TIMELINE OF SELLING A BUSINESS

Dean Street Law has experience negotiating thousands of transactions for hundreds of clients. This timeline is created with small businesses in mind. However, the general structure applies for micro transactions and larger transactions as well.

In every transaction, Dean Street Law's number one goal is to be a seamless extension of the business team. By investing in your legal support early on in the sale process, you ensure that your legal support is in place when business needs arise, minimize your downside risk, and maximize your upside potential. Your legal team and business team are able to move forward as one cohesive unit and avoid delays and loss of momentum, all of which save time and money in the long run. This is key to creating an environment for success for your transaction.

The timeline below includes our highest level of support, and is recommended for first time sellers. We would be happy to discuss how we can customize your level of legal support to suit your needs, budget and expectations. If you'd like to solidify your transaction support, you can schedule a complimentary consultation so we can identify how we can best support you in the sale of your business.

PHASE ONE - INITIAL PLANNING AND STRATEGY DEVELOPMENT

When considering the sale of your business, it is crucial to identify your immediate, short-term, and long-term goals. Immediate goals might include the primary reasons for selling, such as retirement, pursuing new opportunities, or resolving financial issues. Short-term goals involve setting a target timeline for the sale process, defining your desired sale price and deal structure, and establishing parameters for potential buyers. Long-term goals consider the legacy and future of your business post-sale, including the future management or direction of the company, as well as your personal and financial future.

Establishing parameters for deal size and structure is essential. Assess the value of your business using preliminary valuation methods to set realistic expectations. Consider whether you prefer an asset sale or a stock sale and which one is feasible for the sale of your business, based on the assignability of contracts and licenses and ramifications of tax implications, liabilities, and complexity of each structure. Evaluate the pros and cons of different financing options, such as all-cash deals, seller financing, earn-outs, or equity swaps. Engage with key stakeholders, both internal and external, to ensure alignment and collaboration. Assign specific roles and responsibilities to each team member to streamline the sale process and engage external advisors for guidance.

Dean Street Law will help you understand various deal structures and develop the best strategy to meet your goals. Our team will provide insights into the pros and cons of different structures, including tax considerations, liability implications, and regulatory requirements. We will work with you to create a comprehensive strategy that aligns with your goals, developing a roadmap for the sale process with timelines, milestones, and key activities. Additionally, we provide transparent and detailed information on legal costs associated with different deal sizes and structures, helping you budget for legal expenses and ensuring that you have the necessary resources to complete the sale successfully.

PHASE TWO - PREPARING THE BUSINESS FOR SALE

Business Valuation

Determining your business's fair market value is a critical step in preparing for sale. Utilize various valuation methods, and consult with experts in valuation, to gain a holistic view of your business's value. Adjust valuations for factors like market conditions, industry trends, and unique business attributes.

Marketing Strategy

Developing a marketing strategy to attract potential buyers is essential. Create a profile of ideal buyers, considering strategic buyers (competitors or companies seeking vertical integration), financial buyers (private equity firms, venture capitalists), and individual investors. Prepare a comprehensive Confidential Information Memorandum (CIM) that provides detailed information about your business, including its history, operations, financial performance, market position, and growth opportunities. Ensure that the CIM is well-organized, professionally presented, and highlights the strengths and potential of your business. Include sections such as executive summary, company overview, industry analysis, product/service offerings, financial performance, management team, and future growth plans. Most importantly, determine which confidential information may be shared in the marketing of the business, and which information is proprietary and should only be shared once a deal is under letter of intent or there is a purchase agreement in place. As noted below, the parties should execute a non-disclosure agreement or confidentiality agreement before any confidential information is exchanged.

Legal Documentation

Confidentially market the business to potential buyers using targeted outreach through business brokers, online platforms, M&A advisors, and industry networks. Manage inquiries and provide initial information under the protection of a Non-Disclosure Agreement (NDA). Ensure confidentiality by requiring potential buyers to sign an NDA before receiving detailed business information. We can work with you to customize the NDA to protect your business's sensitive information and outline the obligations of both parties. We always recommend including provisions for handling breaches of confidentiality and specifying the duration of the confidentiality obligation.

The next step in legal documentation will be the indication of interest (typically seen in less competitive scenarios where the buyer indicates their interest in purchasing the business in a non-binding letter that may include a range of the purchase price, subject to further due diligence, and other key terms) and/or the letter of intent (a partially binding and non-binding detailed letter setting forth the proposed terms of the transaction that are subject to further due diligence and full legal documentation). A Letter of Intent (LOI) is generally the first binding agreement between the parties and sets forth the foundation of the agreement, outlining tthe proposed terms of the sale, including the purchase price, deal structure, payment terms, and any contingencies, clarifying which terms are binding (e.g., exclusivity, confidentiality) and which are non-binding (e.g., purchase price, deal structure). Use the LOI as the framework for transaction and final negotiations, so both parties are aligned on key terms and can smoothly navigate the process of getting to closing.

PHASE THREE - IDENTIFYING AND ENGAGING WITH POTENTIAL BUYERS

Confidentially market the business to potential buyers and protect sensitive information throughout the process. Utilize a targeted approach to reach qualified buyers through business brokers, online platforms, M&A advisors, and industry networks. This targeted strategy helps to attract serious and capable buyers while maintaining confidentiality. Manage inquiries and initial discussions discreetly to ensure that sensitive information does not leak and potentially disrupt business operations or employee morale. Screen potential buyers for seriousness and financial capability by evaluating their financial health, acquisition history, and strategic objectives. This screening process involves assessing their past acquisition activities, current financial status, and alignment with the strategic direction of your business. Provide initial business information under the protection of an NDA and through a data room (even if it's Google Drive or Dropbox with access limited to specific approved and invited individuals) to ensure that sensitive details remain secure. We typically work with our client to assist them in setting up a data room and review all information prior to it being uploaded to the data room to protect the proprietary information of our clients. Conduct meetings with interested buyers to discuss their interest and fit, sharing the Confidential Information Memorandum (CIM) and answering preliminary due diligence questions. The CIM provides a detailed overview of your business, including its history, operations, financial performance, market position, and growth opportunities. These meetings help gauge buyer interest, assess strategic alignment, and determine the potential for successful negotiations and a possible transaction. We guide our clients through this process, advising them on what information is appropriate to share when and how we can manage the process to best protect them and position them for a successful exit.

PHASE FOUR - DUE DILIGENCE PROCESS

During due diligence, buyers will review financial statements, legal documents, and operational details to verify the accuracy of the information provided and assess the overall health of the business. This process is critical for identifying any potential risks or issues that could impact the transaction. It may seem like an intrusive and laborious process, but the more you disclose (in the appropriate way, as we would advise) the more risk you mitigate going forward. So, when managed well with our assistance, it can be used as a tool to position you for a successful transaction. So, be prepared to provide detailed information and address any questions or concerns promptly to maintain transparency, build trust with the buyer and provide information needed for a lender to underwrite the transaction. Dean Street Law will assist you in responding to the due diligence requests, review materials to be provided in the data room, and set up and manage the data room by assisting in organizing and presenting the required information in a clear and accessible manner, facilitating a smooth and efficient due diligence process. We will coordinate with the other parties and due diligence providers, including accountants, consultants, and industry experts to make this as minimally disruptive as possible. This involves compiling documents, consulting with our clients regarding the meaning and implications of requests, and providing an appropriate level of access to data for the buyer's team. By working in a comprehensive and transparent manner throughout the due diligence process, we help build confidence in the transaction and pave the way for successful negotiations and closing.

PHASE FIVE - NEGOTIATION OF TERMS

Reviewing and Negotiating the Letter of Intent (LOI)

The preliminary legal documentation includes reviewing and negotiating the Letter of Intent (LOI), which serves as a preliminary agreement outlining the key terms and conditions of the proposed sale. The LOI should include the purchase price, deal structure (asset purchase or stock purchase), payment terms, any contingencies or conditions that must be satisfied before closing and other material deal terms. In addition, it may address any issues or concerns raised during the pre-LOI due diligence process so that the LOI accurately reflects the agreed-upon terms of the parties and mitigates potential risks. Key elements to focus on include confirming that the agreed-upon purchase price is clearly stated and reflects the fair market value of the business, that the structure of the transaction is clearly defined and understood by all parties, outlining the payment structure including initial payment, any deferred payments, earn-outs, or seller financing arrangements, and identifying any conditions that must be met before the transaction can proceed, such as obtaining regulatory approvals, securing financing, or meeting specific performance metrics. Our best practices are to negotiate these terms to align the interests of both parties, fostering a cooperative and transparent approach, with the goal of creating a solid foundation for the final purchase agreement and ancillary transaction documents that minimizes the risk of unnecessary disputes and misunderstandings while progressing the deal forward efficiently and effectively.

Finalizing the Sale and Purchase Agreement (SPA)

Once the LOI is agreed upon and the buyer has completed its initial due diligence, the parties begin negotiating the Sale and Purchase Agreement (SPA), which is the definitive, legally binding document that formalizes the terms of the sale and governs the relationship between the buyer and seller. The SPA should include detailed provisions on warranties, clearly outlining the representations and warranties made by both parties regarding the condition of the business, financial performance, legal compliance, and other critical aspects. In addition, indemnities set forth the allocation of risk between the parties, detailing the obligations of each party to compensate the other for any losses or damages arising from breaches of warranties, covenants, or other agreed terms. Furthermore, our best practice is to always include covenants in the SPA that outline ongoing obligations of the parties between signing and closing, and possibly post-closing, such as non-compete agreements, confidentiality obligations, and commitments to maintain business operations in the ordinary course. The SPA may include any post-closing actions required by either party, including transition assistance, the transfer of key contracts or assets (if this has not occurred pre-closing), and addressing any remaining legal or financial obligations. Dean Street Law provides exemplary services in negotiating and documenting transaction documents, which will also include the relevant ancillary transaction documents which differ depending on the transaction structure selected. Each sentence has a tremendous impact on the success of our clients pre- and post- closing, and we take that responsibility to heart and utilize our experience running our portfolio of companies to inform our guidance for our clients.

PHASE SIX - FINALIZING THE SALE

Reviewing Final Terms

This is the time to cross the t's and dot the i's to confirm all conditions precedent are met, including obtaining necessary regulatory approvals and third-party consents. This involves coordinating with relevant authorities to secure approvals and verifying that all required consents from stakeholders, such as shareholders or lenders, are obtained. Furthermore, we finalize all of the transaction documents, clearly outlining the responsibilities and liabilities of both parties. In addition, we carefully review the SPA and ancillary transaction documents to confirm that all terms and conditions accurately reflect the negotiated agreement and that no critical details have been overlooked. Dean Street Law will guide you through this process, providing expert advice to best your interests, position you for success, and satisfy any necessary legal requirements.

Closing Preparation

In the beginning of our representation, we prepare a detailed closing checklist to track all tasks and responsibilities leading up to the closing. This checklist will include all necessary documents, actions, and approvals required for a smooth transaction that we update regularly as we progress towards closing. In addition, we coordinate with all parties involved, including legal counsel, financial advisors, and other stakeholders, to make all preparations necessary for closing day. This coordination involves scheduling the closing date, confirming the availability of all signatories, confirming that all financial arrangements are finalized, verifying that all conditions precedent have been met and coordinating among the parties. Dean Street Law will facilitate this process by managing communications and follow-ups with those involved parties, preparing execution versions of all transaction documents, and meticulously handling the legal and logistical aspects of the transaction.

PHASE SEVEN - POST SALE INTEGRATION AND TRANSITION

Transition Planning

We recommend our clients develop a comprehensive plan for transitioning management roles and responsibilities to the new owners. This plan should include detailed timelines and steps for transferring knowledge, systems, and processes. Effective transition planning enables the parties to transition the business without disruptions, which is most often in everyone's best interest. The transition plan should also include a joint agreement on the communication strategy to inform employees and, sometimes, customers and vendors of the change in ownership. Communications to employees should include reassurance about job security and any changes in reporting structures, helping to alleviate any anxiety and maintain morale. The parties may, or may not, elect to notify customers and suppliers about the sale to maintain continuity of relationships and address any concerns they may have. If the parties plan to notify customers and vendors, providing clear information about how the sale will affect them supports a seamless transition by preserving trust and confidence. While the buyer and seller typically develop this themselves, we are always happy to consult regarding best practices and provide guidance where helpful.

Post-Sale Obligations

After the sale of the business, there may be a few remaining legal and financial obligations, such as filing necessary documents with regulatory bodies, settling outstanding financial transactions, and transferring ownership of assets. Having required legal filings that are completed accurately and timely helps avoid future legal complications. Dean Street Law will continue to support you after the sale of the business by handling any residual legal matters so that contractual obligations are met and may provide advice on how to resolve any issues that emerge during the transition period. This ongoing support enables the post-sale phase to be as smooth and successful as possible, allowing you to focus on your adventure in life with confidence.

If you have any questions or are interested in working together on your next transaction, please schedule a complimentary consultation. We look forward to working together to help you successfully sell your business!