

What legal considerations do you need to make when selling a business?



Legal Matters

R. Scott Elmore
Guest Columnist

So you've worked hard for many years and created a successful business. Maybe it's time for some travel and leisure, or you just need a change in life.

Whatever the reason, you might be ready to sell your business, but have never really thought about the logistics of a sale. This is where your business attorney, along with the assistance of your accountant, can help guide you through the process.

Before getting too far along, it is important to make sure that all legal and financial records of the business are up to date. Potential purchasers will expect to examine those documents as part of their due diligence review of your business. Before handing those over, make sure that the purchaser has signed a nondisclosure agreement. This agreement should require that the purchaser hold all of your in-

formation in confidence and not use it to compete against you if the deal does not go forward.

When the purchaser is ready to move forward, it is customary for the parties to enter into a letter of intent, which outlines the major terms of the deal. This letter is usually nonbinding and considered an expression of the parties' intent to negotiate toward a definitive agreement. However, don't be surprised if the purchaser asks for an exclusive dealing or "no shop" clause for some period of time. The letter of intent should identify whether the transaction will be an asset or stock purchase. In an asset purchase, the purchaser buys the assets of your business but leaves the liabilities with you. In a stock purchase, the purchaser steps into your shoes and essentially assumes the debts and liabilities of your business.

How the deal is structured will have substantial tax consequences to you, so make sure your accountant or tax adviser is involved in this decision.

After the letter of intent is executed, the purchaser will normally present you with a draft of the definitive agreement for the transaction. In addition to getting the best purchase price and tax treatment, a primary goal in negotiating the terms of the agreement should be to limit your potential liability arising out of the transaction and after closing.

Ordinarily, the purchaser will ask you to make representations and warranties concerning the business that will survive the closing for period of time. Make sure that you read these and have your attorney make exceptions and qualifications to them where necessary in order to avoid any future claims against you for misrepresentation or breach of warranty.

Also, try to limit the time period after closing that the purchaser can make a claim against you arising from the sale.

You should expect other issues such as retention of employees and noncompetition to be addressed in the agreement as well.

The key is to understand that selling your business is a step-by-step process that requires patience and a team effort to get you to the closing and the next chapter of your life.

R. Scott Elmore is an attorney with the law firm of Elmore, Stone & Caffey, PLLC, where his practice focuses on handling business transactions for local, regional and national companies. This article is for general guidance of the reader, and is neither intended, nor should it be construed as, legal advice in relation to a particular circumstance. The reader should consult with an attorney for legal advice pertaining to a particular dispute. This column is provided through the Knoxville Bar Association, (www.knoxbar.org), a nonprofit corporation that offers continuing legal education and service to the community through free programs such as the Lawyer Referral & Information Service, speakers bureau and legal advice clinics. Elmore can be reached at rselmore@esc-law.com.



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Use Screens to Improve Outcomes Join an App-Based Pilot

WHAT:

Researchers from the University of Tennessee, Yale, and Happego are recruiting organizations to participate in a pilot project to examine the technology's effect on performance goals.

GOALS:

The Happego Technology can be used to examine outcome effects for any goal.

Sample Areas:

- Customer Service Ratings
- Productivity
- Lowered Injury and Accidents
- Financial
- Sales Numbers
- Performance
- Company Culture
- Wellness
- Employee Motivation
- Health
- Employee Relations
- Inclusion and Diversity

WHO:

Organizations with 10 or more team members who use an Android smartphone on a daily basis.

HOW:

Complete online surveys every week for 12 weeks. One live group meeting per month.

COMPENSATION:

Early VIP access. 50% off of a 1 year subscription (when the full platform is launched)

INTERESTED:

Email research@happego.app



We don't make success. We make success simple.
Visualize Change. Nudge Success.

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