

Protecting Confidentiality in a Business Sale

Protecting confidentiality in a transaction is of utmost importance when considering the merger or sale of your business. We understand that service businesses are no more than the referral sources, the employees providing the services and the proprietary ideas and culture that has given you the edge among the competition. Premature disclosure of a pending sale to employees or referral sources can damage the business, decreasing the value to both the buyer and seller.

We advise our clients to follow specific procedures to protect the confidentiality of the sales transaction as well as any proprietary information that could be used by competitors. Confidentiality is protected through every step of the acquisition process by considering Who, What, When and How to reveal privy information.

The Acquisition Process

Who will your information be revealed to?

First of all, our firm will present you a list of buyers for your approval before we contact even one. Your company's identity is not revealed until the approved potential buyers have signed confidentiality agreements. Our firm commits to knowing the financial resources and integrity of the potential buyers. Furthermore, when negotiating with larger entities, we consult only with the upper echelons. There is a substantial difference between having a confidentiality agreement signed by a CEO or CFO of a large company when compared to that of a local manager.

What information should we give them?

In the early stages of the sales process, we provide as little information as possible and only enough to formulate an offer. That is not to say that information material to the value of the business should not be disclosed. As the sales transaction progresses and an agreement on price and terms is close and the buyer has more vested in the transaction, more information can be released.

When should more complete information be made available?

Usually, specific and detailed information about patients, employees and referral sources is not made available until there has been a signed agreement to price and terms and a formal due diligence has begun. We never recommend allowing potential buyers to speak with employees or referral sources until due diligence is completed and the purchase agreement is fully negotiated.

How is this information transmitted to protect confidentiality?

A qualified buyer signs an agreement where they promise to keep the information confidential and to return or destroy the information if the transaction is not completed. As further information is provided, everything is marked confidential and the buyer is reminded that each piece of information is covered under the confidentiality agreement, which they signed.

As fiduciary agents, we feel that it is our duty to protect your interests and at the same time promote a relationship of trust and confidence resulting in the successful closing of the sale of your company.