



Selling Your Agency

*Being familiar with the process
involved in selling an agency
can help make the transaction a
success for all parties involved.*

By Thomas M. Edens

You are prepared to sell your agency. You have considered various succession planning alternatives such as transferring the business to your children, assisting your management in buying your company or hiring a professional manager to send you an annuity check each month as you head to the beach. For various reasons, you conclude that selling the business is the best alternative. You have also determined that the timing is right for selling immediately. The agency is on solid financial ground, you are mentally ready for the next phase of your life, and the overall market for agency transactions is good.

After you have made this decision, what exactly is the process of selling your agency? Following is a step-by-step analysis of the typical steps involved in selling your agency. Refer to Table A as a helpful schematic of the process. For most agency owners, the business represents the largest concentration of their families' net worth. Accordingly, care and information-gathering are suggested in avoiding as many of the transaction traps as possible.

Preparing your company for sale

The preparation of your company for the selling process is an extremely important step that is best planned over a multi-year period. Among the attributes of a company that has been prepared for sale are:

1. Stable relations with key clients.
2. Costs have been cut and margins widened in the two years preceding the sale.
3. Sales and operations management has been groomed to take over more responsibility.
4. Financial and operational affairs are in order:
 - Lawsuits and/or regulatory complaints are settled.
 - Trust accounts are fully funded.
 - Taxes and vendors are fully paid.
 - Employee relations are satisfactory.
 - Office lease is preferably on a short-term remaining.

Engage professional assistance

The multi-faceted process of selling and closing the transaction requires the skills of several professionals. Most agency owners will want to use the services of a business intermediary to handle the sale. The intermediary can be the owner's attorney, CPA or

other business advisor. If one of the objectives from the sale process is to maximize the price the owner receives from the transaction, the use of a merger and acquisition professional can be the preferred route. A local business broker could handle the sale, but probably will not have a proprietary database of collection agency buyers. Therefore, your company will likely not be exposed to a sufficient number of buyers able to pay top dollar.

As the transaction proceeds to the negotiation of the definitive purchase and sale document, an experienced transaction attorney is very important. The attorney you use for collection matters of the legal counselor who prepared your will may not be the best choice in protecting your position in a complex business sale transaction. Your personal CPA also plays an important part in assisting the business intermediary with the structure of the transaction. The joint goal of these two professionals is to maximize the after-tax proceeds to the shareholders of the selling company.

Determine the value of the agency

Before a company is presented to the market, the business owner should have sought professional help in determining the value of the agency. The business intermediary provides this advice as part of normal services to the business owner. If the agency owner elects to sell the business himself, a professional business appraiser can assist with the valuation process. It has been my experience that few business owners know the true worth of their businesses. Why should they? Most owners have been running successful companies, not perfecting valuation skills required to obtain an accurate range of values applicable to their agencies.

Prepare marketing memorandum and executing marketing plan

A marketing memorandum is prepared to properly package the company for prospective buyers' review. This memorandum or prospectus contains information required by most buyers. The contents may hold information on the company's operations, employees, client mix and financial information. An important part of the financial information is the recasting of historical information. The recast procedure is one of converting the company's tax minimization oriented financial statements to one of properly illustrating the cash flow generating abil-

ity available to a new owner. The marketing memorandum is a good opportunity to describe the intangible attributes of the company that are not apparent by the numbers alone. Highly sensitive information such as clients' names can be substituted with "Client A," "Client B," etc.

Once the agency has been properly packaged, a marketing plan is typically agreed upon by the seller and business intermediary. Among the decisions to be made is to what groups to expose the company and to what groups or individuals not to expose the opportunity. Sellers could, for good reason, not want competitors contacted about the possible selling opportunity. There are four types of buyers that business intermediaries have in their databases:

- Individual buyers typically seek to invest their personal capital for an attractive business opportunity.
- Financial buyers are typically professional investment groups with pooled funds

Table A

Steps to selling your company

1. Prepare company for sale
2. Engage professional help
 - a. M&A Professional
 - b. CPA
 - c. Business Appraiser
 - d. Attorney
3. Determine value of company
4. Prepare marketing memorandum
 - a. Operations
 - b. Employees
 - c. Client Mix
 - d. Financials
5. Prepare marketing plan
6. Implement marketing plan
7. Introduction to prospects
8. Confidentiality agreement signed by prospects
9. Question and answer with prospects
10. Site visits
11. Follow-up questions and answers
12. Letter of intent
13. Preliminary due diligence
14. Purchase and sale agreement
15. Extensive due diligence
16. Close

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seeking to deploy capital for an attractive return.

- Industry buyers are typically other agency owners wanting to acquire other agencies for varied reasons.
- Strategic buyers are typically other agencies or synergistic companies in related industries which are seeking to either expand a market niche or expand into specific geographic regions.

Introduction to prospects and confidentiality agreements

Once the prospects have been contacted, the first order of business is usually the signing of a confidentiality agreement. Confidentiality is an important issue in every transaction. Rumors can upset both employees and shareholders, as well as undermine market position. Even though prospective buyers have signed a confidentiality agreement, it is not a perfect world. The selling parties are primarily depending on the prospect's integrity in keeping this promise regarding the confidential nature of the transaction.

Sellers are advised to qualify buyer prospects as to their financial ability to close the transaction. This qualification is an important part of the intermediary's role.

Question and answer period with prospects

Once the prospects have reviewed the marketing memorandum, there usually will be many unanswered questions relating to their specific information requirements. After the prospective buyers have received answers to the first round of questions, they will be in a position to determine whether to investigate the opportunity further or to terminate discussions. The positive outcome from the preliminary inquiry is a scheduling of a visit to the company.

Site visits and follow-up questions

Site visits are an important part of the due diligence exercise conducted by the buyer. Only so much information can be conveyed by printed material—marketing memorandum and the financial statements. It is now time to get a feel of the operations that only an on-site visit can accomplish. Usually, the business owner will want the intermediary present because, invariably, the

discussion will involve the buyer trying to “read” the seller as it relates to price negotiation.

After the site visit, typically the prospective buyers will have another round of questions that need to be addressed before they can prepare a letter of intent.

Letter of intent

Ideally, the prospective buyers have a favorable view of your company, complete their financial analysis and submit a letter of intent to purchase the business. The styles of the letter of intent are varied in the marketplace. Some buyers submit a one-page term-sheet describing the offer while other

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buyers have their attorneys prepare a five-to-six-page document. Most letters of intent are non-binding, except for confidentiality and a “stand-still” provision. The “stand-still” provision is a requirement by the buyer that the seller cease marketing the company while the buyer is conducting due diligence and incurring the cost to close the transaction. Some buyers will submit a letter of intent before a site visit to determine if the buyer and seller are in the same ballpark.

Preliminary due diligence

After the letter of intent has been signed, the due diligence process intensifies. It is important to understand that due diligence is a two-way street. The buyer is examining the seller's operations and financial condition. However, the sellers should investigate the buyer fully to understand to whom they are selling the company and who will be the next custodian of long-time employees. The seller is also likely to accept a note from the buyer. Therefore, learning about the buyer's past business affairs is important.

Purchase and sale agreement

The buyer's attorney prepares the definitive asset purchase or stock purchase agreement. There will be many items in this document that need to be negotiated even though the letter of intent had memorialized the broad terms of the agreement between the parties. Several of the most cumbersome sections of the agreement to negotiate are the representations and warranties of both parties, including offset provisions and collateral issues if the transaction involves a note.

This is when a knowledgeable corporate attorney with transaction experience is invaluable. The negotiation of this document, which could easily be between 20-60 pages, can proceed fairly quickly or drag on for many weeks.

Extensive due diligence

As the definitive agreement is being transformed into a satisfactory form, the buyers will have their professional team scrub the selling company for confirmation of the financial and operating history of the business. This investigation usually includes a legal and public records search and market surveillance about the reputation of the seller. As previously mentioned, the seller is performing similar investigations about the buyer.

Once all parties have completed their due diligence and the definitive agreement is in an executable form, a closing is scheduled.

Closing

Closing the transaction usually takes place in the city of the location of the seller. Typically, the parties will gather at the seller's attorney's office so any last minute changes can easily be made to the documents. After all documents have been signed, the funds are transferred to the seller. Hopefully, all parties are in a celebrating mood and have participated in a win-win transaction.

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