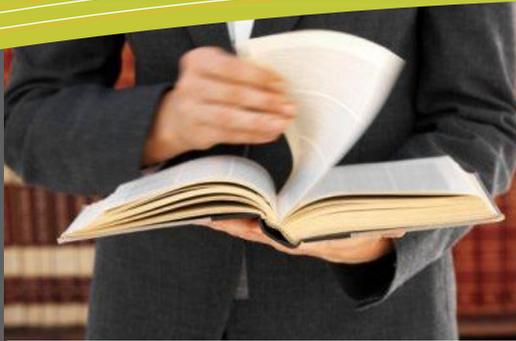


Selling a business is a very important financial decision. It is important to ensure that the person who is advising you and handling your matter is a fully qualified solicitor.

Baldock Stacy & Niven

Solicitors and Notaries



Notes on Selling a Business

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Introduction

Selling a business is a large legal and financial commitment and it is important that you are properly advised in order to avoid the pitfalls. There are many considerations that you should take into account:

- What is the best structure for the sale of the business (e.g. sale of business or sale of shares)?
- Does the contract protect me from future claims by the purchaser?
- Am I selling for the right price?

Baldock Stacy & Niven has been assisting sellers of businesses for over 115 years and we look forward to assisting you in your sale of a business. □



How will Baldock Stacy & Niven help?

Baldock Stacy & Niven will prepare the contract in accordance with your instructions, which is normally a standard "Agreement for Sale of Business" and specially drafted conditions of sale. We will fully explain the agreement to you, noting in particular whether there are any special conditions we suggest, and what the effect of these conditions may be. □

What are the steps before selling a business?

- You should determine the structure of the sale - is it a sale of shares in the company owning the business or a sale of the underlying business.
- Get advice from Baldock Stacy & Niven and your accountant and any other key people you can identify that might help you to make an informed decision about your sale;
- Once you have decided to sell a business ask Baldock Stacy & Niven to prepare a contract for sale of business. □

What are the steps in a selling a business?

1. Initial negotiations, pre-exchange searches, negotiation of special conditions, contracts signed.
2. Exchange of contracts where a deposit of 10% of the purchase price is usually paid and contracts become legally binding.
3. We then arrange for a transfer of lease and any consent by franchisee's etc.
4. The contract for sale will state a completion date, when settlement will occur. Settlement generally occurs at a place nominated by the vendor. The solicitors for the buyer and the

Contact Us

Parramatta Office

Suite 2, Level 4
91 George Street
Parramatta NSW 2150
Ph: (02) 9891 6444
Fax: (02) 9891 6507

www.bsnlegal.com.au
mail@bsnlegal.com.au

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seller must have all the relevant documents signed and the appropriate cheques. ☐

What will be in the contract?

The contract will state what assets are being sold. Assets of the business may include goodwill, plant and equipment, lease, business name, stock in trade, debtors and employees.



The contract will also state the price the business is being sold for. This price is generally apportioned between goodwill, plant and equipment, and fixtures. This apportionment is important, as it will affect the amount of capital gains tax you will have to pay.

The contract should clearly state all liabilities that the purchaser will assume upon buying the business, and include clauses that will protect you as a seller and covers issues of inspecting all

records, receiving necessary licences etc and ensuring a minimum trading level during any trial period. ☐

What is goodwill?

There is no concrete definition for goodwill, however it is generally thought of as the value of the reputation of the business, good location, market penetration and good relations with its suppliers, customers and employees. Goodwill will generally be transferred to the purchaser through the hand-over of the assets and rights (including the business name) of the business. The goodwill of the business can be protected through a clause in the contract, which restrains the vendor from competing with the business after completion of the sale. ☐

Leased Premises

If you lease the premises from which the business is run we will need to organise a transfer (or assignment) of the lease or alternatively the purchaser may wish to obtain a new lease of the premises. It is the seller's responsibility to contact the Landlord to arrange for a transfer of lease or a new lease. ☐

Goods and Services Tax (GST)

Most sales of business are not subject to the payment of GST as they are the "sale of a going concern". However, it is important that the appropriate conditions are included in the contract for the sale of the business to ensure that GST is not payable. ☐

The material in this bulletin is not a substitute for legal advice and is only of general informational value. No person should act or refrain from acting solely on the basis of this bulletin. It does not constitute legal advice and

*your possession of this bulletin does not create a client/lawyer relationship. If you would like to discuss your particular circumstances please contact **Baldock Stacy & Niven** and we would be pleased to be of assistance to you.*