

These tips can smooth the sale of your business

I have represented as counsel both sellers and buyers of a wide range of businesses for more than 25 years. I have identified some critical issues during that time that sellers of businesses need to consider in advance of the sale process. Successfully incorporating these thoughts into the sale can make it run more smoothly.

**IN
 SIDE**
 Mark Longenecker Jr.



LEGAL VIEWPOINT

SHOULD YOU USE AN INVESTMENT BANKER?

An investment banker will serve several roles but typically only gets involved in larger deals. However, smaller deals need the same assistance. An investment banker can assist in cases where the seller is unsure of available buyers by researching buyers and creating interest through preparing a book describing the seller. Hopefully, this process generates a higher sales price in an auction. However, such publicity could alert the seller's employees, competitors and the local press that a deal is in the works, which may not be advantageous.

On the other hand, if the seller is approached by a buyer, the seller may want to engage a banker to determine if the discussed purchase price is adequate. Pricing validation can also come

from a financial consultant or an accountant.

DOES YOUR CURRENT ATTORNEY HAVE ENOUGH EXPERIENCE TO SELL YOUR BUSINESS?

In larger deals, you might seek counsel with more resources, as due diligence requests and document drafting become burdensome and the need to respond quickly and effectively takes center stage. Mistakes or uncertain deal strategies threaten the very success of the deal or the price to be received.

Once experienced counsel is chosen, senior management should feel comfortable delegating control of the deal to counsel. M&A counsel will act as quarterback, developing strategy and deploying resources efficiently.

The time involved in selling a company is substantial and likely will draw away the resources necessary to run it. Sellers should devise a process that allows senior management the proper time to devote to running the business. Nothing is more devastating than having a sale fall through and realizing that your business operations have declined from lack of attention.

The rumor mill can swirl once your company's sale process is under way. It is important to maintain secrecy of the deal. Accomplish as many activities off-site as possible and ensure that senior management continues their daily routine as much as possible. If certain employees need to be involved in the process, you might offer a bonus to them for their extra work and

degree of confidentiality that you need.

WHAT ARE YOUR OBJECTIVES?

It is important for selling shareholders to understand their objectives precisely. If they want to sell the company and get a certain cash price, that is one thing. But goals can get diluted. The buyer may reduce the purchase price it offered after completing due diligence or it may try to substitute stock for cash purchase price. Selling shareholders should periodically check their original objectives and see where a line may be crossed signaling that this transaction is not in their best interests.

Successfully selling a company requires upfront work, potentially beginning several years before the sale process begins. A seller may need to make some changes to increase the opportunity for sale and the purchase price, such as having the company's financials audited. Any lingering lawsuits should be reviewed and resolved if possible and environmental or employee benefit compliance should be looked at to ensure proper legality.

If a buyer finds issue with any of these areas, it could scuttle the entire transaction or the buyer could require escrow of a portion of the purchase price or some other protection.

Ultimately, pulling together an appropriate team of advisers prior to any sales process is the most important strategy a business can follow to ensure a smooth and successful transaction.

Longenecker Jr. is a partner of Porter Wright Morris & Arthur LLP, practicing in Cincinnati. He can be reached at (513) 369-4222 or at mlongenecker@porterwright.com.

TIME TO SELL?

Even small deals can be tricky, so consider your advisers carefully. **Do your** homework, have your financials audited before the sale. **Have clear** objectives, and refer back to them during the process.