11 Deal Killers to Avoid During Your Business Sale

1/17/18 – Keith Carlson

Selling a business is difficult. From marketing to vetting buyers, to preparing financial statements and keeping negotiations on track, a lot can go wrong. Almost no detail is too small to affect the outcome of an M&A deal. But you can reduce the odds of making a deal-killing mistake by knowing how similar transactions have gone astray.

- **Timing the Sale Badly:** Selling at the wrong time, such as the end of a market cycle, could mean fewer potential buyers and smaller offers. If your sector has experienced a recent boom of M&A deals, the buyer base could be depleted, and you might want to delay until a new cycle begins. Many businesses also decide to sell when there is a strong compulsion (death, retirement, etc.), so consider hiring interim talent to show buyers that a potential storm has been weathered.

- **Poor Seller-Process Preparation:** Selling a business is a long and arduous process, and owners and managers need to be mentally and physically prepared for this. Although many tasks in the sell-side process can be handled by advisors or investment bankers, business owners are still critical participants for supplying information and answering questions when they arise. The entire sell-side process can feel like a roller coaster ride, filled with highs (e.g., milestones achieved, offers received) and lows (deal re-trading, voluminous diligence requests), and ill-prepared owners could be more prone to postponing or "shelving" the process once it has started.

- **Seller Emotions:** In most every deal, an owner's usually-rational perspective drifts due to minor issues and personal offenses. After all, the owners are probably selling their most valuable possession, and one they've poured countless hours into. It's only natural for them to be emotionally invested. I always suggest that business owners check their egos at the door before starting a process. I also remind them that they will need to trust me, from time to time, when I feel a recalibration of emotions is needed. In short, trusting an advisor to intervene in high-pressure situations is probably necessary.

- **Surprising Buyers:** When you begin a sell-side process, you are more or less agreeing to bring the proverbial skeletons out of the company's closet and put them on display. I always tell business owners that surprises are the worst occurrences in any sell-side process, so there is no sense to hiding things that will undoubtedly be found later on. In summary, surprises aren't a good thing, sans an instance of crazy earnings growth. Extensive due diligence, reserved for post-LOI execution, is intended to be confirmatory, not evaluatory. It is your advisor's role to collect all the facts about your business, both good and bad, before the process starts, and position them in the most correct and positive fashion. It is your role to be forthcoming about these facts. Remember, for almost every negative fact about a business, there is some set of compelling circumstances that can mitigate or counteract it. Some good examples of bad surprises are past litigation, threatened litigation, customer contracts being put at risk, lackluster accounting practices, management misconduct, industry threats, and missed earnings.

- **Unresolved Seller or Company Litigation:** Pending litigations and the desire to sell don't mix. Buyers are naturally hesitant to accept that kind of risk, no matter how compelling the circumstances or how low the quantification of risk. Litigation is often frivolous, irrational, time consuming, and expensive, and all these things are unpredictable. Before you decide to sell, resolve your legal troubles. Better still, avoid litigious situations.

- **Seller-Mandated Pace of Play:** Moving too quickly or slowly can spook buyers. Move quickly and many people will think you're trying to hide something that's going to happen. Move slowly and they will wonder whether your infrastructure, organization, and management skills are robust enough—and you might also lose the attention of buyers who need to close several deals a year. Every deal requires a different pace, but it's important to start strong and maintain a deliberate momentum. Advisors usually ensure this by setting deadlines and milestones.

- **Portrayal of Perfection:** No company or industry is flawless, so instead of simply ignoring problems as if they don't exist, you, in conjunction would your advisor, should make a conscious effort to be upfront about flaws and about how you, as a business owner, have dealt with them. Not discussing flaws could also cause buyers to wonder what they are missing. My personal preference is to address many of these items within the offering materials being distributed to potential buyers.

- **Seller's Valuation Expectations:** Before showing a company to potential buyers, spend time reviewing an expert opinion on its overall valuation (purchase price expectation). If an M&A advisor or an investment banker is advising you on the sale (highly encouraged), a critical part of their initial assignment will be determining your estimated valuation range. You will need to interpret this guidance and determine whether it is in line with your expectations and meet your family's wealth objectives and plan (side note: I often involve the owner's wealth advisor during this stage). If you aren't aligned with these estimates of value, you shouldn't go to market. It's not worth anyone's time to take a proverbial flyer.

- **Considerations Paid to Sellers:** Valuation isn't the only variable to understand regarding purchase price evaluation. The purchase isn't usually paid out entirely in cash at close – only a portion is. Hence, valuation usually does not equal cash paid at closing. Most likely, other forms of consideration will be involved, such as seller notes, earn-outs, or equity rollover. Don't let an unrealistic disconnect between valuation and consideration paid kill a deal. A good advisor can help you know what types of consideration to expect after he or she knows more about your business as some characteristics of businesses are usually the common drivers of what types and how much non-cash consideration is paid.

- **Key Management and Flight Risk:** A critical part of every buyer's diligence efforts is to identify key members of management and their overall post-close flight risk. They will study owners who are active in operations as well as non-owner managers. It's advisable to do this same exercise yourself. When you identify critical people who aren't owners, you should determine how you might reward them in the case of a successful sale. M&A advisors can suggest sensible options for this. It is much easier to deal with these cases before a sell-side process starts than at the end, when a key manager might make unreasonable demands.

- **Unwillingness to Hire a Strong Deal Team:** Most business owners don't have the experience to sell their businesses by themselves for the price they expect. Conversely, buyers often gather skilled experts (either internally or externally) to negotiate the lowest prices and the best terms possible. Inexperienced sellers are often overwhelmed by these professionals and consent to large valuation discounts and unfortunate and unnecessary risks after a deal is initially agreed to. After the initial agreement, and once seller counsel has been engaged, these discrepancies might be pointed out, which can cause a deal to eventually die.

Mistakes can be avoided

These are only a few of the pitfalls and deal killers that await business sellers. You can avoid others by talking to M&A advisors and investment bankers who have successfully completed sale and have witnessed deal killers first-hand.