MAKE
Top hotel gyms; Warren Buffett's mysterious new #2; 10 questions for your office designer.

GROW
What the Republicans mean for your money; 2010's most expensive art sales; investing in wine.

LIVE
Eight eco-friendly luxury cars; 10 secret bars and restaurants. Plus: Should your kid skip school?

Worth®

THE EVOLUTION OF FINANCIAL INTELLIGENCE

WORTH.COM

10

VOLUME 20 | EDITION 01

Sterling Investment Advisors Ltd.
Timothy E. Flatley, ChFC®, President

"I am selling my family business. What legal pitfalls should I watch for?"

By Timothy E. Flatley

One of the most significant decisions a business owner will make is determining when to sell. Building a successful enterprise takes years of hard work and sacrifice, which makes the decision all the more difficult. Beyond coping with the emotional stress of selling, it is crucial to avoid the legal pitfalls of the sale transaction.

We asked Stephen Goodman, esquire, a senior partner in the Emerging Growth Practice of the law firm of Morgan Lewis, to help us understand the critical issues. Mr. Goodman has been intimately involved with thousands of corporate transactions in his 40-plus years of practice and is consistently recognized by Chambers USA, an annual independent ranking of top lawyers, as an influential authority for his work with emerging growth companies.

Business owners and their consultants should prepare themselves by responding to the kind of due diligence checklist that would be transmitted by a potential buyer at the time of sale. Mr. Goodman emphasizes that sellers will be put through a rigorous due diligence process. The ability to demonstrate a history of strong corporate discipline, sound accounting practices, and steady growth will be of tremendous value when soliciting offers.

Good housekeeping does not happen overnight, he points out, which is why the seller should be organized in anticipation of the countless information requests. The seller should ensure taxes are current and board minutes reflect the approval of significant corporate decisions. He also recommends compiling a list of all contracts and leases with various vendors and clients, detailing which are assignable and which require consent. Inconsistent or belated responses will make a buyer nervous, while misrepresentations can have future legal ramifications. These transactions do not have to be protracted if the seller is prepared, he says.

A seller may have to choose between taking the proceeds up front or through an earn out, in which payments could be contingent on the future performance of the business. Mr. Goodman's golden rule for earn outs is to "assume all that you get is what you get up front." Once you cede control, there is no certainty that the buyers will run the business as you would. For example, he asks, "If they fall on hard times, will they invest new capital?"

The selling business owner must evaluate all these factors and more, while keeping the fiduciary duty to act in the best interest of the minority shareholders. A successful sale of the business you created can be the culmination of a great career. It is vital to align yourself with experienced professionals to protect you and to facilitate the transition.

IMPORTANT ISSUES TO CONSIDER WHEN SELLING YOUR BUSINESS

- Whether to accept cash or stock payments
- Whether to accept up-front or earn-out payments
- Whether to structure the deal as a stock or asset sale
- The effect on employment agreements
- Maintaining the confidentiality of all parties involved
- Fiduciary obligations to minority shareholders
- Complying with securities fraud laws
- Performing the due diligence process on the acquirer
- Avoiding fraudulent conveyance

The Delaware Valley region is defined as the following counties: Pennsylvania—Berks, Bucks, Chester, Delaware, Montgomery, Philadelphia; Delaware—New Castle; Maryland—Cecil; and New Jersey—Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, Salem.

Timothy E. Flatley, ChFC®
President

Sterling Investment Advisors Ltd.
1055 Westlakes Drive
Suite 150
Berwyn, PA 19312
Tel. 610.560.0400 | 877.430.7382

Email: flatleyt@sterling-advisors.com
www.sterling-advisors.com

REPRINTED FROM
Worth®
THE EVOLUTION OF FINANCIAL INTELLIGENCE

About the Worth Leading Wealth Advisors
The Worth Leading Wealth Advisor admittance process is based on, but not limited to, the Advisor's experience, education, fiduciary status, compliance record, wealth management services, methods of compensation and scope of current business. In order to be considered for the Worth Leading Wealth Advisors Program, financial professionals must be willing to provide complete and full disclosure to investors so that independent analysts from Paladin Registry can thoroughly screen and evaluate their credentials, ethics and business practices. Once admitted, Advisors pay a fee to be included. Investors and potential investors are solely responsible for the decision to select particular Advisors.