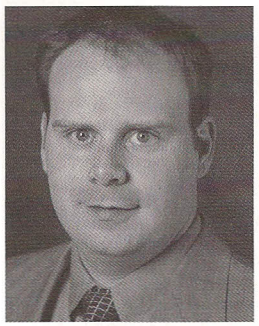
Seller Beware: Five Things to Consider When Selling Your Business

By Jeffrey C. O'Brien and Kristi A. Zentner

Selling a business involves more than price and finding a buyer. The following are some important questions to ask *before* entering into any negotiations regarding the sale of your business:



Jeffrey C. O'Brien

Kristi A. Zentner

1 Know what debts are owed by the business and which debts are secured by liens on the business's assets. The first step any smart buyer will take in evaluating your business will be to order a UCC, tax and judgment lien search for the business, so a smart seller will do so first. As a condition of the final sale you will need to convey "clear title" to the business' assets. "Clear title" requires that any creditor with a lien upon the assets file a release of the lien. Obtaining this release will require the seller to pay the creditor some amount to satisfy the debt for which the lien was granted. Before the seller has any discussions with a prospective buyer regarding a sale price, he/she needs to know what amount will be necessary to satisfy secured creditors.

2 Make sure the sale price is such that you have sufficient resources to meet your post-sale goals. Not only will the seller need to analyze the business' assets, income and cash flow as part of the pre-sale planning, but also the seller's personal spending habits. As you head into sale negotiations be certain of your monthly income and spending habits. The sale price will have to be such that your family can maintain the lifestyle to which it has grown accustomed.

3 Consult with a financial advisor to discuss a post-sale investment strategy involving the sale proceeds. Selling a business which you have owned for a significant period of time means that your primary source of income will no longer exist. It is important to create new income streams in order to maintain your desired lifestyle once the sale has been completed. One way of ensuring you, as a seller, will continue to have the means to maintain your lifestyle is to invest the sale proceeds in a prudent manner that minimizes risk and maximizes return. This can be accomplished through discussions with your financial advisor. These discussions should take place *before* you agree to sell, not after.

4 Structure the transaction properly to minimize adverse tax consequences. The sale of your business – whether structured as a stock sale or an asset sale – will have tax consequences. It is important to consult with your tax advisor and your attorney in order to structure the deal in the most favorable manner. This structuring may include a decision to defer some of the payment for the business. For example, an installment sale may be utilized to defer a portion of the gain until a later date. You should make sure that all of your advisors – accountants, financial advisors and attorneys – are involved in order to create a proper structure as you head into serious discussions with the prospective buyer.

5 Review and update your estate plan to account for the sale. Be sure to review your existing estate plan and update the plan accordingly in light of your newfound liquidity. Prepare a list of your post-sale assets and their estimated value to determine if you will be affected by federal or state estate taxes. Perhaps your liquidity is such that a more complex trust arrangement – such as a life insurance trust or charitable remainder trust – is warranted. If you do not yet have an estate plan, now is the time to have a plan put in place. &

Mansfield Tanick & Cohen can assist you with each of these important issues. For more information, contact Jeffrey C. O'Brien at 612-339-4295 (ext. 263) or by email at jobrien@mansfieldtanick.com; or Kristi A. Zentner at 612-339-4295 (ext. 254) or by email at kzenter@mansfieldtanick.com.

This is the second article of a two part series. The first article appeared in the Summer 2006 Issue of Law Watch.