

Preface xiii

Acknowledgments xvii

Chapter I

Why People Sell Businesses

- Honesty Is the Best Policy 2
- Most Common Reasons People Sell 4
 - Retirement 5
 - Differences among Co-Owners 5
 - Illness or Death 6
 - Change in Strategic Position 7
 - Financial Sponsor Liquidity Event 8
 - Financial Pressure 9
 - Unsolicited Offer 9
- Proactively Making the Sale Decision 10
- Notes 11

Chapter 2

Should the Seller Hire an Intermediary?

- What Do Investment Bankers Do, Anyway? 14
- Criteria for Selecting an Investment Banker 19
 - General M&A Experience 19
 - Specific M&A Experience 19
 - Marketing Philosophy 20
 - Contacts 20
 - Temperament 22
- Investment Banker Fees 23

Choosing the Right Investment Banker 29
Notes 32

Chapter 3 **33**
What Is the Business Worth?

Valuation Methodologies 34
 Book Value 34
 Multiple of Some Measure of Earning Power or Cash Flow 36
 Intangibles Such as Technology or Market Position 38
 The Synergy a Seller Could Provide a Buyer 39
Applying Valuation Theory to Real-World Situations 42
 Cases Where Dividing the Business Created Value 43
 Cases Where a Strategic Buyer Unlocked Value 47
Notes 50

Chapter 4 **51**
**The Difference between “Value”
and “Currency”**

Mediums of Exchange in M&A 52
 Cash 52
 Notes 52
 Stock 54
 Stock Options 56
 Contingent Payments 57
Sale of a Company’s Stock 59
Notes 61

Chapter 5 **63**
**Taking Advantage of the Seller’s Unfair
Advantages: Prepping and Timing**

Preparation 64
 Environmental Issues 64
 Lawsuits 66
 Tidy up the Financial Statements 67
 Cosmetic Issues 68

Web Site Upgrades	68
Management Changes	68
Timing	71
Long-Term Timing Dimension	71
Short-Term Timing Dimension	73
Involving the Management Team	75
(Not) Involving Company Employees	80
Informing the Workforce	81
Dealing with Leaks	82
Conclusion	86
Notes	87

Chapter 6

89

Preparing the Documents

The Offering Memorandum	90
Executive Summary	91
Industry Description (Optional)	92
The Business	92
Financial Review	100
Exhibits	103
The Executive Summary	106
The Management Presentation	110
The Data Room	112
The Definitive Purchase Agreement	116
Notes	116

Chapter 7

117

Identifying and Cultivating the Right Buyers

Strategic Buyers	118
Financial Sponsors	125
Diversification Parties	132
Employee Stock Ownership Plans	133
Management	136
Family Members	139
Notes	141

Chapter 8 **143**
How Many Buyers to Approach?

- Negotiated Sale 144
- Limited Auction 150
- Broad Auction 152
- Notes 155

Chapter 9 **157**
Approaching Prospective Buyers

- Confidentiality 158
- Distributing the Offering Memorandum to Buyers 165
- Securing Buyers' Indications of Interest 168
- Appendix 9A: Confidentiality Agreement 174
- Appendix 9B: Sample Process Letter 179
- Appendix 9C: Indication of Interest 181
- Notes 183

Chapter 10 **185**
Management Presentations and Plant Tours

- Management Presentations 186
 - Management Presentation Blocking and Tackling 186
 - Practice Makes Perfect 189
 - Management Presentation Pitfalls 189
- Facility Tours 190
- Next Steps 193
- Notes 194

Chapter 11 **197**
Negotiating the Purchase Price

- The Letter of Intent 198
- Case-Specific Negotiating Strategies 201
 - Case 1: One Clearly Superior Offer 202
 - Case 2: Four Comparable Offers 204
 - Case 3: A “High Price with Tough Terms” Offer versus a “Lower Price with Reasonable Terms” Offer 206

Case 4: Three Offers with High Prices and Tough Terms	207
Case 5: One High Price Offer with Tough Terms	208
Case 6: Six Offers with Different Forms of Consideration	209
Case 7: Five Offers with Different Legal Structures and Different Forms of Consideration	213
Negotiating Dynamics	215
Appendix 11A: Letter of Intent	217
Notes	223

Chapter 12 **225**

Moving from Letter of Intent to Closing

The Negotiating Dynamics Have Reversed	226
Exclusivity	226
Maintaining Performance between the LOI and Closing	227
Negotiating Out the Purchase Agreement	229
Buyer Due Diligence	230
Hart-Scott-Rodino Filing	232
Keeping the Closing Process on Track	234
What if It's Not Meant to Be?	237
Seller's Exposure if the Buyer Does Not Close	237
Interim Milestones and Backup Buyers	238
Appendix 12A: Definitive Purchase Agreement	240
Notes	247

Chapter 13 **249**

Sales Forced by Bankruptcy or Financial Duress

The Painful Decision to Act	250
Time Is of the Essence	251
Senior Lender Dynamics	252
Secured Party Sales	256
Sales Engineered before Filing, but Closed in Bankruptcy Court	257
Sales Engineered and Closed in Bankruptcy Court	259
Notes	267

Chapter 14 **269**
Working with Lawyers

Legal Involvement from Day One 270
The Lawyer's Distinct Role 270
Deal Makers versus Deal Breakers 271
Retaining the Right M&A Lawyer 272
The Legal Check-Up 274
Collaborating with the Investment Banker 274
Drafting and Negotiating the Purchase Agreement 275
Effective versus Ineffective Lawyering 278
Managing the M&A Lawyer 280
Appendix 14A: Seller's Attorney Pretransaction Checklist 281
Note 288

Chapter 15 **289**
After the Sale Has Closed

Post-Closing Immediate Cooperation 290
Employee Notification 290
Customer Notification 291
Supplier Notification 292
General Public Notification 292
The Month Following Closing 293
Alternative Notification Methodology 293
Post-Closing Subsequent Matters 295
Post-Closing Hubris 296
Post-Closing Legal Matters 297
Post-Closing Financial Matters 298
Taxes 299
Charitable Giving 300
Investments 303
New Horizons 304
Leveling the Playing Field 305
Notes 305

About the Author 307

Index 309