

Hints and tips to selling a business

Depending on the type, selling a business can be complex. It can involve: intellectual property, leasing, franchising, tax, GST, personal property securities, licencing and employment not to mention finance, marketing and a maze of other legal and non-legal issues. Finding your way through the maze is time consuming. The following are some *hints and tips* to help you during the process.

Understand what you are selling

This may seem obvious but, a closer look at what you are selling is essential – not being prepared could mean you lose your sale. A business sale contract (**contract**) will normally include:

- Assets
- A client/customer list
- A list of suppliers
- A business name, logo, trademark or other intellectual property
- Phone, fax, email and domain name
- Plant and equipment
- A restraint on the seller after settlement
- list of employees

Carefully prepare a list of what you are selling. Make sure the assets are accurately described. For example, include the make, model, registration number and engine number of any vehicles included with the business.

Employees can form a very important part of the business. Buyers will often want to lock in key employees as this could be critical to the continuing success of the business and may require special conditions to the contract. You should carefully consider how you manage this with your employees. You don't want to lose your employees before the contract is signed or settled.

You should estimate the employees' entitlements – your discovery at the last

minute that you owe the employees significant entitlements can eat into the sale price. Knowing what your costs are will help you arrive at the right sale price.

Stock or **work-in-progress** is also another important aspect of the contract. You need to understand whether the purchase price includes stock or work-in-progress or whether this is an additional cost. A stocktake may be required prior to the settlement to establish the stock price payable in addition to the purchase price.

Make sure you are not holding obsolete stock or excessive work-in-progress as this may not be purchased by the buyer.

Your **licencing** could be critical to selling the business. Provide early advice to the buyer as to what qualifications, licences and permits the buyer will need to operate the business before you sign the contract. This may avoid delays in settlement of the contract.

Understand your **costs**. You should talk to your lawyer, accountant and bank about the costs, tax (capital gains tax etc.) and outstanding loans.

How do you sell the business?

You will need a contract prepared. The usual contract is a standard REIQ contract which comes with standard conditions. The contract may be prepared by either the business broker or a lawyer.

At this point, consult your lawyer to review the contract and consider:

- What special conditions may be required
- What costs will be incurred

The buyer will also usually require special conditions. These are negotiable.

Special conditions

The contract contains standard conditions which contain the usual rights and obligations that the seller and buyer must observe. However, these may not be enough for the buyer.

Special conditions to the contract typically include:

- Due diligence – such as mechanical review of vehicles or plant and equipment or a review of the financial records of the company
- Obtaining the consent of a franchisor
- Special licence requirements

Each business is different and the special conditions should be tailored to the business you are selling.

After the contract is signed

Each party has legal obligations that it must meet after the contract is signed:

The buyer must typically:

- Pay the deposit
- Conduct its due diligence within time limits – e.g. lease review, review of financial records, review plant and equipment
- Apply for finance approval within a time limit
- Apply for landlord approval if a lease is required
- Apply for franchisor approval if the business is a franchise
- Apply for all licences and permits
- Apply for supplier approval
- Pay the transfer duty
- Pay the purchase price at settlement
- Collect and account to you for money owed to the seller before the settlement.

As the seller, you must typically:

- Provide a copy of the lease by a set date (if any)
- Provide access to its books of account by a set date
- Provide a copy of the franchise agreement by a set date (if any)
- Pay the debts of the business up to and including the settlement date
- Pay the employees entitlements up to the settlement date
- Comply with any restraint of trade after settlement
- Transfer the business assets
- Provide tuition or assistance to the buyer before or after settlement
- Continue to properly manage the business until settlement

Special conditions may oblige either party to satisfy other requirements.

Your costs

Costs will vary for each transaction. You should consider the following possible costs:

- Your business broker's commission
- Your legal fees including some search costs
- Transfer fees for a franchise (if any)
- Your accountant's fees
- The landlord's costs (if any)
- Your bank's costs (if any)
- Your marketing campaign
- Transfer costs – e.g. registering the transfer of a vehicle or a licence
- Rent adjustments at settlement
- Stock or work-in-progress
- Employee entitlements
- Other contractual payments such as higher agreements and equipment leasing

This advice

This advice has been prepared as a guide only. It does not replace specific legal advice.



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We encourage you to contact *Matthew Yates*
0428 898 100 for specific legal advice.

Best of luck!

Other services provided by **mylegal**:

- Property law
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