

## Title:

8 Ways to Avoid Litigation When You Sell a Business

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## Summary:

Based on recent litigation storm clouds, business owners planning exit strategies better batten down their legal hatches. As a small business owner, your company most likely represents a significant portion of your net worth. That's why it's crucial not to let litigation wash it away when the time comes to convert your years of hard work into cash.

## Keywords:

acquisition,merger,business,ownership,selling,litigation,potential buyers,sell a business,confidential

## Article Body:

Based on recent litigation storm clouds, business owners planning exit strategies better batten down their legal hatches.

As a small business owner, your company most likely represents a significant portion of your net worth. That's why it's crucial not to let litigation wash it away when the time comes to convert your years of hard work into cash.

Selling a business involves substantial amounts of money and a wide range of issues including warranties and representations, disclosures and contractual obligations. Consequently, there are many opportunities for litigation to arise. Not only is litigation highly unpleasant and disruptive to your lifestyle, it is also very, very expensive - even if you win.

But other than wishing, hoping and praying, what's a small business owner to do? Rather than complaining try something more constructive. Here are eight strategies to follow when selling your business that can help minimize litigation issues.

1. Honesty is the best insurance policy. Tell the truth about your business. Do not attempt to hide any problems or issues that, if left undisclosed, might be the basis for future litigation. Rest assured that the cost of disclosure in a transaction is very small when compared to the cost of litigation for non-disclosure.

2. Develop a confidential business review. This is a high-quality and comprehensive document that describes your business and its background. Within this document, clearly disclose any negative issues that are involved in the business. Not only will disclosure reduce litigation risks, it will also add to your credibility with potential buyers and save you time by eliminating those who are unwilling to accept the realities of your business.
3. Accurately communicate historical financial results. Do so in a manner that demonstrates the earning power of your business. Ideally, this information will be presented in a summarized format that recasts your discretionary and certain other expenses to show EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization).
4. Require your buyer to go through extensive due diligence. Due diligence is the process by which a buyer conducts an independent investigation of the information you have provided about your business. The written due diligence materials should be incorporated into the final legal documents to minimize your litigation risks.
5. Assemble a strong team of experienced professionals. Your accountant and your attorney will play key roles, and their expertise will reduce litigation risks. You may also benefit from the assistance of an experienced intermediary, broker, or merger and acquisition firm that specializes in selling privately owned businesses. However, before hiring an intermediary, make certain that they do not charge up-front fees and that they have a litigation-free track record.
6. Ensure that closing documents are thorough and complete. Not only must these documents contain appropriate legal language, they also must anticipate and address potential disagreements that may occur after closing - disagreements on issues like equipment or inventory values and condition, collection of accounts receivable and more. These issues are easily addressed during the courtship phase with a buyer, but they can cause major problems after the transaction is closed and the honeymoon phase is over.
7. Be careful with employment, transition and consulting agreements. If you enter into longer term agreements with your buyer, make sure the terms are entirely consistent with your retirement plans. Otherwise you run the risk of being unwilling or unable to perform your obligations, and that can lead to litigation.
8. Maintain confidentiality throughout the entire selling process. Although confidentiality will not directly protect you from litigation, it will help

minimize the risk of losing valuable employees, customers and vendors during the process. One of the best ways to avoid litigation is to help ensure your buyer's success, because that success significantly reduces the basis for damage claims.

The goal is a successful, worry-free transition. Take the time to recognize and act on the many opportunities you have to minimize your litigation risks and reap the benefits later.