

Skeletons in the Closet: The 5 Biggest Undiscovered Issues that Can Halt the Sale of a Business

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You have an interested buyer and they have submitted an exciting letter of intent for the purchase of your business. What could possibly derail the sale? Well . . . the golden rule for a seller is that the business is not “sold” until the closing and the monies hit the account. Before receiving your monies and having the business sold, be aware of a number of issues that could cause problems. By the way, with proper advanced planning these issues can be alleviated/mitigated prior to going to the market.

1. **Proper documentation of owner relations.** Nothing ices a sale transaction like equity owners not on the same page. Ownership disagreements on the terms of a sale will quickly sour any potential buyer. However, with a proper stockholders’ agreement or operating agreement, the sale of equity can be controlled and “dragged” along into a transaction.
2. **Locking up key employees.** Too often key employees are not properly locked up. All buyers will compel sellers to lock up their key persons, making such requirement a condition to closing. Going to a key employee on the eve of a sale is a very bad place to be if you are the seller.
3. **Poor financials.** One of the first intersections a buyer will have with your business is the review of your financial data. Too many sellers have a mess for their financials. A buyer cannot evaluate the value of your business if it cannot review financial statements that are prepared to standard.
4. **Wrong corporate form.** Many buyers have corporate structures that are not friendly to investors to maximize gains. The form a seller operates their business during normal times (an S corporation for example) may not be the corporate form desired by an acquirer.
5. **Uncertain ownership of key assets.** Too many sellers rely upon the assumption that they own the assets of their business. This rings especially true with technology and intellectual property. The time to learn that you do not own the source code to your software is not in the middle of your sale transaction.

These are a few of the most common pitfalls that many sellers experience during the sales process. Many times a seller is not aware of these items until a buyer brings it up in diligence as part of a larger conversation regarding the path to closing. All M&A transactions spin on leverage. Sellers should be careful to give over leverage to a buyer by falling into one of the traps.