

# Getting Ready to Buy or Sell a Practice – An Attorney's View

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Presented by J.V. Anderton  
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# For the Seller: Succession Planning

- Broader topic than the transaction issues I'll be focused on here.
- Three legs of the stool:
  - Maximize Transferrable Business Value
  - Ensures Owner is Financially Prepared
  - Ensures there is a plan for “What's Next”

Peter Christman

Cofounder of the Exit Planning Institute

Author of The Master Plan

# For the Buyer

- Process before the decision to buy is also outside the scope of this presentation.
- Key issues to consider:
  - Are you/your team prepared to take the entrepreneurial risk, both financially and emotionally?
  - Do you have the financial ability to survive if this does not work?
  - If it works very well, do you have a plan to grow and/or scale?

# Key Topics in the Buy/Sell Transaction

- Structure/Types of Sale/Purchase
- Financing
- Documentation issues
- Due Diligence Matters
- Communications

# Structure/Types of Sales

- Outright Sale – Full Transition and Exit
- Partial Sale – Opportunity to Grow with new Capital and Energy
- Gifting to Keep in the Family – Estate Planning issues
  - Taxable Gifts?
  - How to make “fair” if there are multiple children but only one vet?
  - Remember family can purchase as well.

# Structure/Types of Sales (Slide 2)

- Asset Sales – Preferred by buyers (and their lenders!) for liability and tax reasons
- Stock/Ownership Interest Sales – Usually a better tax treatment for seller, but liability issues for buyer.

# Financing Matter

- Most common is buyer gets a loan from the bank to complete an asset purchase and bank gets a first priority lien on all assets.
- Other Options:
  - Seller Note/Financing (either in full or via a “Seller’s Second”)
  - Earn-Out – Purchase Price Payments made over time that will vary depending on performance of the business post-closing (risky for seller)
  - Rollover Equity – Commonly used in PE deals. Be cautious.

# Documentation Issues

- In sequence:
  - 1) The Non-Disclosure
  - 2) The Letter of Intent
  - 3) The Purchase Agreement
    - a) Representations and Warranties
    - b) Indemnification Provisions
  - 4) The Post-Closing Employment/Consulting Agreement (if applicable)
  - 5) The Non-Competition Agreement



# Due Diligence Matters

- Buyer's Opportunity to Confirm the Representations and Warranties and to "Kick the Tires."
- Financial Records
- Employee Records (and Interviews?) and Employee Benefit Plans
- Real Estate and Asset Inspections
- Litigation (threatened or pending?)
- Material Contracts
  - Consent notices?

# Communications

- Needs to be thoughtful and coordinated
- Three key groups to manage:
  - 1) Key Employees
  - 2) Other Employees
  - 3) Third Parties (vendors, customers and the public)

# Thank You!



- Any questions, please contact me:
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