THE VELD GROUP VELD MERGERS & ACQUISITIONS

How to Be Sure You Are Leaving Your Business in Good Hands

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Most business owners are considering several options for the future of the ownership of their businesses. If you're keeping your options open, that is typical. But business owners who end up selling their businesses to an outside, unrelated buyer often report that they wish they had known more about what the sale process would be like, and that they wish they had spent more time (years) preparing. So, whether you are actively looking for a buyer right now, or if a sale is only one possibility you're considering for the future, it's important to take steps today that could be helpful in a future sale. If you put the company on the market, there will be a lot to think about, and anything you can do today to make that process easier is well worth the effort.

Benefits of Planning Ahead

Selling your business can be overwhelming. You probably want to be sure that your company will be in good hands after you leave. Don't wait until after you've made the decision about who your buyer will be to make sure that your most important employees remain loyal to you and the business. By then it might be too late. To improve the chances that your employees stick around and continue to support the business plan that enabled you to attract a good buyer, consider taking the follow precautions.

Tips to Keep Your Key Employees Around

1. Although this may seem obvious, you may want to have your high-level employees sign a covenant not to compete well before you put the company on the market (and ideally, at the time they are hired). This can be tricky because you could easily offend your most valuable employees with this request, and they could do exactly what you didn't want them to do in the first place – leave and work for a competitor. Of course, you always need independent legal analysis to determine the conditions under which, if any, covenants not to compete are enforceable. In most, but not all, states, covenants not to compete are generally unenforceable except or unless they meet certain rather narrow exclusions—exclusions which often apply to key employees and management. If you are not a candidate for the non-compete, you may be able to implement other types of restrictions that suit

your needs and are enforceable.

2. Create an effective incentive plan for your employees. In your incentive plan, be sure to “handcuff them to the business” (so to speak). This means create an incentive plan that encourages key employees to stay with your company for many years after your departure. You can do this in several ways. It’s best to work with your full advisor team to think through incentive compensation options, vesting schedules, funding devices, forfeiture provisions, and payment schedules.

Time is on your side when you start planning early. It can mean the difference between options being available to you or being off the table. Planning ahead to keep key people around can also have additional benefits, even if you decide you’re never leaving your company.

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