

When it's Time to Explore "What's Next?"

Initial Legal Considerations When Planning a Sale or Other Transition of Your Business

You've built a business that you're proud of, but it's time to think about what comes next. Perhaps a competitor or outside investor has approached you with an enticing offer. Or a family member or key employee(s) has shown interest in leading your business into the future. Whatever the reason, you're thinking about "What's Next?" and how to move on to a new phase of your and/or your business's life.

Where do you start with assessing where your business currently stands and how it might influence your next adventure, whether that's a quiet retirement or making your favorite hobby your next business venture? The questions and topics below are intended to direct a business owner toward an inward-looking assessment of where their company currently stands and whether a plan needs to be implemented to better position the business for a sale or transfer, or if the business, if sold "as-is," will garner a transition that fits the owner's future plans.

The subjects and topics below cover many of the key categories that are explored during the "due diligence" phase of a potential business sale or transition. By reviewing, analyzing and assessing these topics internally and in collaboration with legal and other trusted advisors, business owners can begin to think about and plan for a transition while also considering what else might need to be done before it really is time to move forward.

This list is not intended to constitute legal advice or to create any form of attorney-client relationship.

1. If you were to sell your business tomorrow, in an ideal scenario, where would you be and what would you be doing the day after the sale? Do you retire? Do you continue to work?
2. What parts of operating your business give you drive, purpose and/or happiness? What causes you the most stress and/or anxiety?
3. How prepared are you for a "disaster scenario"? If a key owner were to die or become permanently disabled, are one or more fail safes in place to keep the company operating with little or no disruption? Who would assume that ownership and/or control?
4. What are your company's greatest strategic strengths? What have you done in the past 5 to 10 years to invest in and build on those strengths and to create others?
5. How has the COVID-19 pandemic affected your business? Have you made any operational or organizational changes to better address and adapt to the "new normal"?

6. What are the largest potential risks to your company? What steps have you taken to manage and minimize those risks?
7. What percentage of your company's total revenue is attributable to its 5 largest customers/clients?
8. Does your business face consistent competition? If so, how are you positioned in relation to your most significant competitors?
9. Is your company reliant on sales or other business activities that originate outside of the United States? Is your company facing any supply chain or logistics challenges?
10. How do handle your company's accounting needs? Do you employ a full time or part time/fractional CFO? Do you engage outside accountants to prepare periodic financial statements?
11. Does your company have any secured or unsecured debt? What is the status of your company's relationship with its primary bank and/or lender(s)?
12. How many people do you employ and is turnover an issue? Do you have benefit/incentive programs in place to bolster recruiting and retention?
13. How is your company managed? Do you have a board of directors and do they meet regularly? What is the status of your corporate/organizational documents, such as minute books, stock records, bylaws, operating agreements and buy/sell agreements?
14. Has your company been engaged in any litigation, regulatory compliance investigations or audits (OSHA, NLRB, state or local licensing, etc.) or other disputes or formal legal claims in the past 5 years? If so, have those matters been resolved or are any ongoing?
15. Does your company have any significant operating contracts, such as licenses, leases, supply agreements or long-term sales contracts? Are all such agreements in good standing? Do you know whether any are transferrable and pursuant to what terms?
16. Does your company hold any registered intellectual property, such as trademarks, copyrights or patents? Is your business heavily reliant on a particular brand, logo, name or other similar unregistered intellectual property? Are you aware of any unauthorized use of your company's intellectual property?

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