

Cherin Law Offices, P.C.

From Start-Up to Exit and Everything in Between



Selling your Business - Step 1 - Assemble the Team!

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Selling your business is a process, not an event. The planning process needs to start long before you list the business for sale. But, sometimes running the business gets in the way. This article and the following installments offer some suggestions for improving the process and, ultimately, the prospects for success.

Whenever you start, use experienced M&A professionals (attorneys, investment bankers and accountants). Most buyers of businesses have experience acquiring businesses, while most sellers have experience building their businesses, but not selling them.

Experienced advisors can help you understand the metrics and mechanics of selling your business. For example, if your industry is one where a multiple of EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) is a typical metric, the advisors can help identify expenses that may be tax-efficient, but may cost you money when selling. Owners' cars and other perks fit in this category. It may make sense to pay a higher tax rate for a few years, while increasing the EBITDA for the eventual sale.

Most deals start with a letter of intent or term sheet. Advisors can assist with getting a favorable letter of intent or term sheet. Don't wait to engage advisors until after you sign the term sheet. From our experience, **NO DEAL EVER GOT BETTER AFTER THE TERM SHEET!**

One client reported:

"Most companies start and succeed because of a niche or specialized skill. Then one day another company recognizes your company's value and suggests a merger or buyout; that happened to us at our software company. What

happened next was very interesting; we had meetings and received a letter of intent. It read very well and seemed to meet all our expectations, but wait, it was sent by a lawyer for the multi-national buyer. Thankfully this was when [you] entered the scene and quickly made us aware of what the letter represented.”

In that instance, the term sheet was refined to protect the seller’s interests, and there was a successful closing.

Additionally, advisors allow you to focus on the business and prepare for working with the buyer after the closing. Let the advisor wear the “black hat”, taking strong positions to protect you.

In one recent instance, there was extensive negotiation on how “Modified Gross Profit” was to be calculated for an earn-out. The Letter of Intent covered how much the Seller was to be paid based on “Modified Gross Profit, but the specific line items from the income statement necessary to calculate Modified Gross Profit had to be documented in the purchase agreement. By allowing the advisors to handle this discussion with the buyer’s CFO, the seller was able to focus on growth opportunities with the buyer’s CEO.

As a side note, the advisors will explain, that as a seller, you want any earn-out to be based on information as high-up the income statement as possible. Ideally, gross income or gross profit. The further down the income statement, the less control of the result that you have. For example, net income or EBITDA can be adversely affected by the buyer’s added overhead expenses.

Finally, the advisors can handle tax planning to be sure that the transaction will produce the best net returns, while fitting into a structure that has the least disruption. Even though buyers often want to buy assets, both tangible (equipment and inventory) and intangible (intellectual property, contracts and customer lists), we have been able to show that a stock sale or even a cash-out merger may be advantageous for the transition and may well provide tax benefits for both parties. Additionally, charitable opportunities and benefits to long-time employees can be built into the structure, if discussed at the outset.

I’m interested in hearing about your experiences – reply to this post or contact me at steve@cherinlawoffices.com.

If this interests you, stay tuned. Next month, I will share [Step 2 - Doing Your Own Due Diligence](#).

DISCLAIMER: The information presented is not legal advice and does not create an attorney-client relationship.