



When do you finally get to walk away from the deal?

You have decided to sell your company soon and you are looking forward to your next stage of life. Now is the time to talk about a few issues that may or may not affect you after the sale of the business:

1. The Transition Period
2. Any Employment or Consulting Agreements
3. Looking Over Your Shoulder - Representations and Warranties

The Transition Period

Each transaction is a little different. The length and/or the need of a transitional period is determined by how involved you are with the day-to-day operations of the company and the relationships between the customers and the vendors. It is all about transferability. The buyer just wants to make sure that you can transfer your earnings stream over to him. I have seen transition period consist of being available by phone for a few weeks, to working 3 months with the buyer. If you want your transition period to be short, make sure that you have delegated what you can. When selling your business, it is better not to be needed, than to be needed.

Employment or Consulting Agreements

Many times, the owner wishes to stay on as an employee. If you choose this path, make sure you have thought it through and are willing to take orders from the new sheriff in town. Also remember that if you are getting market value for your company, then your salary will have to be market value as well. You will also lose some of the “discretionary” perks that you have taken from time to time. If you choose to maintain some ownership in the company (majority or minority), all the above will still apply plus you will need to develop a buy/sell, shareholders, or operating agreement depending on what structure your company is under. Once your employment agreement ends, then you begin the transitional period. Again, depending on your involvement in the company, it may be necessary to work a consulting agreement for a time period of a few months to a couple of years.

Looking Over Your Shoulder – Representations and Warranties

When you sell your company, it is customary to sign certain representations and warranties. This is when you become very acquainted with your legal advisor. These are the statements that can unwind a deal if you have misrepresented an event or something

of fact. For instance, if you state that you have no liabilities against the company and buyer is hit with significant liabilities that you did not disclose, then the transaction could get completely unwound, plus you could end up paying penalties and attorney fees. Generally the reps and warranties will last anywhere from 6 months through the statute of limitations which is generally 4 to six years. In many transactions, the parties will agree to compromise on the two year mark. However, the time frame chosen depends on the negotiations of the buyer and the seller and the strength of the company. It is imperative that you receive good legal counsel on these matters so that you understand the “whole” deal and can balance the risk with the reward.

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