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### Continuing On or Starting New

January always seems to be a good time to evaluate aspects of our personal lives, budgets, and if we are not also evaluating our businesses, we should. It's natural to look back at the previous year and evaluate how our business performed and what events have transpired both good and bad. It's also important to review what we did well, what we could have done better, and what we learned.

At this moment in time, most if not all businesses are dealing with employee shortages and higher employee costs for both compensation and benefits. Many are dealing with supply chain issues as well.

We are all dealing with inflation the likes of which haven't been seen for decades. All of these factors lead to other considerations like: What do we need to do to maintain our businesses? What do we do to increase the value of our businesses? These are important decisions but there are still other factors to consider.

Looking ahead, the questions we need to ask: "Can we Continue On and be successful?" The answer very well might be "Yes we are good to go", or maybe there are some aspects of our business that we need to Start New? Starting new might be considering changes. There might be better ways to accomplish our goals, but as part of a normal business planning process we need to ensure that we review, evaluate, consider the possible consequences of change, and then decide on next steps. These decisions should be done with

### Lack of Required Approvals from Stakeholders

It's hard to believe, but it happens. Owners put their businesses up for sale without reaching an agreement with other shareholders or partners who own a portion of the business. If you have not reached an agreement with those stakeholders of your business, it doesn't matter if you reach an agreement with a prospective buyer. You cannot close on the sale of your business if your partner(s) or shareholders refuse to sign the paperwork. This is a huge waste of everyone's time. There may be no more painful experience than going through this type of useless exercise.

Stakeholders include partners, shareholders, family members, franchisors, and manufacturers providing exclusive distributorships. It's important to obtain stakeholders' approval before selling your business.

#### Partners and shareholders

If you have other partners and shareholders, get your attorney involved immediately and ensure an agreement exists between all partners/shareholders to sell the business. Ideally, the agreement empowers you to negotiate on behalf of the entire ownership group. Get this accomplished before you put the business up for sale.

#### Franchises

If you own a franchised business and you decide to sell, the franchisor is a stakeholder. Your franchise agreement will address the process of selling your franchise. It may require notice, transfer fees, training fees, physical upgrades, and the franchisor's approval of the buyer. In many instances, the franchisor requires the buyer to meet minimum levels of financial capability and may require certain types of employment experience.

Before putting your business on the market, it is imperative to talk with the franchisor about your interest in selling your business. As suggested in the last newsletter, stress the absolute need for confidentiality. Often, the terms of transfer outlined in the franchise agreement are more ominous than the reality of the process, but the opposite can also hold. You need to be aware of both - the legally documented franchise agreement terms vs. what you are being told verbally. To fully understand the transfer terms, it is best to get your attorney involved.

#### Exclusive distributorships

Because there will be an agreement that addresses transfer rights and the approval process, exclusive distributorships are similar to franchises. The manufacturer may have much leverage in approving the transfer of your business to a new owner. It is an absolute necessity to read your exclusive distributorship agreement to understand the terms of

the input of the business owner, key managers and key employees.

Business owners want their business to grow in value. For that to happen the current value needs to be determined, so there is a benchmark to evaluate change. What's it worth now, what do we want it to be worth, and what steps do we need to take to get there. The process starts by looking back, looking at what the current situation is, and what the future might hold.

Advising business owners is our specialty. Often that means looking at a business to see what its value is and what could be done to increase that value. If the sale of the business is being considered, then this process is an important contributor to the decision. So whether or not you are considering selling or might be looking at an acquisition, we are available to discuss business value and options.

Contact us today to start a discussion, of course with no cost or obligation.

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transfer and it is best to have your attorney interpret the document for you. In both instances--a franchise or an exclusive distributorship--disclose the terms of the transfer process to prospective buyers early in the sale process.

### **Family Considerations**

Your family may also be significant stakeholders that should be considered. In most instances, the seller needs his or her spouse to be supportive of the decision to sell. If your goals are not aligned with the goals of your spouse, there's work to be done before moving forward with a sale. The key is communication to address your spouse's concerns. A complete explanation and discussion of your decision-making process may be enlightening and earn the support of your spouse. And vice-versa - you may need to adjust your plans based on your spouse's input.

Depending on the specifics of the situation, your children, your in-laws (spouses of your children), and possibly key employees may be considered stakeholders with whom you should discuss the decision to sell before you place the business on the market. At the same time, it is important to heed the warnings of the previous newsletter and maintain the confidentiality of your decision to sell to the ultimate extent possible. The more people that know of your intention to sell, the greater the chance of a confidentiality breach. Only you can determine if your children, in-laws, or key employees' interests are so important that you might have to blow up a transaction based on their negative reaction to learning of an impending closing on the sale of your business.

As with other obstacles, it's best to address known issues upfront. If you do not discuss your sale intentions with partners, shareholders, franchisors, manufacturers (in an exclusive distributorship relationship), and your spouse before putting your business up for sale, it will almost certainly come back to haunt you. The need to do so may seem obvious, but surprisingly enough, many transactions are lost late in the sale process for lack of required approvals from these stakeholders.

**NEXT ISSUE**

**UNPRODUCTIVE ASSETS**

**CONTACT US**



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