

CONTINUING INVOLVEMENT OF OWNER AFTER THE SALE OF A BUSINESS

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One of the important decisions that a seller of a business needs to make is how long he or she is willing to stay with the business after it is sold. Seller should be honest with himself about his feelings and his desires. On the one hand, if the seller stays on with the business as an employee or a consultant, he needs to understand that this is a lot different than being an owner. In many cases, seller has owned his business for many years and obviously has reported to no one. That dynamic is completely different when you suddenly are reporting to the new owner or to the management group of a private equity firm. This is not an easy adjustment to make. It's similar to the long time bachelor who finally takes the plunge. Lo and behold he discovers his spouse (beloved that she is) is not too keen on his version of household tidiness (clothes draped over the door) or his decision to buy a sports car rather than a family sedan. At least in a marriage, you are both equals and you have the ability to compromise. When you are a consultant or an employee, it is a job and he is the boss. So one of the first things you need to consider is whether you can make that adjustment.

Nevertheless, if your primary objective is to sell your business, you must be realistic about the concerns of the buyer. This is especially the case if you have been the face of the business to your customers and vendors. From buyer's standpoint, he wants to give your customers and vendors a seamless experience through the transition. Often this can be accomplished by having the seller stay on in some capacity to work through the transition. This is entirely reasonable and is in the best interests of all the parties. A customer likes to know that seller is giving buyer hands-on expertise as to customer's needs. Vendors have greater confidence in extending finance terms when the seller stays around. In addition, no matter how smart your buyer is, his smartest move is to admit he doesn't know everything and can use the guidance and inside tips that only seller's experience can provide.

You have your own concerns as well. In many deals today, part of the purchase price might be in the form of a promissory note or an earnout. An earnout is a payment made by buyer in the future based upon the future performance of the business after closing the purchase. By sticking around in some capacity you have the ability to keep an eye on the business.

Long term employment agreements work in certain limited situations, especially when a recapitalization is done. In a recapitalization, the seller retains an ongoing minority stake, sometimes significant in the business. However, for the most part, in straight out purchases, it has been my experience that a consulting agreement is the best vehicle for continuity.

First, it satisfies all the concerns of buyer. It is a vehicle to continue seller's presence as needed as a mentor/advisor, and as an ambassador with customers and vendors. Next, if structured properly, it fulfills seller's concerns. First, it is usually part-time, giving seller a measure of the freedom he has longed for. Second, it often does not require seller to be at the buyer's office. Sometimes phone contact is sufficient. Third, it usually lasts for a brief duration. A six month period is not unusual. Fourth, and most importantly, a consultant maintains a professional relationship with buyer. It is a business proposition between equals and not the unequal employer/employee relationship.

Conclusion

When you decide to sell your business, you should be aware of the legitimate concerns of the buyer, your customers, and your vendors for some continuity that may require your continuing association with the business. In a recapitalization, an employment agreement with seller is the more appropriate vehicle since seller is returning a minority stake in the business. In most other cases, a short term consulting arrangement is the best vehicle providing the parties with the minimum continuity while at the same time providing seller with the freedom and flexibility he desires and the dignity he deserves from knowing that although he is no longer the owner, he is at least dealing with the new owner on the same level. That's the ticket you just might want.



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