

Considerations in Selling Your Title Agency

Description

Do you own your title agency and are now in the early stages of exploring or thinking seriously about your exit strategy? As you can imagine, making the decision of when and how to exit your business can be one of the hardest and most emotional decisions you will have to make as a business owner. I personally know this, as I owned The Settlement Group, Inc., and made the decision to sell the agency I had founded and nurtured, to a larger local title agency in 2019. The decision to sell the company was a very difficult and emotional decision, but the result has been great for me, as the former owner, as well as for my staff. The cultures of both companies were very similar which made the transition from owner to owner much smoother.

Every owner should think about what they want for their exit strategy. The exit strategy will change over the years — just like your business plan changes over the years. Besides the obvious financial terms you want to consider, as part of your analysis, other matters to consider can be: 1) when is the best time to sell, 2) how long, post-closing, do you desire to work, 3) what role do you want to take going forward. A prospective buyer may want you, the seller, to stay on for a year or two. You should try to pinpoint what you want to do before you sell your title agency so the parties can have a good plan to implement going forward.

Valuation of a title agency can vary depending on the buyer's approach. Most transaction valuations use a standard formula in business sales — Earnings before Interest, Taxes, Depreciation, and Amortization (EBITDA) where a multiple of that figure is used to determine the title agency's value. The ultimate sale price of your title agency is a combination of what you are willing to sell it for and what a buyer is willing to pay for it.

While there have been a few full cash at closing transactions over time in our industry (typically for very large agencies), most transactions are based on future earnings of the agency over a period of time set by the parties. The combination of cash up front and future earnings (earnout) depends on the profitability and other financial metrics of your agency.

The types of business sales are Asset Sales and Share Sales.

Asset Sale

Asset Sale is selling the assets of the agency. Assets can be broken down into Tangible and Intangibles

Tangible Assets have a physical form such as buildings, land, equipment, investments, and inventory.

Intangible Assets are assets that are not physical in nature. Client lists, the goodwill of the company, your employees, and employee relationships with your clients, intellectual property, computer software, licenses, patents, copyrights, trademarks and accounts receivable are Intangible Assets.

An Asset Sale is the most common of business sales. Buyers of title agencies, usually prefer an Asset Sale as the buyer desires to limit exposure for your agency's prior closings. Asset sales require you, as the agency owner, to close down your agency. The buyer will most likely require you to obtain a Tail Policy for your E&O coverage for the period you wind down the agency extending through a 3-5 year period (depending on the buyer's requirements).

Share Sale

A Share Sale is selling shares of the business rather than the assets. The Share Sale is advantageous to the seller as the Buyer acquires all the company's assets, rights and liabilities.

Since most title agencies are Asset Sales, the information below, is based mostly on an Asset Sale.

DUE DILIGENCE

Don't think due diligence is just for the Buyers side. You will want to make sure you do your due diligence on the Buyer.

You should have your team of trusted advisors help with the sale of your title agency. This may include your accountant, tax accountant, business attorney, investment bankers or any other professional advisor that knows the title industry.

Every document regarding the sale of your title agency should be reviewed by your team of advisors. Don't think you can do all of this by yourself – **You Can't!**

Your first meeting with a potential buyer is usually a "Get to Know You" type of meeting. Feel free to share general information such as your background, your desired exit strategy, what is important to you going forward, your office team, (by roles, not by name), who your underwriter is, and if you feel comfortable, your gross revenues.

Before you release any confidential information to a potential buyer for your agency, you will want to have a Non-Disclosure Agreement (NDA) signed by you, the seller, and the buyer. The Non-Disclosure Agreement is a legally binding contract that establishes the confidential relationship between both parties.

Different buyers follow different sequences for their due diligence process. The potential buyer should want to review your operating agreement, lists of assumed names and DBA's, income statements, P&L's and balance sheets to start the due diligence process. If the buyer is satisfied with the review of the initial documents, then the seller could be presented with a Letter of Intent (LOI) rather quickly from the buyer summarizing the terms of a proposal. The LOI can include items such as the Transaction Structure, if the sale is an Asset Sale then it will include Assets Purchased, Consideration for the Assets Purchase, and Time Line for Due Diligence. The LOI can also include a Definitive Agreement, Representations and Warranties, Indemnification, Conditions to Closing, Exclusivity, and Responsible Party for Expenses, Confidentiality, Closing Expiration Timeframe, and Governing Law. The Letter of Intent is not intended to be binding but there may be some sections that the parties will designate as intended to be binding.

Remember, the LOI is not a Purchase Agreement.

Once the Letter of Intent is signed, the buyer could ask for a more substantial amount of documentation regarding the agency. The buyer will typically want to review operational information such as a list of all employees and their job descriptions, list of employees with title insurance licenses and copies of their current licenses, employee benefits, copy of the employee handbook, copy of the compliance manual, any and all intellectual property, list of any pending litigation of claims and confirm that the company is RESPA compliant. The buyer could even want a review of a number of files to review all content, documentation, and closing procedures.

Different buyers have different due diligence hot buttons. The buyer will review the financial information such as the company's accounting system, bank statements, depreciation schedule, tax returns for 3-5 years, list of vendors and the services or goods they provide, employee and payroll information, any outstanding loans, background checks on employees, copies of W-2's and state unemployment returns.

A buyer may want to review all bank accounts - live and dormant, list of employees authorized to sign checks and issue wires on each account, 3 way reconciliations for 3 years, underwriter's audit reports for the past 3 years, any active or closed title claims for past 3 years, and list of any complaints for the past 3 years.

The buyer will also need to review copies of current office leases, current equipment leases, existing employment contracts, underwriter agreements, any other active contracts and any Affiliated Business Arrangements or Marketing Service Agreements you have.

Some buyers will want to perform a review of all IT and telecom systems. There will also be a review of inventory of hardware for each office, physical office visits, inspection of office equipment and systems, review of all software and software licenses, security procedures and setup, list of domain names and addresses and internet invoices.

Please have your trusted advisors assist in preparing all documents for the buyer's review. As you see, there are many documents that must be reviewed during the Due Diligence Period.

Employees

Employees are very important in the sale of a company. You want to make sure your employees are well taken care of and offered employment with the new company. Also look at the benefits the buyer has to offer your employees. The buyer typically will want your employees stay on as your clients are comfortable working with them and it makes the transition smoother

Culture

When you are looking at potential buyers, make sure their company culture is similar to your company culture. Don't be shy in asking the buyer about their culture and operating processes. Knowing what to expect and doing your due diligence makes the transition from owner to owner much smoother for everyone. You want your employees to be comfortable with the buyer. Successful Company Culture is one that brings out the best in your employees.

RESPA

Your buyer will want to review any and all Affiliated Business Arrangements and Marketing Service Agreements to make sure all written agreements and disclosures are in place and are compliant. You need to let the buyer know how the Affiliated Business Arrangements and Marketing Service Agreements help the bottom line. In advance of due diligence, make sure all your affiliated business relationships are well documented and are RESPA compliant. No buyer wants to acquire a title agency that is not RESPA compliant.

Underwriters

You will need to notify all of your underwriters of the potential sale of the title agency, as each underwriter will need to conduct an audit once the final policies are issued and the sale has been completed. Once your Title Agency is purchased, you will sign a Termination Agreement for each underwriter.

Please read your Underwriter's Agreement before the sale of your title agency to understand what is needed.

BUREAU OF INSURANCE

The Bureau of Insurance has Virginia Title Settlement Agency Close out Audit Requirements that must be followed. The requirements regard General Duties and Information, Escrow Account Requirements, Disbursement Guidelines and Due Diligence Requirements. This information can be found on the State Corporation Commission's Website.

Please review the Bureau of Insurance requirements prior to the sale of your title agency.

LEGAL DOCUMENTS

The purchase document is typically the main legal document for the sale transaction. It will include the Recitals, Definitions, Sale Price, Representations by both parties, typically Restrictive Covenants that lock up the seller for a period of time post-closing to ensure the value of the purchase remains for the buyer. It may also include other terms such as Indemnifications, Miscellaneous Provisions and Governing Law negotiated by the parties specific to your agency sale and the exit you desire.

If you, the agency owner, are staying with the new company, an Employment Agreement is typically part of the documentation signed. This could contain provisions for what role you will have, your salary and other compensation negotiated, and any restrictions for your ability to leave and go to another company or start another company.

As I mentioned earlier, please have your trusted advisors review everything with you.

Every Non-Disclosure Agreement, Letter of Intent and Purchase Agreement may be written differently. I have recited just some of the items that may be in these documents.

I have only touched on the subject of things to consider when selling your title agency. Selling your title agency is very an involved process. Since I have sold an agency, I have some insights to the process, the documents, the timing and most importantly the emotions that go along with all of it.

Please feel free to reach out to me if you have any questions or would like to talk about how you may want to analyze and accomplish your exit strategy. My email is myrna.keplinger@communitytn.com and

my cell number is 703-675-5812.



Myrna Keplinger

Myrna has spent almost 40 years in the title industry. She was the Principal and a

founding member of The Settlement Group, Inc. The Settlement Group, Inc., was founded in 2000 and was acquired in June 2019 by Community Title Network. Myrna now works in Business Development with Community Title Network.

Category

1. Marketing
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