

5 Questions You Should Answer When Preparing To Sell Your Business

By Angie Armenta  *Improve the legal health of your business now and improve your sales experience later by undertaking a (mini) legal due diligence evaluation of your business.* As a business owner, you'll have plenty of work to do when you decide to sell your business. By completing a (mini) legal due diligence evaluation of your business now, you can prepare to impress potential buyers with a professional-looking business, eliminate unnecessary due diligence headaches, increase the likelihood of a successful closing (and decrease the time to get there), lower your legal costs of selling, improve your negotiating power and, just as important, discover deficiencies that might currently threaten your business. Although every business has unique considerations, regardless of your business structure or industry, answering these five questions (and taking any necessary action) is likely to improve your business now and position you for a better sales experience later:

1. Are your company's corporate records in order?

Ensuring that you have complete, up-to-date, organized and accurate corporate records that can quickly be produced to a potential buyer will reduce the due diligence burden later and show a buyer that the company is well organized and professionally run. Corporate records should include proper documentation of annual meetings, resolutions and minutes (if and when required); record books that accurately reflect the current ownership of the company and any prior transfers of ownership; and complete copies of the company's organizational and governing documents, including amendments. *Current Benefit: You formed an entity to protect against personal liability. Although following corporate formalities can be a hassle, they will help avoid the potential of a court looking through the entity to your personal assets (i.e. piercing the corporate veil).*

2. Can your company demonstrate clear ownership of its assets?

If technology or other intellectual property is at the heart of your company, be certain that the creators of the intellectual property have signed effective documentation vesting ownership of the technology or other intellectual property in the company. *Current Benefit: If your company does not clearly own key assets that are at the heart of the business, it's easier to correct those deficiencies sooner as opposed to later—before you are left tracking down a former employee, owner or contractor (who may have little incentive to cooperate) in hopes of securing the proper documentation.*

3. Could key employees leave and compete against you or take away your customers or other key employees?

A buyer will want strong management, key employees or both in place to ensure the success of the business after the closing, as well as assurances that your company has safeguarded the business from key employees who could compete against the company should they leave. If your key employees are not currently bound by restrictive covenants regarding confidentiality, noncompetition and nonsolicitation, consult with an attorney to fully understand the considerations involved in implementing an at-will employee agreement, as well as to assist with preparing a form that can be used with current and future employees. *Current Benefit: You, too, should be interested in protecting trade secrets and confidential information from improper use by employees after they cease employment, as well as protecting your business from employees who are capable of competing with you, or assisting another employer in recruiting away your key talent.*

4. How could your company's contracts impact the sale?

Understand the agreements you, your co-owners and your company are bound by and how those could impact the overall sale process or structure of the sale transaction. Such agreements may include buy-sell agreements among owners outlining the rights and obligations relating to certain business transfers; customer agreements; and supplier agreements. Issues among the owners impacting business sales should be understood and, if possible, settled before soliciting outside buyers. Understand if and under what circumstances customer and supplier agreements can be transferred to a buyer, as well as the company's termination and renewal rights under such agreements. It can often be difficult and time-consuming to get consent from key customers or suppliers (e.g., landlords) to transition an agreement to a buyer of your business. And, a buyer will not likely be interested in closing if the company's key customer agreements cannot be assigned over to the buyer or are expiring in a month, or if there are issues securing a long-term lease for the business location. (Practical tip: Try to negotiate favorable assignment rights in your agreements and calendar expiration and renewal dates to avoid unwanted automatic renewals or surprise expirations.) *Current Benefit: You won't miss the opportunity to terminate a bad service provider before an agreement automatically renews, and you may increase opportunities to negotiate with suppliers and customers if you have sufficient notice of an upcoming contract expiration or renewal.*

5. Is your company properly licensed and registered?

In addition to ensuring that the company's licenses and registrations are current (including confirming that your company is in good standing with the Secretary of State), consider how the company's operations may have changed and ensure that the company maintains all necessary licenses and registrations. For example, has your company expanded operations into another state or hired an out-of-state employee who works from home? If company operations cross state lines, visit with an accountant or attorney to confirm that your company is properly registered to conduct business in all relevant states and is registered with proper tax accounts and remitting all necessary taxes. *Current Benefit: Voluntarily correcting any issues before they are discovered by a regulatory authority puts your company in a better position to avoid or reduce any penalties that may be assessed with regard to past noncompliance.*

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