

Thinking of Selling Your Business? Get Your Ducks in a Row

By Mariane Gardner

We use the phrase “get your ducks in a row” before any significant project. In nature, ducklings line up neatly behind the mother duck and waddle in order. As a mother of two young children, I can admit that human children rarely cooperate like ducklings. A simple task such as “get in the car” results in both kids ending anywhere but “in the car.” Businesses tend to align with children more than ducklings. Contracts become misplaced, corporate records are buried in emails, and various arrangements are made over the years without any actual paper. Preparing to sell your business involves getting your ducks in a row, now.

For many business owners, the decision to sell comes after years of building and growing a company which was once your baby. To kick off the legal part of the sales process, typically, a buyer and seller will enter into a letter of intent (LOI) which outlines key business terms. This LOI then serves as the basis of a purchase and sale agreement (PSA), which varies based on the deal specifics and continues to be negotiated while the transaction winds its way to a closing.

One of the most critical phases of any deal is due diligence. The diligence phase involves a comprehensive review of the business’s legal, financial, and operational health. This is when the buyer dives deep into the business to assess its risks and tends to uncover issues such as unresolved disputes, hidden liabilities or fuzzy ownership and governance records.

As diligence and negotiations happen simultaneously, questions which arise during diligence require increased negotiations which could potentially delay or derail closing unless and until resolved. The negotiations during the diligence phase can often shape the structure and value of the transaction.

Because of the dynamic nature of a deal, early preparation by the seller is key. The more organized and transparent a business is on the front end, the more smoothly the pre-closing process will run.

So, where should a business owner begin to align these metaphorical ducks? A good starting place is corporate housekeeping: a legal compliance audit. In New Jersey, confirm the business is in good standing with the New Jersey Department of Treasury and current ownership is properly memorialized in the corporate documents. Next, locate and organize your documents into a secure data room. Review your key customer, vendor and service agreements to generally understand your rights and obligations. Additional consideration relating to real estate, tax compliance, employment, insurance, and operational aspects of your business must also be considered in accordance with the applicable laws.

While ducklings instinctively are prepared, humans do not share this same instinct. Selling a business is not just about finding a buyer, it’s about preparation. And in the business world, preparation is a powerful form of leverage. ■



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