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Trust and Secrecy When Selling Your Business

By: Carlos Tavares

Perhaps the most important element of an M&A transaction is confidentiality. Defined as “the state of keeping or being kept secret or private”, it is crucial for all parties involved to respect the secrecy of the transaction taking place. If information is leaked, not only can it impede the potential transaction, it may have a significant impact on the operations of the business going forward, as well as its valuation and future relationships.

Owner dependence can negatively affect a transaction in the following ways:

When we mention information being leaked, we are referring to that information falling into the wrong hands of an individual. Perhaps it is a key employee who has a close friendship with the owner, a competitor looking for leverage or even a customer you've dealt with for years.

If you're considering entertaining a casual conversation about the sale of your business you should enter into a confidentiality agreement or use a trusted intermediary who will guide you and provide a layer of protection between you and other parties involved.

Let's look at some worst-case scenarios if the sale of your business becomes public knowledge:

- **You lose a key employee.** Some of your best employees are the heart of your business. Your potential buyer also recognizes this and has asked these personnel to sign new employee contracts. Unfortunately, one of them finds out about the transaction at a social event, becomes nervous and leaves the company due to uncertainty of their future.
- **Customers find out.** Your revenue and future growth are severely impacted because customers become aware of the transaction and are now worried they won't receive the same level of service and quality.
- **Competitors take advantage.** Competitors are quite possibly the party responsible for spreading the news faster than anyone else. They will 100% use the sale of your business to gain market share and damage your reputation. They may even pose themselves as a potential buyer in an effort to gain valuable information about your business and your customers.
- **Vendors get anxious.** Possibly worried about your cash flow and getting paid on time vendors will look to other customers to avoid losing future revenue.

The most attractive buyer is interested in your business's ability to generate future profits. Any event that takes away from this should be treated with respect and responsibility. Therefore, in order to avoid a massive headache in the future, it is beneficial to have all parties involved sign a confidentiality agreement.

In addition, legal counsel or a proper M&A intermediary should be considered as it will prevent costly mistakes down the road. Even though it may be tempting to save on legal fees by finding agreements online or from a different transaction, you will not be sufficiently protecting yourself as the seller.

Unfortunately, if you are not protected you are risking the ability to receive higher than

market value for your business and will minimize the final selling price. Buyers by default will be looking to scrutinize your business, so any sign that day to day operations are not running as per usual will become a red flag.

If possible, you should consider the following:

- **Technology.** Use data rooms to track information being viewed by all parties. Communicate through encrypted methods and always take control of information being exchanged.
- **People.** Properly vet all persons participating in the transaction and enforce confidentiality agreements. It is paramount to trust everyone involved
- **Plan Ahead.** Consider implementing policies and procedures with your employees that will begin to protect you going forward. You need to keep important data confidential, so why not start now?

Selling a business is a complicated process. It can take years to finalize the transaction and as the owner you are required to keep productivity high. Having to manage confidential information being leaked severely impacts the return on your investment.

Bottom Line

Imagine being days or hours away from selling your business and the deal completely derails? You have invested countless years of your life growing that business into a multi-million-dollar success, only to have information leaked at the eleventh hour and everything falls apart. You have the utmost business integrity and should be worried about keeping the sale of your business confidential. Let's work together to protect your secret.

About the Author

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Carlos is a sales professional with extensive experience in consumer packaged goods and media/advertising. Carlos began his career with Pepsi Beverages Company and quickly became a top rep earning the trust of his clients and ensuring Pepsi products were widely displayed throughout his customer's retail outlets. With a short but crucial stop with Ricoh Canada, Carlos then became a sales leader with Metroland Media (TORSTAR Corporation) where he quickly became a product expert in digital advertising strategies. Carlos was able to work with Key Accounts in the GTA and assisted them in developing and executing marketing/advertising campaigns and then progressed to National accounts working closely with CPG's and Retailers in helping their shopper marketing initiatives.

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