

SELLING YOUR BUSINESS

BY PRIVATE CORPORATE COUNSEL

Selling your business requires careful planning and execution. Before you sell your business there are many issues to consider. These issues can occur during the listing, LOI, purchase agreement, pre-closing, and closing stage of this process. Here are a few of the important issues Sellers consider when selling their business:

Where Can I Get the Best Advice Before I Sell my Business?
Who are my Potential Buyers?
Can I sell my Business to my Children?
Can I sell my Share of the Business to my Partners?
Can I sell my Business to my Workers?
When Should I Hire a Private Corporate Counsel?
Who Do Else I need to Help me Maximize my Chances of Success?
What is the Value of the Business?
Should I Sell the Assets only?
Should I Sell the Business Entity?
How Do I Negotiate a Letter of Intent (“LOI”)?
How Do I Negotiate a Sales Agreement?
Are There Any Legal Compliance Issues?
What Happens to the Contracts I Signed with Vendors?
What Happens to the Contracts I Signed with Customers?
What Issues Can I Expect During the Due Diligence Phase?
What Do I Need to Disclose?
How Will the Buyer Pay my Asking Price?
What Should I Consider Before Closing the Deal?
What Happens at Closing?
What are my Obligations After Closing?
What are the Tax and IRS Issues?
I Have Closed the Deal, Now What?

First, you must get the right counsel to help you on this journey. Private Corporate Counsel business lawyers have the legal and business education, training, and experience to help you. They also have practical experience representing businesses in many sectors and operating businesses themselves, giving them added insight on what new entrepreneurs often tackle. Your Private Corporate Counsel (“PCC”) can help you in many ways, including:

Important Advice Before Selling Your Business	PCC
Help You Analyze Your Exit Options	√
Help You Understand How Businesses are Valued	√
Help You Negotiate an Agreement with a Broker	√
Help You Negotiate and Draft a LOI	√
Help You Negotiate and Draft a Sales Agreement	√
Help You Comply with Your Due Diligence Requirements	√
Help You Comply with Contracts, Rules and Regulations	√
Help You Prepare for Closing	√
Help You During Closing	√
Help You After Closing	√

The next step is think about potential buyers. This step requires a good understanding of your business, your industry, the industry trends, your competition, and lots of self-reflection and planning. Your Private Corporate Counsel can help you identify and analyze potential buyers so that you target the buyers who are in a position to offer you the best price for your business. Here are some issues to consider during this phase:

Identify and Analyze Potential Buyers	PCC
Identifying Your Aspirations, Dreams and Goals	
Selling vs. Transferring to Your Children	√
Selling to Workers	√
Selling to the General Public – Casting a Wide Net	√
Selling to a Strategic Partner	√
Are there Benefits to Not Selling?	√
Single Buyers vs. Collective Buyers	√
Selling to a Competitor	√
Selling your Interest to Your Partner(s)	√
Which Buyer Helps You Make Progress Towards Your Aspirations	√

If you have decided that selling or transferring your business to any of the following is the best way to help you make the progress towards your aspirations, dreams, and goals, then visit the corresponding pages for more information:

- Transferring or Selling to Your Children: **Family Succession**
- Selling to Your Workers: **Selling to Workers**
- Selling to Partners: **Partner Buyout**

After you have identified and analyzed your potential buyers and have decided that you are going to sell, then it is time to identify the strategic partners you need to help you take the next steps. The right broker can help you list your

business for sale and identify and preliminary evaluate potential buyers. As Brokers only get paid if the deal closes, it is important to get independent advice as to the value of your business and to have a legal expert help you with the negotiation of the LOI and Sales Agreement. At this stage, you should consult with your Private Corporate Counsel on how to identify, evaluate, and choose key external partners, including the following:

Choose the Key Partners	PCC
Business Broker	√
Industry Expert	√
Valuation Expert	√
Accountant and Tax Professionals	√
Special Legal Support	√
Consultants	√

Once you have potential buyers and they are preliminarily vetted as qualified buyers, then it is time to begin the negotiation phase. Typically, the first document negotiated is the Letter of Intent (“LOI”). At this stage, it important for you to talk to your Private Corporate Counsel about the key terms of the deal, including:

Negotiate a Letter of Intent (“LOI”)	PCC
Identify the Price Terms	√
Identify the Assets of the Entity to be Sold	√
Identify the Key Dates for Disclosure	√
Identify the Key Timeline for Due Diligence	√
Negotiate the Scope of NDA and Confidentiality Agreements	√
Negotiate the Contingencies of the LOI	√
Negotiate the Date to Move from LOI to Contract	√
Complete the Vetting of the Buyer	√

After you have negotiated a LOI and both parties have signed off, you will have an opportunity to do some preliminary due diligence on the buyer, while the buyer will have the opportunity to do some due diligence on the business. If both sides are satisfied with the initial due diligence, then it is time to begin to negotiate the Entity Purchase Agreement (a Stock Purchase Agreement, if the target is a Corporation, or a Membership Purchase Agreement, if the target is a Limited Liability Company, or an Asset Purchase Agreement if an Asset Sale). **CAUTION: DO NOT ALLOW A BROKER, SELLER, OR BUYER’S ATTORNEY TO FORCE YOU INTO SIGNING THEIR AGREEMENT.** Consult with and leverage your Private Corporate Counsel to help you negotiate the following key points to effectively protect your interests and maximize your potential to get a fair deal:

Negotiate The Entity Purchase Agreement	PCC
Negotiate the Price and any Contingencies	√
Negotiate & Identify the Physical Assets Being Sold	√
Negotiate & Identify the Intangible Assets Being Sold	√
Negotiate and Identify the IP Assets Being Sold	√
Negotiate the Assignment of Key Contracts and Releases	√
Negotiate & Identify the Company's Liabilities to be Assumed	√
Identify the Key Timeline for Additional Due Diligence	√
Negotiate Worker Benefits	√
Negotiate Remedies for Breach	√
Negotiate the Deposit, if Any	√
Negotiate Seller Financing, if Beneficial to Seller	√
Negotiate Transition Management Terms	√
Negotiate Other Key Terms of Agreement	√
Draft the Sales Agreement	√
Draft Due Diligence Confidentiality Agreement	√
Draft Due Diligence Non-Compete Agreement	√
Draft Due Diligence Non-Disclosure Agreement	√
Draft Due Diligence Non-Solicitation Agreement	√

The due diligence phase of the process is critical. With the help of your Private Corporate Counsel, consider and analyze all relevant issues, including:

Due Diligence	PCC
Organize, Review and Provide Financial Statements	√
Organize, Review and Provide Real Estate Records	
Organize, Review and Provide List of Tangible Assets	√
Organize, Review and Provide List of Intangible Assets	√
Organize, Review and Provide Employee Files	√
Organize, Review and Provide Non-Employee Worker Files	√
Organize, Review and Provide Vendor Files	√
Organize, Review and Provide Supplier Files	√
Organize, Review and Provide Bank Statements	√
Organize, Review and Provide Business Tax Returns	√
Organize, Review and Provide Litigation History and Cases	√
Organize, Review and Provide Organization Records	√
Organize, Review and Provide Proof of Good Standing	√
Organize, Review and Provide Auditor's Letters	√
Organize, Review and Provide Company's Budgets and Plans	√
Organize, Review and Provide Internal Control Procedures	√
Organize, Review and Provide Other Relevant Records	√
Ensure Enforcement of Due Diligence Protection Agreements	√
Address Issues as they Arise	√
Negotiate Addendums Based on Due Diligence	√

If your due diligence did not uncover any deal breakers, then it is time to begin the process of preparing to close the deal. At closing it is important to have your Private Corporate Counsel present to ensure that you understand all of the closing issues addressed below, documents being signed, that the correct documents are executed correctly, and that any unexpected issues get resolved.

Close the Deal and Manage Transition	PCC
Prepare for Closing	√
Closing Checklist	√
Escrow Services	√
Review, Analyze and Advise on Closing Documents	√
Ensure Assignments of Key Contracts	√
Ensure Releases of Liability on Key Contracts	√
If Seller's Financing, Ensure Adequate Collateral	√
If Seller's Financing, Ensure Security Agreements Signed	√
If Seller's Financing, Ensure Correct Documents Recorded	√
Ensure IRS Compliance	√
Confirm Transition Management Issues Addressed	√

Successful entrepreneurs who exit their business recognize that there is always a risk to their personal assets since accidents do happen. They also recognize that they do not live forever. Changes in the environment, technology, and politics are unpredictable and can be devastating. They must take steps to protect their assets, and to create a plan. The earlier they engage in risk mitigation planning, the more chances they have of creating a plan that will be effective when they need it. Therefore, at the onset, it is a good idea to talk to your Private Corporate Counsel about the following:

Reduce Your Risks with Advice and Planning	PCC
Asset Protection Planning	√
New Venture Planning	√
Estate Planning	√
Segmentation of Risky Assets	√
Key Contracts to Limit Risks	√
Key Insurance to Cover Risks	√
Ready Access to Private Corporate Counsel to be Proactive	√

Entrepreneurs sell their business for many reasons, some business related, some personal related. They continually seek to achieve prime in their personal life cycle, relationship life cycle, family life cycle, professional life cycle, work/job life cycle, and their financial life cycle. The sale of their business can allow them to spend time on all of their life cycles and afford the things that will help them

be the best version of themselves, and give them the opportunity to help others. The Private Corporate Counsel’s membership program provides unlimited access to former business professionals to help them through each step of the journey and monthly coaching to address difficult issues as well as learn new ideas to ensure that they keep improving.

Success is also growing your business to increase sales, expand its market share, expand to other jurisdictions, and expand its offerings. When you are “working on your business”, you will have time to expand your knowledge, skills, experience and relationships. This will help you see the trends in your industry, and anticipate changes in the environment and technology, allowing you to identify opportunities that you are now ready to pursue. At this stage, it is critical to have your Private Corporate Counsel readily accessible to review and analyze the opportunities and help you choose the right opportunity for the moment. This requires consistent communications between you and your Private Corporate Counsel to help with the following:

Grow Your Business with PCC’s Help	PCC
Continually Analyze and Improve Your Business Model	√
Continually Analyze and Improve Your Value Proposition	√
Continually Working in Innovating	√
Continually Working on Differentiating From Competitors	√
Continually Identifying and Analyzing Trends	√
Anticipating and Preparing for Changes in the Environment	√
Anticipating and Preparing for Changes in Technology	√
Analyzing Key Life Cycles & How They Impact Your Business	√
Identifying and Analyzing Opportunities for Growth	√
Taking Strategic Advantage of Opportunities for Growth	√
Training Your Team to Make Sure They are Always Ready	√

If you are thinking of starting a new business, before making any decisions call us at 407-647-7887 to discuss your options.