

Some Questions to Consider When Thinking About Selling Your Business*

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1. What are the most important issues to stay focused on if I want to sell my business?

- A. Why am I selling my business?
 - i. Am I being forced to sell my business?
 - ii. Shareholders dispute?
 - iii. Retirement?
 - iv. Industry changes?
 - v. Capital needs?
 - vi. Industry trends lowering valuations?
 - vii. Growth profile peaking?
 - viii. Interest rate trends?
 - ix. Competition?
 - x. Estate planning?
 - xi. Succession planning?
 - xii. Wealth management?
 - xiii. Other reasons?
- B. Who are the likely buyers?
- C. Have other businesses in my industry been sold recently? How do I find out?
- D. How do I find out the terms of those transactions?
- E. What purchase price do I need in order for the sale to make economic sense for me? Is this price realistic? Are multiples in the industry declining?

- F. How is the purchase price going to be paid?
 - i. Cash?
 - ii. Cash and promissory note?
 - iii. Promissory note?
 - iv. Stock?
 - v. Security if purchase price is not all cash?
 - vi. Guaranty? (Guaranty is only as strong as the guarantor).
 - vii. Letter of credit?
 - viii. Earnout?
 - ix. Employment/Consulting Agreement?
- G. How do I avoid or limit the risk of having to give the purchase price back to the buyer after the closing? Disclose, Disclose, Disclose! What is a cap?
- H. Will the transaction include a “holdback” or an escrow to secure my indemnity obligation if I breach a representation or warranty? H. What is a working capital adjustment?
- J. What is the difference between a strategic buyer and a financial buyer (e.g., private equity) and how does this shape my plan for selling my business?
- K. What is my personal plan after I sell my business?
- L. Buyer financing?

2. If I want to sell my business, what should I do to get prepared for the sale process?

- A. Do I need a valuation or an appraisal?
- B. What if my business is owned in whole or in part by an ESOP?
- C. How do I keep my plan to sell the business confidential?
- D. Do I need a broker or an investment banker?
- E. Do I need a lawyer or an accountant (or both) to assist me?
- F. What if I am not the sole owner and there are multiple owners?
- G. What if family members are owners or employees of the business?
- H. Do I need audited financial statements? What if I have reviewed financial statements?
- I. Are my books and records in great shape?

- J. What do I need to do to protect my key employees as part of the sale?
- K. Environmental issues?

3. What steps are involved in the sale of a business?

- A. What is due diligence?
- B. What is a quality of earning review (Q of E)?
- C. What is a letter of intent or term sheet? Exclusivity?
- D. What is a purchase agreement?
- E. Does my company's working capital matter?
- F. What are representations and warranties? Why do they matter to a seller?
- G. What is the difference between a deductible and a basket? What is a "tipping" basket?
- H. What are disclosure schedules?
- I. What is indemnification in the context of a sale of a business? What risk will I have of having to give the sales proceeds back to the buyer?
- J. What is rep and warranty insurance?
- K. Escrow Agreement? Non-competition agreement?
- L. How long does it take to sell a business?

4. At what point in time does the seller of a business have the greatest leverage in dealing with a potential buyer?

5. As a seller, what is the value of a letter of intent (or a term sheet, a memorandum of understanding or a heads of agreement)?

- A. Value to the Seller?
- B. Value to the Buyer?
- C. Is a letter of intent or term sheet necessary?
- D. Is there a need for a non-disclosure agreement?

6. How do I create competition among potential buyers so that I get the deal I want? Should I go through an auction process to sell my business?

7. What can I do to share part of the sales proceeds with my key employees?

8. What if there is a gap between what I think the business is worth and what a potential buyer thinks the business is worth?

- A. Are there ways to bridge the gap?
- B. What are the risks to the Seller?

9. How should the transaction be structured?

- A. Should the transaction be structured as a sale of capital stock (or a sale of membership interests if the business is held by a limited liability company)?
- B. Should the transaction be structured as a sale of the assets of my business?
- C. Are there tax differences for the buyer and the seller?
- D. Are there ways of achieving the objectives of both the buyer and seller?
- E. Some of my friends have sold a business and they have talked about a 338(h)(10) election or a 336(e) election – what are they talking about?
- F. What are tax allocations? Do they matter?

10. Are there special tax issues involved in a sale of a business?

- A. Is my business a corporation or a limited liability company or partnership?
- B. If my business is a corporation is it taxed as an “S” corporation or a “C” corporation?
- C. Does my business have any foreign subsidiaries or affiliates?
- D. Does my business have any net operating loss carryovers?
- E. Who are the owners? Are all of the owners US citizens or US residents?
- F. Does the Tax Cuts and Jobs Act of 2017 effect how I structure the transaction and will it affect the net after tax dollars I realize from the transaction?

11. Are there special regulatory issues or similar issues that I need to be aware of when selling my business?

- A. What regulations is my business subject to as part of its current operations?
- B. Government contracts?
- C. Hart-Scott-Rodino Antitrust filing and FTC or DOJ?
- D. Healthcare regulations?
- E. CFIUS?
- F. Union Contracts?
- G. Banks and other Financial Institutions?
- H. Intellectual property?
- I. Environmental issues?
- J. Federal and State securities laws?
- K. Fraudulent transfers?
- L. Lender consents?
- M. Landlord consents?
- N. Other contractual consents?

12. What if I want to, or will I have to continue working for the company after the transaction closes?

* *Note that this outline is not intended to cover every question that should be considered as part of a sale of a business. In addition, if you are a seller that is part of a group of companies or a public company or a company being sold as part of a bankruptcy, there will be other questions to ask and issues to address.*

This outline is not intended as legal advice and is not intended to create (and does not create) an attorney-client relationship with Arthur Nathan or Kane Russell Coleman Logan PC.

Visit www.krcl.com for more information about Kane Russell Coleman Logan PC.

Arthur Nathan's professional biography is available online [here](#).