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M&A Nugget: Shhhh…Keep It Secret

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Sellers usually do not want the world to know the terms under which their business is sold, especially the purchase price. Purchase agreements therefore typically contain a confidentiality provision requiring both sides to keep the transaction and its terms confidential. There are, however, exceptions to this "keep it secret" obligation that should be included in every agreement. First, the parties should be able to relay the transaction and its terms to their accountants, attorneys and advisors. Second, either side should be able to disclose the transaction in any dispute between the parties. Last, buyers often want to publicize an acquisition through a public notice, commonly referred to as a Tombstone. In non-public transactions, the Tombstone usually contains the names of the purchaser and seller, but not the purchase price. So, keep the transaction secret for the most part, but allow for the above reasonable instances of disclosure.