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# Guide to Selling a Small Business

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This guide is authored by the North Carolina Small Business and Technology Development Center (SBTDC), a business and technology extension program of the UNC System. It is a resource tool for business owners with limited knowledge of selling a business. This guide provides an overview of the key steps and documents involved and answers common questions.

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# Guide to Selling a Small Business

## Key steps, documents, explanations, and definitions

The following guide contains an overview of the key steps and documents involved in the sale of a small business. The table of contents roughly follows the timeline of the transaction.



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## Preface

Business owners may choose to sell their business for any number of reasons, but a prepared seller should have a legitimate, marketable reason for selling the business. Potential buyers will always ask about the seller's motivation for exiting. A reasonable and straightforward answer removes uncertainty in the mind of the buyer and ultimately makes the business more attractive. Common internal and external motivations for selling include:

### Internal

- Retirement without a viable succession plan.
- Recent success leading to relatively high valuation.
- Lost desire to run the business.
- Partner dispute or sudden loss of a business partner.
- Personal financial needs.
- Change in lifestyle (e.g. death of a spouse or partner, illness, aging, divorce settlement, or new spouse.)

### External

- Downturn in the business cycle.
- Unfavorable government regulation.
- Increasing competition.
- Market shift requiring additional investment.

## Involve competent advisers early

Selling a business is a daunting exercise, even when the owners are well-prepared. Given the endless number of stumbling blocks on the path to a successful sale, it is critical that a seller engage appropriate advisers early on in the pre-sale process. Advisers help set expectations and walk the seller through the process. A potential buyer is likely to have a team of professional advisers assisting throughout the process as well.

## Who should I hire?

Every transaction is different and requires different types of assistance. At a minimum, the seller needs the assistance of an experienced tax consultant (accountant, wealth manager) and lawyer who have guided clients through the sales process in the past. A business exit adviser or valuation expert can help the selling business owner understand the value of the business and how it can be improved prior to sale.

## Should I hire a broker?

Business brokers or investment bankers<sup>1</sup> may or may not be hired to assist in the marketing and negotiation of the sale. Competent brokers have assisted in the sale of many businesses and can add value through their network of potential buyers, knowledge of comparable transactions, and experience with negotiation tactics, among other areas. Depending on the anticipated time commitment, many small business owners choose to carry out these functions themselves.

A professional broker will require clients to sign an Engagement Letter creating a contractual arrangement between the selling company and the broker. The general components of an Engagement Letter include:

- A description of the services provided. The description may be comprehensive and include identification of prospective buyers, creation of selling memorandum and marketing documents, assistance in negotiation of the purchase agreement and related agreements (employment, non-compete, etc.), and guidelines for conducting due diligence.
- How the broker will be paid. The broker's compensation is typically a percentage of the total consideration, ranging from over 10% on smaller deals to 1% on deals in the tens of millions. All fees are negotiable and a minimum transaction fee may be required.
- The length or term of the agreement. Typically, the term is 12–24 months and may include a “tail” payment whereby the broker will still receive payment if a sale is consummated after the expiration of the agreement but within a specified period of time afterwards (i.e., during the tail). The “tail” clause prevents the seller from kicking the broker to the side once a deal is lined up.

## Confidentiality is key

Competent advisers should be a key part of the seller's team during the sales process. Advisers are bound to confidentiality and can help safeguard the company's intentions. Confidentiality is a critical piece of the sales process and requires sellers to be disciplined, particularly if proceeding independently. Any breach of confidentiality risks the loss of the sale, employees, or customers.

## PRE-SALE DOCUMENTS

Prior to beginning the sales process, a business must ensure its own house is in order. This involves collecting or drafting the key business formation, organizational, operational, financial, and sale-related documents that a buyer will ask to examine prior to closing a deal. Organizing these documents prior to beginning the sales process will avoid delays in the later stages of the transaction that can cause serious problems with the sale and may even kill the deal. The pre-sale documents listed on page 8 are representative of legal and financial diligence requests commonly made by prospective buyers. It is recommended that the seller have as much prepared and available to their advisers as possible to aid in the sales process and pre-engagement evaluation.

Whether a business must have all, most, or just a few of the documents listed below depends on its size and the requirements of potential purchasers. Sophisticated purchasers or larger businesses may expect to see an audit from a regional accounting firm, whereas accounting software printouts may suffice for smaller companies.

## Potential pre-sale documents to collect or prepare:

### Business formation

- Articles of incorporation
- Bylaws
- Capitalization table
- Stock certificates
- Board of directors resolutions
- Board of directors meeting minutes



### Organizational

- License agreements
- Intellectual property (patents, copyrights, trademarks)
- Staff list with hire dates and salaries
- Employment agreements
- Employment policy manual
- Organizational chart
- Business procedures manual

### Operational

- Business licenses, registrations, and certifications
- Building leases or deeds
- Equipment leases, deeds, and maintenance agreements
- Litigation or settlement agreements
- Inventory list with value details
- Product/service descriptions and price lists
- Supplier and distributor contracts
- Business plan
- Client list and key client contracts
- Marketing plan and related materials
- List of future opportunities for growth

### Financial

- 4–5 years of financial statements
- Seller's Discretionary Earnings (SDE) calculation (identify non-recurring, non-essential business expenses)
- Key financial ratios and/or trends
- Aged accounts receivable and accounts payable reports
- Outstanding loan agreements
- Bank and credit card statements
- Corporate or Schedule C tax returns
- Promissory notes
- Security agreements
- Personal guarantees
- Insurance policies
- Description of liens and all UCC filings
- Escrow agreements
- Depreciation schedule from tax return

### Transaction-related (created during pre-sale process)

- Mutual non-disclosure agreement
- Selling memorandum
- Letter of intent

## Think like a buyer

A company is worth what a qualified buyer will pay. Key value drivers for a business include size, market and industry trends, financial performance, and economies of scale. It is helpful for a selling business owner to understand that buyers typically value a private company in one of three ways:

### 1) Market approach

When comparing companies in the same industry via a similar NAICS code, the market approach derives value by applying multiples (“rules of thumb”) to the company’s gross sales and/or net earnings.

In smaller owner-managed companies, the seller’s adviser can restate earnings to reflect Seller’s Discretionary Earnings (SDE). SDE is calculated by adding back the owner’s lifestyle expenditures (including the owner’s salary) to reflect the true earnings of the business by year. This reflects the earnings a buyer can expect to receive from the operations of the business. In larger companies, earnings will be stated as Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA). This value will include the manager’s salary. By applying industry-specific “rules of thumb” expressed in multiples of gross sales, SDE, and EBITDA, a reasonable expectation of value can be estimated based on what buyers have paid for companies in the same industry.

### 2) Asset approach (or book value)

If the selling business is not generating a profit or its sales do not exhibit a reliable trend, it may be valued based on its net asset value, which is calculated by subtracting the total value of the company’s liabilities from the total value of the company’s assets. If possible, a business should consider delaying its sale until it can show a multiple of years of revenue or profit growth.

### 3) Income approach

If the selling business has operated for long enough that a buyer can reliably forecast future financial performance, then one might argue that the business is worth a percentage of the future cash it will provide to its owners. Annual cash flow in the forecast period (typically the net income after tax) is added, then “discounted,” based on the expectation that a future dollar will be worth less than a dollar today.

#### General valuation advice:

- Use advisers! Competent brokers, accountants, and lawyers can provide an informed opinion as to what the selling business is worth based on past experience, the current market, and the underlying financials of the business.
- When potential buyers evaluate acquisition candidates, total annual revenue is often their primary gauge of the size and potential of the business. Top-line sales growth can often justify a higher sales price.
- Don’t overlook physical assets. Potential buyers are evaluating your company based on the overall value. A tidy appearance and clean financial records can go a long way to demonstrating an organized culture.



## FINDING THE RIGHT BUYER

The process of identifying the correct buyer for your business can be time-consuming and requires forethought and discipline on the part of the seller. The seller should work with their advisers to develop a list of prospective buyers.

### Step 1: Generate a list of all potential buyers.

The seller should consider all internal parties, such as business partners, employees, or family members, who may be interested in buying the business. Once potential internal buyers are exhausted, the seller should look to external parties to add to the list of prospective purchasers. External buyers can be divided into three categories based on their different motivations, risk tolerances, and synergies:

- Strategic (complementary businesses) — have the most synergy and high motivation; can justify paying more.
- Financial (private equity groups) — are most interested in returns, exit strategy, and management team.
- Individuals — are buying themselves a job and are typically small companies; have no synergy and lowest multiples. A business with annual revenue of less than \$1 million will generally find a buyer in this category.

The seller should also keep in mind that half of all sales of businesses that sold for \$500,000 or less were to a buyer in the same city. The seller should make sure to include buyers that are close to home on the list.<sup>2</sup>

### Step 2: Prioritize the list of potential buyers based on the selling business' requirements and the capabilities of the buyer. Key differentiators include:

- Financial capacity:
  - Will the buyer pay with cash, a loan, the seller's cash (seller-financing), or stock?
  - How the purchaser plans to pay for the company directly impacts the seller's taxes, the amount of time needed for closing, the seller's future involvement in the business, and additional aspects of the deal.
  - See Figure 1 on page 19 for a detailed explanation of the various ways a buyer may pay the seller and the implications for the seller.
- Acquisition experience/track record.
- Purchaser's acquisition appetite — are there any known or published acquisition preferences?
- Cost savings or synergies in the deal to be realized by a customer, competitor, or supplier.
- Sufficiently developed infrastructure to absorb the selling business.
- Cultural fit — does the selling company's management like and trust the potential buyer?



### Step 3: Contact the potential buyers.

The selling company's management or owners may contact potential buyers if a personal relationship exists. However, it is best practice for the seller's broker to reach out to prospective purchasers on their behalf. The broker should engage potential buyers in discussion without disclosing the identity of the selling company.

- **Confidentiality is very important.** Sellers may send potential buyers a one-page summary document that contains only very high-level business and financial information. Never share sensitive information with a prospective buyer until a non-disclosure agreement (NDA) is signed. The agreement may require the parties to safeguard non-public information, freeze hiring, discontinue any current and future discussions that might lead to an alternative transaction, and meet other specified terms or conditions. Otherwise, the seller risks losing customers, employees, and revenue if word of a potential sale leaks out. Once a potential purchaser demonstrates sufficient interest and signs an NDA, the selling company's management or broker can send the selling memo and set an initial meeting or conference call among the parties. Valuable strategies to consider when contacting potential buyers include:<sup>3</sup>
  - Preparation of a confidentiality agreement (NDA) in advance that includes an expiration date and a commitment to confidentiality by both parties.
  - Creation of a separate email account for prospective buyer inquiries.
  - Use of a non-business phone number.
  - Preparation of a selling memorandum.<sup>4</sup>
  - Withholding detailed information until there is a signed letter of intent.<sup>5</sup>

# THE SELLING MEMORANDUM

The selling memorandum, or “selling memo,” is the principal sales and marketing document a company uses to generate buying interest. The selling memo is typically drafted by the seller’s broker, who should include industry-specific details. It should be tailored to both the size and complexity of the business and the requirements of potential buyers. The selling memo is similar in structure and content to a business plan.

A selling memo should be shared only with qualified buyers who have executed an NDA. Be sure to keep track of the number of copies of the selling memo distributed and to whom. Specific sections of the selling memo typically include:



## 1) Executive summary<sup>6</sup>

## 2) Key selling points

- What are the selling business’ competitive advantages in its market?
- Who are the key customers?

## 3) How does financial performance reflect the business’ success?

## 4) Description of business

- Brief history of company and core business model. How does the company make money?
- What are the key physical assets of the company? How are they owned (outright, equipment finance, mortgage, etc.)? Where are they located?
- Who are the key personnel that are likely to remain with the company following the sale?
- What is the intellectual property?

## 5) Market overview

## 6) Financials

- Include income statement and balance sheet showing historical performance and the key financial ratios.

## FORMS OF TRANSACTIONS

In most cases, the sale of a company's ownership interest occurs in one of two ways:

### 1) Sale of stock<sup>7</sup>

A stock sale transfers the actual ownership of the business entity (whether it is a corporation or LLC) to the buyer and includes all the assets (inventory, licenses, money, furniture, customer contracts, etc.) and liabilities (interest payments, legal judgments, etc.).

Future liabilities are also transferred, since the owner of the stock will be responsible as the business owner going forward. Therefore, when the selling business has taken actions that may expose it to liability in the future, a buyer will likely avoid buying the stock. However, the sale of stock is a much simpler transaction to document. If the business is losing money, a buyer may want to purchase the entity and the loss carryover for tax reasons.



### 2) Sale of assets

In an asset sale, the selling company receives cash or stock, and the buyer purchases all or some of its assets and assumes all or some of the selling company's liabilities and leaves the actual business entity owned by the seller.

An asset sale requires a more detailed agreement than a stock sale. The agreement must specify which assets are to be purchased and which liabilities are to be assumed. This requires attention to detail and can be time-consuming. It is typically used when the buyer or seller would like to carve out certain assets and/or liabilities from the transaction. An asset sale is the choice of many business owners when the transaction is less than \$1 million.

#### A buyer might require an asset sale if:

- There are environmental liabilities, dormant legal claims, or other actual or potential liabilities that would be time-consuming and expensive for the seller to address.
- The business cannot produce sufficient ownership records to confirm that the buyer is actually purchasing 100% of the selling business' stock.

## LETTER OF INTENT AND NEGOTIATIONS

The Letter of Intent (“LOI”) is a non-binding agreement between the buyer and seller. Its purpose is to list the key terms and conditions upon which the purchaser proposes to buy the business. Depending on the type of transaction and the preferences of the potential buyer, a Term Sheet or Memorandum of Understanding may be used instead of a LOI. The purpose of each agreement is the same. These three documents are not essential to a sale, yet they are effective starting points for more serious negotiations and due diligence. An LOI is also helpful to the seller if there is more than one potential buyer because it helps the seller compare the terms and conditions of each offer.

**What is it?** The LOI may include as many terms and conditions of the transaction as the parties choose, such as: the proposed purchase price, timeline to closing, form of payment, source of financing, future seller involvement in the business, etc. In a cash deal, for example, the LOI may spell out the funding source to show the seriousness of the buyer. While these terms are almost always non-binding, the LOI may include other terms that bind the seller, e.g.:

- A non-disclosure forbids public disclosure of the deal or information learned through negotiations.
- An exclusivity or “no-shop” period during which both parties stop talking to other potential deal partners.

**A word of caution:** A LOI is not a done deal. As mentioned, the LOI is typically non-binding, so either party can pull out of the deal until a purchase agreement is signed. Common reasons for deals to fall through include findings from due diligence, passage of time and its effect on the company’s valuation, and the net working capital target/adjustment.<sup>8</sup> Prior to beginning negotiations with a potential buyer, the seller should work with their adviser to establish clear objectives for the transaction. Referring to these objectives either privately or publicly during the negotiation process will limit emotional tangents and keep the parties anchored on important points.

### Negotiations

This is where experienced advisers literally pay off. They should know your market and what selling terms are normally included or excluded from a sales agreement. Additionally, conducting negotiations through an adviser can shield the seller from the pressure and emotion associated with the sale of a business.

The three elements of all meaningful negotiations are terms, conditions, and price.

#### Helpful tips for negotiating:

- Move quickly when possible; delays can hinder buyer interest and may lead to concerns.
- Most advisers recommend that the selling business refrain from negotiations until it has a signed LOI or term sheet that lays out the buyer’s proposal.
- Understand the buyer’s motivation to buy the company: How will they make money now or in the future?
- Don’t let negotiations turn personal.

## DUE DILIGENCE

Due diligence is the investigation of a target company by reviewing documents and interviewing people with knowledge of the company. The buyer wants to verify the assumptions outlined in the LOI. The selling company's role in the due diligence process is to respond in a timely fashion to the buyers' due diligence requests. Thorough document preparation during the pre-sale period will increase the odds of a quick and smooth due diligence process.



### The buyer's goals of due diligence are to:

- Uncover the material issues that could impact the acquisition of the selling company.
- Validate the valuation of the selling company.
- Draft appropriate documents that address unique aspects of the sale.
- Identify impediments to closing the deal.

### The buyer typically engages the following parties to assist in due diligence:

- Attorney — looks for legal/regulatory issues.
- Accountant — looks for financial misstatements or risks.
- Adviser — conducts financial investigations and reviews all documents prior to final negotiations.
- Buyer's executives/employees — looks into commercial operations of the selling company.

So that due diligence is minimally disruptive to normal business operations, the parties should make arrangements such as using a data room for electronic documents that can be reviewed off-site. The data room can be a critical record of the disclosures upon which the parties in the transaction rely, since it insures that all parties are negotiating, drafting, and, ultimately, executing an agreement based on the same information.

The seller should be prepared to address any questions that may arise from watchful employees. It is very important to be truthful with employees without arousing concern. The buyer wants to be sure good employees stay with the company after the transaction closes, as a trained workforce is a key value driver in most deals.

# PURCHASE AGREEMENT

The purchase agreement may go by different names and contain slight variations depending on the type of transaction. It is customary for the buyer's attorney to draft the initial purchase agreement and other closing documents. However, this can be decided among the parties to the deal. Below is a list of provisions common to most purchase agreements.

## Identifying information

Legal names and location of the seller, buyer, and businesses.

## Subject of the sale

In an asset sale, the purchase agreement will identify all assets (inventory, accounts receivable, fixed assets, etc.) purchased by the buyer and any liabilities that will be assumed by the buyer. Typically an asset sale will be structured such that the buyer will purchase the business free of most liabilities. In a stock sale, the purchase agreement will describe the ownership structure of the selling business and identify the seller's stock that is to be transferred to the buyer.

## Purchase price

This section should include the amount to be paid for the subject of the sale described above, in addition to payment terms describing when and how the payment will be made to the seller.

## The closing

- Date
- Location

## Representations and warranties<sup>9</sup>

Representations are statements of fact about the business, and a warranty is a promise to make the recipient whole if the statements turn out to be untrue.

- By the Seller
  - This section allows the seller to list their promises regarding the current condition of the selling business that may or may not have been reviewed in due diligence (e.g., the seller has title to the assets they are selling, the sale is authorized by the legal owners of the business/assets, the financial statements are accurate, all material information has been disclosed to the buyer, etc.).
- By the Buyer
  - A buyer's representations and warranties are short and typically focus on the ability to pay. If the selling company's owners are receiving stock as payment, this section may be more developed.

## Seller's covenants

This section lists the specific actions that the seller promises to undertake in order to complete the transfer of the business to the buyer. This may include continuing to pay employees during the transition, changing contracts as necessary, and other agreed upon terms. The seller's covenants are a potentially sensitive negotiating point, since the buyer is dictating how the seller should run its business from acceptance of the purchase agreement through closing.

## Conditions to closing

This section will include any requirements the buyer or seller wants to impose on the other party prior to closing. For example, in a third-party financed transaction, the seller may require that the buyer apply for, receive, and provide evidence of financing. Additionally, shareholder and board of director approval may be required.

## Remedies

Define the allocation of costs associated with due diligence, legal and accounting fees, and other expenses in the event the sale does not occur.

## Confidentiality

The purchase agreement should contain a provision that requires a prospective buyer to maintain the confidentiality of the seller's sensitive financial and business information for the duration of the negotiations and possibly even after the sale of the business.

### Post-sale involvement:

Address how the seller or owner will transition out of the business, and how and by whom the management and employees of the business and the suppliers, vendors, distributors, and other stakeholders will be notified of the change in control and/or ownership of the business.

- Management agreement — This agreement outlines the responsibilities of the seller to the buyer after closing and may include a period of seller support either on-site or on-call for a defined period of time.
- Non-compete agreement — This agreement may prevent the seller from opening a business in the same industry for a defined period of time, in a defined area. A portion of the purchase price may be allocated to this agreement.
- Seller financing — When the seller finances a part of the transaction, the buyer must provide the seller with periodic (monthly, quarterly, annual) financial statements of the business until the debt is satisfied.



## THE CLOSING

The closing is when the buyer delivers and the seller receives the agreed upon payment, whether it be a bank check, wire transfer, stock certificate, or other valuable consideration. In a small business sale, the signing of the purchase agreement and closing are typically simultaneous. The closing may take place in-person (all parties and advisers are physically present at a single location) or virtually (signed documents are emailed, and payment is transferred electronically). It is not until the closing that the owners of the selling business realize the benefit of the sale. “It (the sale) is not over until the check clears.”

### Third-party consents

The seller must manage the process of obtaining third-party consents, where necessary. The entire deal could be put in jeopardy if key clients haven't agreed to amend their contracts or a landlord fails to transfer a lease.

### Key closing documents

The following documents are often essential to the closing process. In addition to evaluating whether each item on this list is relevant to the sale of the business, the seller should consider getting an opinion from a legal professional who is knowledgeable about the closing process and the documents required.

**In more complicated transactions, a “closing checklist” may be prepared by either party’s attorney to keep track of the documents to be signed and delivered and other actions necessary to affect the transaction.**

1) **Closing certificate**

Certifies selling company is materially unchanged since the signing of the purchase agreement, if there is a gap in time between the signing of the purchase agreement and the closing.

2) **Secretary certificate**

Confirms that all persons signing the documents can bind the company.

3) **Board and stockholders consents**

Verifies that the selling and/or buying company's actions are properly authorized by the board of directors and shareholders, if necessary.

4) **Ancillary agreements and documentation**

Examples: assignment of lease or real estate, agreements with suppliers or distributors, licenses or permits held by the business, etc.

5) **Wire transfer instructions (if necessary).**

6) **Filings (if necessary).**

7) **Regulatory approvals (if necessary).**

**FIGURE 1: Ways a buyer pays a seller**

CONSIDERATION PAID	PROS	CONS
<p><b>Cash</b> It's cash!</p>	<ul style="list-style-type: none"> <li>• The seller walks away from the closing table with the deal concluded.</li> <li>• Eliminates risk that the buyer won't be able to make post-closing payments.</li> </ul>	<ul style="list-style-type: none"> <li>• It's tough to find an all-cash buyer for a business.</li> <li>• Lump-sum payout may push the seller into a higher tax bracket.</li> <li>• Less payment risk typically equates to lower selling prices.</li> </ul>
<p><b>Third-Party Financing</b> A lender provides a percentage of the purchase price of the business after conducting its own investigation into the business and potential buyer.</p>	<ul style="list-style-type: none"> <li>• Expands the list of potential buyers since most people cannot afford to buy businesses with all cash.</li> <li>• The third-party providing the loan will conduct its own due diligence on the buyer, serving as validation.</li> </ul>	<ul style="list-style-type: none"> <li>• Post-recession bank loans can require an extensive qualification process (sellers should leverage adviser relationships).</li> <li>• Deal may be delayed to allow third-party to conduct its own due diligence on the seller.</li> </ul>
<p><b>Seller Financing</b> The seller finances a portion of the purchase price with a secured promissory note to be paid down with interest over time. Often the loan will have a "balloon" payment due 3–5 years after the sale, with the expectation that the buyer will be able to refinance the loan with a bank at that time.</p>	<ul style="list-style-type: none"> <li>• Demonstrates confidence in the business' ability to generate future profit.</li> <li>• Greatly expands the number of potential buyers to include those that need financing beyond what a third-party can provide.</li> <li>• May avoid higher tax rates by spreading the proceeds over multiple years.</li> <li>• The promissory note may yield interest to the seller.</li> </ul>	<ul style="list-style-type: none"> <li>• The seller takes on the significant risk that the buyer doesn't pay interest or principal on the promissory note.</li> <li>• Upon default of note secured by business' assets, the seller may end up as owner of the business again.</li> </ul>
<p><b>Earn-Out Payments</b> The seller "earns" a percentage of the purchase price based on the business hitting specified financial performance targets.</p>	<ul style="list-style-type: none"> <li>• Similar to seller financing, earn-out payments demonstrate the seller's faith in the business' ability to generate future profits and also spread taxable sale income over multiple years.</li> <li>• May be used to bridge the gap when the buyer and the seller cannot agree on the value of the business.</li> </ul>	<ul style="list-style-type: none"> <li>• Payments are usually determined by accounting calculations that put both selling and buying parties at risk.</li> <li>• The seller may need to stay involved to ensure the business hits the specified performance targets.</li> </ul>
<p><b>Stock</b> If the buyer is a business, it may pay for the selling company with stock.</p>	<ul style="list-style-type: none"> <li>• Receiving stock in the buying entity may avoid all taxes.</li> <li>• Share in future gains of the combined business.</li> </ul>	<ul style="list-style-type: none"> <li>• Most private company stock requires a 6-month or 1-year holding period.</li> <li>• Selling the stock in the private market may be difficult.</li> </ul>

## Endnotes

- 1 Both business brokers and investment bankers are referred to as “brokers” throughout this document.
- 2 Market Pulse: Quarterly Survey Report, Pepperdine University School of Business and Management (2013), available at <https://bschool.pepperdine.edu/institutes-centers/centers/applied-research/content/2013ppcmpcapital-markets-report.pdf> (“If you’re a small company, you have almost a 75 percent chance of finding your buyer within a 50-mile radius.”)
- 3 Curtis Kroeker, When Selling a Business, Confidentiality is Key, <https://www.inc.com> (2013), available at <http://www.inc.com/curtis-kroeker/confidentiality-business-sale.html>.
- 4 Refer to the Forms of Transactions section for more information regarding the selling memorandum.
- 5 Refer to The Closing section for more information regarding letters of intent.
- 6 A one-page summary of the selling memo built from the Executive Summary section is helpful in the early stages of negotiation.
- 7 If the business is a corporation, this will take the form of a sale of stock. If the business is an LLC, it will take the form of the sale of the members’ interest in the company.
- 8 Dani Sherrets, 4 Common Reasons Why M&A Deals Fall Apart, <https://www.lutz.us>, available at <https://www.lutz.us/4-common-reasons-deals-fall-apart/>.
- 9 Previously Disclosed Letters. Depending on the size of the sale, the parties’ attorneys may each draft a “previously disclosed letter” that lists the exceptions to the representations and warranties in the purchase agreement. The purpose of this letter is to provide helpful information in transferring the business to the other party and to protect the company writing the letter from liability.

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