

Confidentiality During the Sale Process

You can't believe it! You decide to sell your business and the next day it seems that half the city knows you're trying to sell. What affect will that information have on your employees, vendors competitors and customers?

This is a real concern of owners once they decide to sell. The next thing they know is that everyone in the free world knows their intentions. How does that happen and how can it be prevented?

In order to make the best possible decisions for their families, their companies, and themselves, owners must talk about their plans to sell with informed and experienced professionals. They need factual information about how the exit planning and sale or transfer processes work. They need expert guidance about whether their company is poised to command top dollar and information about market conditions for sales in their industries. And finally, owners need help sorting through all of the emotional issues that surround the departure from their companies.

Experienced transaction advisors (attorneys, business brokers or investment bankers) provide the input owners need on a confidential basis. Nothing that an owner discusses with the transaction advisor leaves the room without that owner's express consent.

Information leaks seldom originate with your advisory team. They know the importance of confidentiality. They understand that a breach of confidentiality on their part will affect not just your business, but their reputations in the community.

The confidentiality problem then does not lie with your advisors. How then does an owner maintain confidentiality once the information-gathering process ends and the sale process begins?

Should you decide to use a transaction intermediary (Business Broker or Investment Banker), that intermediary will contact interested buyers and disseminate information about your company to parties known and unknown. To safeguard your confidentiality, screen the potential buyer list, removing competitors or companies with whom you do business. Make sure that initial marketing efforts to potential purchasers do



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not identify your business by name. Finally, require interested, qualified buyers (of your un-named company) to sign strong and binding confidentiality agreements before learning the identity of your business or any confidential information.

Like any other contract, a confidentiality agreement is not bulletproof. To make it as strong as possible it: 1) should be written by your transaction attorney (not the buyer's!); and 2) must precede any disclosure of information. Good investment bankers or brokers do not send out blanket mailings. They carefully identify and pre-screen targets before making a first contact.

All of these safeguards are in place to protect you, the owner, from the consequences mentioned above: nervous customers, jumpy employees and opportunistic competitors. All the scrupulously maintained barriers in the world, however, cannot shield an owner from the most dangerous threat to confidentiality—the owner's own mouth. In the few cases when confidentiality is breached, the leak generally originates with the owner. He or she just couldn't maintain silence until the deal closed.

Let that be a warning to the loose-lipped. But let it also reassure the vast majority of owners: if you can control your own conversations, you can control the confidentiality of the entire sale process.

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