



## SELL YOUR BUSINESS AND RETIRE?

by Charles Schaefer, Esq.

**N**early every day newspapers and business magazines report about the high volume of mergers, buyouts and acquisitions and a prediction that 2006 will be higher than 2005. The action is initially driven by private equity funds raising large amounts of money for buyouts of public companies and/or their divisions in order to achieve rates of return that exceed those available in the stock or bond markets.

Public company activity has a dribble down effect to businesses of all sizes. While it takes time, 2006 and 2007 look like some of the busiest times for mergers and sales of family and closely held entrepreneurial businesses that have reasonable growth prospects. Entrepreneurs thinking of cashing out in order to retire or diversify their assets within the next five years, should consider doing so during the 2006-2007 window.

Maximum sale or divestiture value is achieved, however, only with thorough preparation before "going to market." The first step may be calling your lawyer and accountant to discuss and create a plan for pursuing the sale process. If your personal attorney or accountant is not familiar with planning for the process, seek recommendations and names of experienced practitioners from friends or business associates. Look for specialists, especially in lawyers, in the same way you seek medical specialists from your internist or family doctor.

Just like the homeowner selling a house, the business owner needs to decide whether to go it alone or use an investment banker or broker. Experience generally shows that a broker serving as an intermediary/negotiator usually more than pays for its commission by obtaining additional sale price. The knowledge a broker or investment banker brings to the table is two-fold. First, the banker/broker sees many deals in the market and can help the entrepreneur decide about going forward by giving realistic pricing expectations. Second, the banker/broker has a feel and knowledge of who is in the market looking to buy and what type of business the buyers are seeking.

Preparation also includes having the lawyer/accountant/banker team meet to discuss how to best present the past results and future prospects of the business. Many adjustments can be made to past

expenses and historical results to legitimately dress up financial results to show a business operation with a profitable return on investment. Many entrepreneurs run their business not to maximize profits but to support one or more entrepreneurs and their families, and to minimize taxes. The dress-up adjustments tend to increase on-paper profitability by showing results that would occur if the sole objective was maximizing profit. Buyers and lenders seek maximum profits. Experienced brokers, lawyers and accountants know where adjustments make sense and where they are believable to a prospective buyer.

It is also time to finally put in order the business details that entrepreneurs "just let slide." Get key employees signed to employment contracts with non-competition provisions, if appropriate. Sign the renewal of those long-expired distributor and sales agreements. Get your real estate lease in order if you do not own the location. Correct all legal violations, even the minor technical ones. Make sure all the critical contracts of the business are in order and effective. Put in writing the "critical deals" that are now just a handshake with your buddy. Make sure all your intellectual property is properly protected. Spend the money on professionals and spruce up matters before going to market. It costs a lot more money to make corrections later under the buyer's pressure to close the sale. Many times it is easier and cheaper to put matters in order before you have a proposed transaction and before the other party knows you "must have" their cooperation in order to close the deal.

Once everything is fixed up or simultaneously with fixing it up, work with your advisors on the important information for any prospective buyer. Put this information in a formal booklet or offering memorandum along with appropriate historical and pro forma financial statements. Give the offering memorandum the same effort you give to your sales literature. Now you are ready to hit the market, put your best foot forward and look for all those buyers with cash to invest who are looking for returns on their investment.



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