as the process continues.

Deal Negotiations

Every deal is unique – like a snowflake. But the process of negotiation is relatively certain – parties start at opposing ends and meet in the middle. Exit deals cover many areas, including valuation, terms, employment agreements, notes, earn-outs, representations and warranties, lawyers, contracts, taxation, just to name a few. Experienced professionals will help you anticipate and navigate these many areas of negotiation and guide you through the process.

Getting to Relative Unhappiness

Relative unhappiness is the point in time in a negotiation between a buyer and a seller when both parties look across the table and see that the other party is equally as unhappy as they are. When this magical moment arrives, it is time for a deal to close. Because in this moment, both parties have heard all of the logic, have reviewed all of the data, and have listened to the point and counter-point of each argument. So, when there is nothing left to argue and only minor items to 'horse-trade' to close out the negotiations, it's time to close the deal.

Eye on the Prize

A well-developed exit plan will help you mitigate the risks of relative unhappiness in a deal. The reason is that the exit planning process should help prepare you for what lies ahead and set clear goals for the destination that you would like to reach. The investment of time and money that you make to develop your exit plan will pay off large when it is time to transact. You will make fewer mistakes, hire more qualified advisors, and be under less pressure than if you were not prepared with a plan.

Concluding Thoughts

We hope that this newsletter has achieved the goal of helping you think through your exit and to be more prepared for the circumstance where you are searching for your relative unhappiness. By understanding the other sides' concerns you can more easily understand and navigate the process, expecting that both you and the other side will meet in the middle and be equally unhappy before your successful exit is complete.

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