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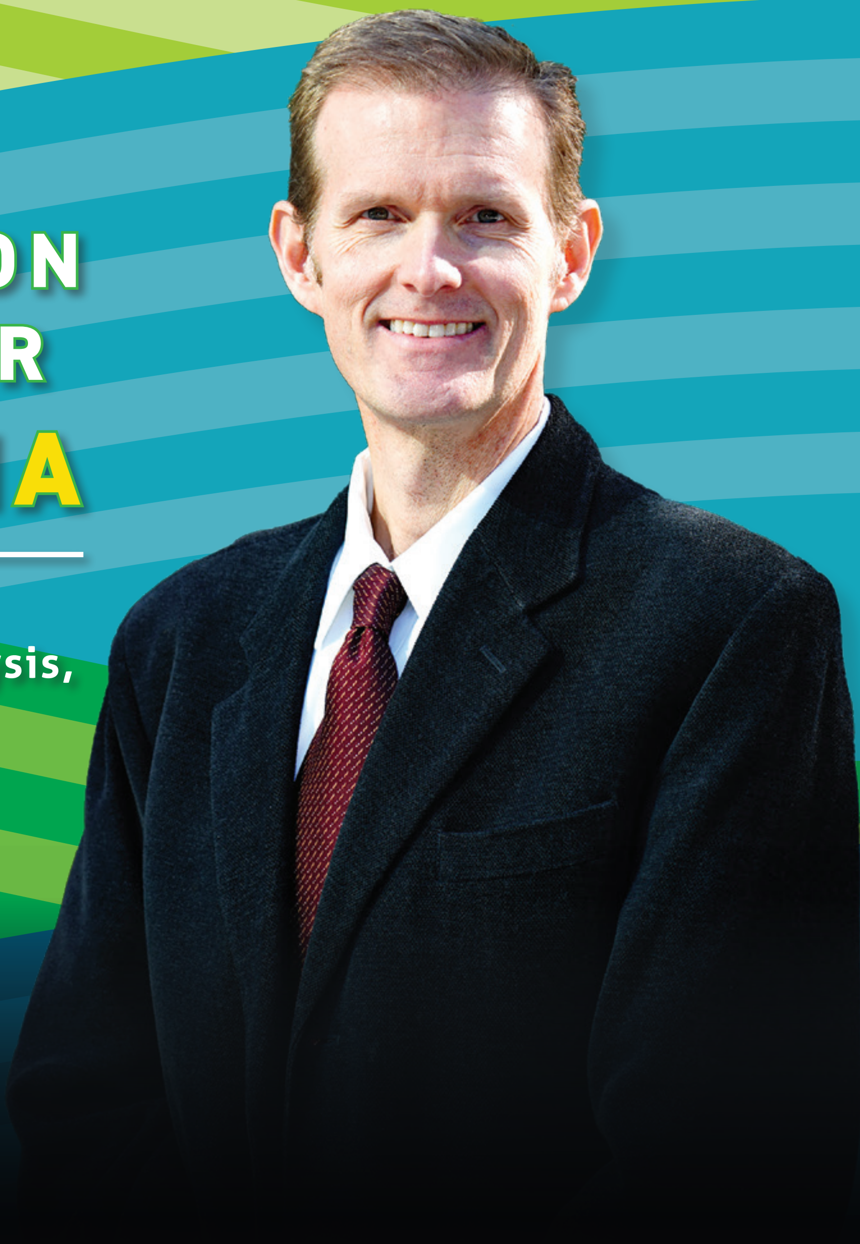

CONSTRUCTION OUTLOOK FOR CALIFORNIA

Baron Worthington,
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SEE INSIDE:

Is This the TIME to SELL Your Company (and How)?

By Bill Capps, Jeffer Mangels Butler & Mitchell LLP

As a merger and acquisitions ("M&A") attorney in the building materials industry, I am frequently asked questions by clients and other friends about the potential sale of their businesses.

Below are some of the frequent questions and the answers gained from my experience and expertise:

<u>HOW DO I KNOW THE RIGHT TIME TO SELL MY BUSINESS?</u>

The "right" time depends upon your personal situation. For example, are all your eggs in one basket? If so, owning a "one stock folio" is particularly risky for those over 50. Do you think there is any significant additional value to be developed in the business over the next few years? If not, what are you waiting for? What are your own personal financial goals? Can they be satisfied when you sell, pay your taxes and reinvest the proceeds?

As some learned in the 2008 and 2009 financial crisis, trying to "time" the M&A markets can be risky. When the window for a good sale closes, we cannot know when it will open. In the meantime, the owner can experience a business reverse, a divorce, disagreement with other owners, or severe illness.

By the time this article is published, the economy may be in the tank, the same, or better (unlikely). Your guess is as good a mine!

<u>WHAT CAN I DO TO INCREASE THE VALUE OF MY COMPANY BEFORE SALE?</u>

Fixing problems and improving the good features of your business are key to increasing its value in a sale. Examples of “aerobics for the company” (getting into shape for a sale or third party investment) include:

◆ examining and verifying entitlements (for example, a conditional use permit that has a long life will make it easier for the buyer to pay a higher price).

◆ analyzing burdensome (or helpful) supplier and customer contracts (for example, a contract to sell aggregate at a cheap price).

◆ getting commitment from important executives and employees (this is particularly true where the buyer is a “financial” buyer rather than “strategic buyer”).

◆ analyzing and solving environmental and other liability issues (the point here is really that the competence of management is called into account if there are unresolved problems in the business; buyers discount the price for unresolved issues and take the most pessimistic view).

◆ improving financial statements particularly where employment practices make the company vulnerable to potential class action litigation (e.g. overtime or time off policies not in accordance with the law). Financial statements are frequently adjusted to improve EBITDA (earnings before interest, taxes, depreciation and amortization) which is an important metric for financial buyers.

It is important to remember that the purpose of due diligence from the standpoint of a buyer is not merely to determine whether or not there are problems which prevent the purchase of the business. The buyer wants to find problems in the business which the seller is not aware of since these serve to legitimize the re-negotiation (downward) of the purchase price. Therefore, any significant problem, which the buyer identifies before the seller does, ends up being to the buyer’s advantage.

<u>WHO CAN I TALK TO?</u>

Sometimes, it is lonely owning a business. Finding disinterested advice is hard, particularly on the topic of selling the business. Talking to employees or customers can make them nervous. After all, if the buyer is a larger company, your financial and HR staff are frequently redundant.

Say, you are thinking of conveying the business to your children because they have sufficient intelligence and passion to operate it successfully. Unfortunately, there is an "M&A Industry" composed of wealth managers, investment bankers and transactional lawyers who earn fees if there is a deal to an outsider, but not so much if the business is conveyed to a family member.

Trust is the watchword in this case. Smartness or skill or the number of deals done does not necessarily guarantee trust.

DO I NEED AN INVESTMENT BANKER? HOW MUCH DO THEY CHARGE?

Sellers frequently overestimate their knowledge about potential purchasers for their business and overlook buyers that are identified by investment bankers (who act essentially as brokers for a commission). In a recent example, a “surprise” buyer paid 10 percent more than anyone expected for the business and closed within 60 days. In that case, the buyer was completely unknown to the seller (and in fact was in a different line of business).

Many of the “name” investment bankers will have minimum fee of $1 million and really do not want to deal with companies that are going to sell for less than $30 million or so. The bankers believe they do the same amount of work in selling a $100 million company that they do in selling a $50 million company. Not surprisingly they are seeking bigger deals.

However, there are smaller investment bankers who will negotiate better fees and can produce good results. Part of the skill and experience you should be looking for in your professional advisors (such as attorneys) is knowledge about and introduction to the investment bankers.

HOW LONG IS THE PROCESS OF SALE AND WHAT DOES IT CONSIST OF?

From start to finish, it would be rare to be able to sell a small sized business (say, $50 million in purchase price) in under 9 months after you have fixed the problems and improved the good features of your business.

Selecting the investment banker will require providing financial information so that the banker can advise you of their strategy for sale and approximate pricing.

The banker’s process of soliciting indications of interest will require preparation of a “book” describing your company and providing this to potential buyers.

Once a buyer has appeared which is willing to pay your price, a “letter of intent” is negotiated. In recent years, letters of intent have gotten increasingly more detailed, probably in order to shorten the process of preparation of a definitive sale agreement. Due diligence for the buyer is usually 60 days or longer and closing can follow shortly afterwards. ■