THE FAMILY BUSINESS LEADER SERIES

McGrath | North

WWW.MCGRATHNORTH.COM

A GUIDE ON:

HOW TO SELL YOUR COMPANY

Nick Niemann, JD | Matt Ottemann, JD, LLM
Family Business Continuity Attorneys

HOW TO SELL YOUR COMPANY

"Just as Family Business Leaders are looking at how to transition their Business to their family or to key members of their Team, they are also looking into their Outside Route Exit (company sale) options early on and making decisions accordingly."

Your "Fourth Quarter" Game Plan

In our other Guides, we have described the "Fourth Quarter" Planning process – which is a combination of Profit Planning, Asset Protection Planning, Estate Planning and Succession Planning.

This Guide on "How To Sell Your Company" is intended to answer some fundamental questions – if you believe the sale of your Company to an outside buyer should be considered. These questions include:

- Is there or will there be a market for the sale of your company to an outside third party?
- How do you plan ahead for and pursue a sale to an outside third party?
- What kind of price and terms can you expect or require?

Outside and Inside Exit Routes

• Family	• Strategic Buyer	• ESOP
• Partners	• Financial Buyer	• Franchise
• Key Employees	• Synergistic Buyer	• Liquidate
• Liquidity Recap Dividend	• Roll Up Buyer	• Death — Heirs
• Become Retired Owner	• Private Equity Group	• Hybrid/Combo of These

The answers to these questions early on can help direct your business decisions throughout your time as an owner—especially during your personal "Fourth Quarter" of your time in action.

The results of this review will help you decide whether you should plan for a sale of your business to an outside third party as your primary or fallback plan.

Understanding Your Potential Outside Exit Routes

There are four principal directions to exit ownership of your company through a transfer to an outside third party (as compared to in inside route exit). These consist of:

- Sale to third party buyer (financial, strategic, synergistic or roll-up).
- Sale to the public market.
- Sale to a business liquidation buyer.
- A partial sale, to a strategic, financial buyer or the public, or through a joint venture or franchise.

We've found that most business owners have some idea about who might be a potential outside purchaser of their business. Rarely, however, does a business owner have a good assessment of the full potential market. That's because unless you are actively studying this market on a frequent basis, you simply don't know its reach. This is why we include in the Fourth Quarter Planning process the option to pursue an **"Outside Route Assessment"** with the help of an M&A advisory firm.

One of the primary reasons business owners have reported dissatisfaction with their exit is that they didn't understand their alternatives. Until you know the actual market outlook for your business, it's difficult to select the best exit route for you and your family. You may prefer to transfer the business to a key employee group and you may feel so strongly about this that an outside sale simply isn't an option for you.

However, we've found that business owners normally want to know what they are leaving on the table by excluding one or more options. With an Outside Route Assessment we can look at your value strengths and detractors and be better able to recommend specific value and marketability enhancements. This can detail the best routes to pursue to target the best potential type of outside buyer. And it will detail an expected sales price range based on specific sale transactions for similar companies in your industry.

What We Do

We "look into the future" with Family Business Leaders to design and deploy what's really needed for you, your family and your colleagues to win the whole game.

Why We Do It

Because we believe in the greatness of the family business dream.

Private Equity Groups As An Exit Strategy

Due to the existence of several thousand Private Equity Groups ("PEG") which possess several billion dollars of funding for the purpose of purchasing companies, the potential often exists for a sale to a PEG. Not all companies are attractive to the PEG community. Generally, PEGs find the following characteristics to be appealing.

- Predictable, steady revenue stream.
- Profitability in excess of industry norms.
- A significant level of Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA"). A minimum EBITDA of $2 to $5 million or higher is generally needed.
- Strong growth potential and track record.
- Unique products, services, technical skills and customer bases.
- Strong leadership team with a deep bench.

HOW TO SELL YOUR COMPANY

Being Prepared With The Right Attitude

The eventual exit from active duty and ownership will typically be a major event in the life of a business owner, after which some will transition well and some not so well. Some owners will take a sneak-preview of life after business by taking an extended vacation before reaching the decision to sell, to, in essence, experience a taste of retirement to see how well it suits you.

Once you decide its time to sell and begin the actual sale process, it's best to be both prepared to leave and prepared to not leave – that is, be prepared to stay on if the transaction can't be completed. Unless you maintain the ability to walk away from any deal, you will lose negotiating leverage.

The sale of a business can be a very trying time for a business owner. The transaction intermediaries will tell you that unless a deal has been in the ditch at least a half dozen times, it's not a real deal. Have your S.W.A.T team (Business Continuity Attorney, transaction intermediary or business broker, and M & A attorney) assembled well in advance to help pull the deal out of the ditch and keep it on track. But be prepared to walk away from any deal that you find will not meet your objectives.

The Competition For Quality Buyers

Various organizations have projected a substantial, baby boom driven increase in the number of businesses being offered for sale in the next several years. This increase in competition for quality buyers raises the need to develop a Fourth Quarter Game Plan with an understanding of the business sale process.

Are You Ready To Let Go?

Understanding the business sale process isn't limited to just learning the technical aspects. It's important to first address your planned readiness to sell. Entrepreneur Jimmy Calano and author of "Make Your Move" provides a good insight into the mental steps an owner should walk through when approaching the sale of your Company. He was co-founder and former CEO of CareerTrack, an international training company.

Business Owner Survey

- **79% of Business Owners want to exit within 10 years**
- **57% of Business Owners want to exit within 5 years**

- **80% believe their exits will occur because of planning and actions they implement**
- **Owners are looking at multiple possible Exit Routes**

Source: Business Enterprise Institute
www.ExitPlanning.com

His advice as you contemplate the sale of your Company is to first take some time to decide if you are ready, willing and able to let go. He suggests that you do this by first listing out: your reasons for selling, your fears about selling, what could go wrong, your deal team, how you will mentally prepare yourself, the things that you won't miss, your "Dream List" of what you'll do with your days after you've sold, the positive habits and routines you promise to develop, and the goals you plan to achieve after the sale.

You Can't Win If You Don't Know The Playing Field

Just as it's difficult to be successful in running a business without understanding the playing field, it is difficult to be successful in selling your business if you don't understand the field of play. One of the objectives of the Fourth Quarter Planning process is to provide the business owner with enough understanding of the business sale process to be able to prepare appropriately and to engage the right expertise at the right time to help accomplish a profitable exit through the sale of your business.

Many business owners fail to build the optimal position for profitably selling their business. Often this results in leaving large amounts on the table. This can arise because of any number of reasons, including the failure to properly design or place your business into a position to be ready for sale, as well as a failure to properly approach the buyer's marketplace.

So… What do <u>you</u> want to see?

Family Business Leaders tell us they most want to **<u>achieve</u>:**

- **Profitable Growth** for our business
- **Wealth Protection** for what we're building
- **Lifestyle Continuity** for us and our family
- **Personal Freedom** on our terms

Family Business Leaders tell us they most want to **<u>avoid</u>:**

- **Train Wrecks**

Understand The Business Sale Process

The business sale process typically consists of four principal stages, including:

- Pre-Sale Planning.
- Marketing the Business.
- Negotiating The Sale.
- Completing And Closing The Transaction.

Pre-Sale Planning

The Fourth Quarter Game Plan is designed to help accomplish your pre-sale planning (whether for a sale to an outsider or to an insider) and begins with a **"House-In-Order Checkup"**. It will help in making sure you have properly structured your business organization. It will also help you focus on growing the value of your business, protecting it through the date of your sale, as well as putting you in a position to be able to sell your Company. Pre-sale planning will help increase your odds of completing a sale.

In planning the sale of your Company, it's important to keep in mind the factors which determine what a buyer is willing to pay. These include (i) the return on investment the buyer expects on the purchase of your business (vs. other investments), (ii) the buyer's expectation of your business' future performance (e.g. predictable, growing future cash flow, management capabilities, proprietary technology and products), (iii) the buyer's own objectives and needs, and (iv) the then-present economic factors affecting the M&A market (e.g. interest rates, capital availability, industry economic cycle).

HOW TO SELL YOUR COMPANY

Marketing Your Business

Fourth Quarter Planning involves a review of your potential Exit Routes. This includes a review of your potential third-party buyers, whether financial or strategic. Depending on the industry within which you operate, you may well possess the best working knowledge of the potential financial and strategic buyers for your type of business. We typically work with our business owner clients to engage an investment banker, a transaction intermediary or business broker (depending on the size and nature of your Company) to assist in marketing the business: a business broker (for smaller companies), or a transaction intermediary or investment banker (for middle-market or larger companies). A business broker, transaction intermediary or investment banker may also be known as an "M&A Advisor", or "M&A Broker" or "Deal Maker".

In each instance, we will work together to first do a **"Marketability Assessment"**, which includes potential buyer profiles. Next, a **"Confidential Information Memorandum"**, also known as a Confidential Offering Memorandum, will be prepared, which describes the salient business features.

In addition, the investment banker, transaction intermediary or business broker will work with us to prepare some form of a **"Teaser Sheet"**, which is a document which contains enough information to test a buyer's interest. Once the investment banker, intermediary or broker has developed a list of potential buyers, the "Teaser Sheet" can be distributed to potential buyers to determine an indication of interest. This Teaser Sheet will typically not contain enough information to identify the specific seller.

Once an indication of interest is received from one or more potential buyers, a **"Confidentiality Agreement"** will be executed with each interested buyer, assuming that the buyer is of interest to the seller. At this point, the Confidential Information Memorandum can be provided for a detail review of interest by the potential buyers.

Depending on the circumstances (such as the size of the company), some form of "auction" will typically be developed. The Deal Maker will generally engage in what is in effect a limited auction in order to involve multiple potential buyers during the same time process. Importantly, you don't state a price. The potential buyers develop an offering price. For smaller transactions using a business broker, the published listing will typically include an offering price and cash flow, but not the company name.

A business broker, transaction intermediary or investment banker will typically negotiate a retainer for its fee to engage in this process, coupled with a "success fee" if and when the sale is concluded. Often the success fee will be set at a fixed percentage of a given expected value and a somewhat different percentage as to that portion of the selling price achieved in excess of that. This aligns the interests of transaction intermediary with the seller.

A seller engaging an M&A Advisor to sell his or her business should anticipate giving an exclusive term for a period of time, followed by a cancellation option by either party. Normally you should expect a tail period for a certain period of time after termination of the agreement in the event a sale transaction is actually consummated with a buyer which the M&A Advisor broker brought to the table.

Strategic Value

It's critical during this process to understand and identify the unique value your business can bring to a buyer beyond just the obvious profitable cash flow to every buyer. What are the potential strategic and synergistic values (yes, there's a difference) your business can bring to the strategic buyer? For those who have deployed our **"Fourth Quarter" Profit Playbook**, you will have already identified and benefited from these aspects of your business.

Negotiating The Sale

The bidding process ends when the seller has selected one of the buyers with whom to complete the transaction. Typically, the parties will then enter into a **"Letter of Intent"** which will include the key terms of the transaction. This will detail the proposed purchase price, the particular business being sold, the method of payment, a proposed closing date, the expected contingencies to closing (such as completion of financing and the due diligence process), and such other factors as the parties determine. The Letter of Intent can also include provisions which provide for a period of time (known as a standstill) during which the seller cannot market the business to another buyer. The Letter of Intent can also contain further details regarding confidentiality requirements and press release requirements. The Letter of Intent creates the framework for an agreement, but it is not intended to be a legally binding document (other than with respect to certain terms, such as the standstill and confidentiality terms).

Following the execution of a Letter of Intent, the buyer will, with the cooperation of the seller, typically engage in a very comprehensive investigation of the business, known as the due diligence process. The transaction intermediary, investment banker or business broker, as well as M&A legal counsel for both the buyer and the seller, are typically involved in the Letter of Intent preparation as well as management and review of the due diligence process.

Following this, assuming that the parties are both in agreement on proceeding, then a definitive **"Purchase and Sale Agreement"** will be prepared by M&A legal counsel and further negotiated by legal counsel, the buyer, the seller and the investment banker, transaction intermediary or business broker. The initial draft of the definitive Purchase and Sale Agreement is often prepared by the buyer's legal counsel. It will contain the terms of the deal, along with various representations and warranties to be made by both parties, as well as certain covenants regarding actions to be taken or not taken between the date of the agreement and the closing of the transaction. During this process, the buyer and its advisors will also be negotiating its own financing for the transaction as well.

HOW TO SELL YOUR COMPANY

Completing And Closing The Transaction

Following execution of a definitive Purchase and Sale Agreement, the buyer will typically engage in additional due diligence to confirm that the representations made in the agreement have been complied with. In order to complete and close the transaction, a number of additional documents will be prepared by M&A legal counsel in order to actually carry out and implement the completion of the sale.

The overall timing for this process can vary greatly from transaction to transaction. Overall, the time period involved from first engaging the investment banker, transaction intermediary or business broker to closing of the transaction could be expected to take from six months to over a year, depending on the size and complexity of the transaction and the market conditions.

The process of selling a business can typically be very complex and can also involve a lot of time by the seller and the Company's key employment staff. It's important to involve professionals who have demonstrated experience in the process, both as to the business marketing capabilities of the investment banker, transaction intermediary or business broker as well as the merger and acquisition experience of the M&A legal counsel.

Plan For An Outside Route Exit

Once you've decided that your primary or backup exit route includes the future sale of your business to an outside third party, it's important to start to consider the terms under which you will be willing to sell by developing an **"Outside Route Exit Plan**". Such a plan would address:

- **Who will you sell to?** Do you have specific buyers you do or don't want to consider?
- **What is sold?** What are you selling and what are you keeping?
- **What is received?** What overall financial package are you willing to receive to accommodate your needs and the buyer's objectives?

Understand The Potential Sale Models

As you consider what you want to achieve, you need to begin to consider the various potential selling models which exist for selling your Company. Several different models exist for selling your Company in an inside sale (e.g. to your key employees, family, partners or ESOP) as well as in an outside sale (e.g. to an investor, private equity group, competitor, supplier, customer or industry roll up). These can best be considered by addressing the principal components of the transaction.

Transaction Structure

The principal choices to overall structure include:

- **Asset Sale**. Sale of the Company assets to a new entity set up by the buyer(s).
- **Stock Sale**. Sale of the stock you own in the Company to the buyer(s).
- **Joint Venture**. Transfer of all or part of the Company assets to a newly formed limited liability company or corporation which you (or your Company) will own along with the buyer(s).
- **Equity Rollover**. This enables you to keep a portion of your ownership equity invested in the buyer's company. This may be some form of full tax deferred merger or a partial equity rollover.
- **Franchise**. Franchise your business and sell franchises to selected qualified buyers.

Pricing

The principal choices to the pricing for the sale of your Company include:

- **Fixed Price**. The price here is determined and fixed under the terms of your sale agreement.
- **Contingent Or Earn Out**. The price here would be adjusted based on the Company's performance after the sale. This could be dependent, for example, on the Company's future revenue, EBITDA (earnings before interest, taxes, depreciation and amortization), net cash flow, net earnings, or key customer retention. Certain collars could be used to set a floor and ceiling on the price adjustments.

- **Combination**. Some combination of fixed price and contingent price.

Valuation

The valuation of the Company on which the price will be based depends on the parties' negotiations and could include the following factors:

- **Appraisal**. An appraisal can be obtained by one or both parties.
- **EBITDA Multiple**. The parties may determine pricing based on a multiple (e.g. 4 to 10) of past (e.g. 1 to 3 year weighted or simple average) or projected earnings.
- **Earnings Multiple**. The parties may determine pricing based on a multiple of past or projected net earnings.
- **Discounted Future Cash Flow**. The parties may determine pricing based on the present, discounted value of future expected cash flows.
- **Sales Multiple**. The parties may determine pricing as a multiple of past or projected revenue.
- **Book Value**. This is appropriate for certain industries.

HOW TO SELL YOUR COMPANY

Payment

The principal alternatives for payment of the purchase price include the following:

- **Cash**. You may require full cash paid at the time of closing of the sale.
- **Installment Note**. You may be willing to accept an installment note from the buyer for the price (typically secured by the assets of the Company or the purchased stock as collateral).
- **Equity**. You may accept equity in the buyer as payment.
- **Combination**. You may agree to the receipt of a combination of cash, a promissory note and equity.

Other Agreed Payments

You may decide to accept some part of your overall payments in other items of compensation such as:

- **No Compete**. You might decide to be paid to agree not to compete in the future.
- **Consulting**. You might agree to an ongoing fee to consult with the buyer about the business.
- **Employment**. You might agree to continue to be employed after the sale for some period of time for an agreed compensation package.
- **Lease**. If you presently own or decide in the transaction to retain real estate or equipment that has been used in the business, you can agree to lease this to the buyer.
- **Intellectual Property**. If you presently own or decide in the transaction to retain intellectual property that has been used in the business, you can agree to license this to the buyer.

Portion of Stock Transferred

You may choose in a stock transfer from the following as to the amount of stock sold:

- **100% Transfer**. The sale of 100% of your stock now to fully exit ownership.
- **Less than 100%**. The sale of less than 100% of your stock to enable you to remain a part owner with the objective of continuing to achieve equity growth with the possible sale of the balance in the future.
- **Multiple Phase Transfer**. Particularly in the sale of your stock to your key employees, family or ESOP, you may choose to sell or transfer just some of your stock now, with the balance over several steps (and in each case leaving you the option to change course in the future as to the sale of the balance of your stock).

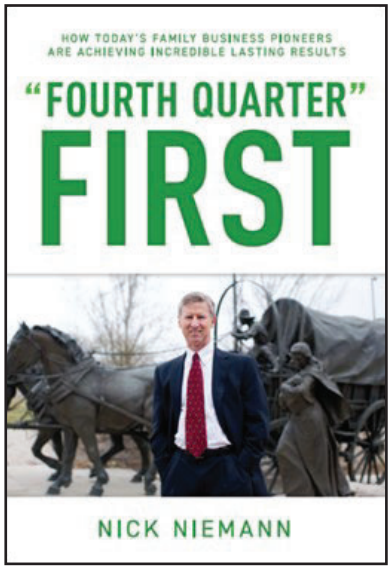
Leadership Retention Incentive

In order to properly compensate your key employees, as well as to incent them to remain with the Company upon a sale, you will want to consider providing one or more of the following (preferably well in advance of the sale):

- **Stock Bonus**. Bonusing key leaders shares of stock in the Company.
- **Stock Purchase**. Allowing key leaders to purchase shares in the Company at a full or bargain element price.
- **Stock Option**. Granting key leaders stock options in the Company.
- **Phantom Stock**. Providing key leaders what is known as “synthetic” equity in the form of phantom stock.
- **Stock Appreciation Right**. Providing key leaders “synthetic” equity in the form of a stock appreciation right (with the proper balance between Retention SARs and Performance SARs).
- **Deferred Compensation**. Providing key leaders with a deferred compensation plan (unfunded or funded, e.g. with one of several insurance products).
- **Stay Bonus**. Providing key leaders with a cash Stay Bonus for agreeing to remain with the Company for a certain period after the sale (paid by the seller or buyer).
- **Employment Commitment**. Providing key leaders with an employment agreement and/or position commitment for a certain period of time.

Your Outside Route Exit Plan

The Outside Route Exit Plan enables the business owner to see the reality of achieving, and put into place the strategies to achieve, a company sale which can meet your objectives.



This Guide primarily consists of excerpts from Nick Niemann’s book titled “Fourth Quarter First – How Today’s Family Business Pioneers Are Achieving Incredible Lasting Results.” Copies of this book are available upon request.

GETTING STARTED

Company: _____ **Website:** _____
Address: _____ **City:** _____ **State:** _____ **ZIP:** _____
Email: _____ **Office Phone:** _____ **Cell Phone:** _____

Business Owners Main Priorities and Aspirations

1.
2.
3.
4.
5.

Owners

Names	Operating Company	Related Company
	%	%
	%	%
	%	%
	%	%
Total	100%	100%

Leadership

Board _____ _____
_____ _____

Officers (Age)

CEO ( ) _____ **CIO ( )** _____
President ( ) _____ **CHRO ( )** _____
COO ( ) _____ **CAO ( )** _____
CMO ( ) _____ **[_____] ( )** _____

Discuss Key Person(s) Interested/Capable of Owning and/or Running Business

Our Value Propositions We Make and Sell …	**Our Customer Segments** Those Who Buy From Us Are …	**Our Revenue Streams** Our Pricing Method Is ...	**Our Top Competitors**
	Top 2 = ____ % of Revenue		
	Top 5 = ____ % of Revenue		

Owner Believes Company Stock Value Is Worth: $_____ **Owner's Total Annual Compensation: $**_____

Our Company's Biggest Known Opportunities In The Next 5 Years:

1. _____
2. _____
3. _____
4. _____

Our Company's Biggest Known Threats In The Next 5 Years:

1. _____
2. _____
3. _____
4. _____

Key Employees

Name	Comp. $	Age	Yrs. w/Co.	Present Position	Could Run Co.	Could Own Co.	Wants To Run Co.	Wants To Own Co.	Motivated By:

PRE-SALE/EXIT PLANNING: "HOUSE-IN-ORDER" CHECKUP

☑ = CHECK THE ACTIONS TO BE TAKEN OR DISCUSSED

Corporate Structure Review ☑

We will address our Corporate Structure:

- ☐ **Business Divisions**. Whether our corporate structure needs revision if we wish to retain a particular operating division of the Company (e.g. due to personal preference or if part of the company won't be as attractive or feasible to an anticipated buyer).
- ☐ **Real Estate**. Whether our corporate structure needs revision if we wish to retain and lease to the Company (or to a buyer) the real estate the Company uses.
- ☐ **Intellectual Property**. Whether our corporate structure needs revision if we wish to retain and license to the Company (or to a buyer) specifically identifiable intellectual property that the Company utilizes.
- ☐ **Leaders**. Whether Leadership Team is strong with great retention expectations and if we need to restructure due to the change in leadership team anticipated before or upon our sale (e.g. due to a desire to have each of two persons head a company or due to different leadership skills or approaches needed and available).
- ☐ **Tax Planning**. Whether due to my tax savings plans it becomes necessary or advisable to revise corporate structure.
- ☐ **Business Model**. Whether our existing or anticipated Business Model is fading, needs to pivot and fits our Company's present corporate or divisional structure.
- ☐ **Asset Protection**. Whether a high risk part of our business should be separately incorporated.
- ☐ **Due on Sale Benefits.** The terms and amounts under executive incentives due on sale have been determined.

Pre-Sale Due Diligence Review ☑

We will address our Pre-Sale Due Diligence:

- ☐ **Corporate Records**. Corporate Minute Book should be fully up to date, reflecting shareholder and director minutes as well as stock owners, charter documents, bylaws and doing business registrations.
- ☐ **Employee Ownership.** Review terms of employee ownership (Actual, Phantom Stock or Stock Appreciation Rights).
- ☐ **Asset Ownership**. Corporate records will fully document key asset ownership.
- ☐ **Debts**. Corporate records will fully document all presently outstanding indebtedness and financial commitments.
- ☐ **Contracts**. A list of all material contacts of the Company (e.g. leases, customer contracts, supply contracts, vendor contracts), will be maintained.
- ☐ **Intellectual Property**. All intellectual property will be listed and protected (e.g. trademarks, tradenames, licenses, patents, etc.).
- ☐ **Litigation**. A description of all pending or threatened litigation will be maintained.
- ☐ **Licenses**. Copies of all material licenses and permits will be maintained.
- ☐ **Banking**. Financial institution relationships will be documented and maintained.
- ☐ **Taxes**. Tax records, elections and compliance will be documented and maintained.
- ☐ **Regulatory**. Applicable regulatory compliance (e.g. environmental, OSHA, ERISA) will be documented and maintained.
- ☐ **Code of Conduct**. Code of Conduct strength, scope and compliance to be reviewed.

Financial Accountability Review ☑

We will address our Financial Accountability:

- ☐ **Credibility**. Whether our accounting system needs enhancements to better protect us and to be fully credible to an inside or outside buyer.
- ☐ **Accounting Methods**. Whether our present accounting methods provide a sufficient reflection of true (and normalized) net income, net cash flow and net worth of the Company.
- ☐ **Internal Controls**. Whether sufficient internal controls are built into our accounting system to provide current financial protection as well as reliability to outside buyers.
- ☐ **Financial Statements**. Whether our outside, independent CPA report should be a compilation, review or audit, based on the degree of financial statement reliability needed by us and which is anticipated to be needed by a future buyer.
- ☐ **Projections.** Whether we have a credible projections process.

Tax Planning Review ☑

We will address our Tax Planning:

- ☐ **"C" versus "S" Tax Election**. Whether "S" tax status should be elected/maintained to avoid double tax on sale of Company's business (in an asset sale) and to reduce capital gain due to increased tax basis (in a stock sale). To achieve full double tax relief, "S" status needs to be elected at least 5 years before sale.
- ☐ **Deferred Compensation**. Certain tax planning is needed throughout the life of the Company to minimize taxes upon the sale. Documenting deferred compensation agreements and "under-compensation" situations to justify deductible compensation and bonuses will be considered.
- ☐ **Intangible Assets**. Whether intangible assets (e.g. certain goodwill) should be documented as owned by the business owner (rather than the Company) to help avoid double tax on sale of the business.
- ☐ **Multiple Entities**. If a particular business division is going to be retained, then advance (at least 5 years) company restructuring (e.g. spin-off) needs to be considered to achieve optimum tax results.
- ☐ **Catch-Up Payments**. Pre-sale documentation of underpayment of building or equipment rent, to be caught up/deducted upon or before Company sale, should be considered.
- ☐ **State Taxes and Incentives**. Impact on various state tax and incentives matters should be addressed.

Sellability Control Review ☑

We will address our Sellability Control:

- ☐ **Customer Agreements**. Customer agreements will be reviewed to minimize or eliminate change of control and change of ownership provisions.
- ☐ **Loan Agreements**. Loan agreements will be reviewed to minimize or eliminate change of control and change of ownership provisions.
- ☐ **Supplier Agreements**. Supplier agreements will be reviewed to minimize or eliminate change of control and change of ownership provisions.
- ☐ **Owners**. The Buy-Sell Agreement will include "bring along" provisions which enable the majority shareholders to require the minority to sell on the same price/terms as the majority owner.
- ☐ **Intellectual Property**. Intellectual property ownership (e.g. patents, tradenames, domain names, key processes) will be reviewed to determine if it is solely owned by the Company or if control and transfer rights need to be obtained.
- ☐ **Leases**. Building and equipment leases will be reviewed to minimize or eliminate change of control and change of ownership provisions.
- ☐ **Franchise Agreements**. For Franchisees, the Franchisor consent standards and purchase options will be addressed.

OUTSIDE ROUTE EXIT PLAN

☑ = CHECK THE ACTIONS TO BE TAKEN OR DISCUSSED

Outside Route Choice ☑

We will consider (or have selected) the following targeted outside exit route(s) and method(s):

Exit Routes	Exit Methods
Third Party	☐ Negotiated Sale ☐ Controlled Private "Auction" ☐ Unsolicited Offer
Public Market	☐ Initial Public Offering (IPO) ☐ Dutch Auction ☐ Reverse Merger ☐ Direct Public Offering
Liquidation	☐ Partial Liquidation ☐ Controlled Liquidation ☐ Fire Sale
Partial	☐ Sell Partial Stake ☐ Sell Control Stake ☐ Redemption / Refinance ☐ Franchise ☐ Joint Venture

Company Value Expectations

Our calculation estimate of Company value using the EBITDA Value Formula estimate is and will be:

	Value Now	Value Target	
	(_____, 20__)	(_____, 20__)	(_____, 20__)
Net Income	$_____	$_____	$_____
Add Back			
Interest	_____	_____	_____
Taxes	_____	_____	_____
Depreciation	_____	_____	_____
Amortization	_____	_____	_____
EBITDA	$_____	$_____	$_____
Normalize			
Salary	_____	_____	_____
Expense Reimbursements	_____	_____	_____
Building Rent	_____	_____	_____
Equip. Rent	_____	_____	_____
Non-Recurring	_____	_____	_____
Non-GAAP	_____	_____	_____
Non-Operating	_____	_____	_____
Normalized EBITDA	$_____	$_____	$_____
Multiplier (e.q., 4-10)	x_____	x_____	x_____
Business Value	$_____	+_____	+_____
Excess Work Capital	+_____	$_____	$_____
Company Loans	(_____)	(_____)	(_____)
Stock Value	$_____	$_____	$_____

"Normalize" = Add back or subtract where income or expense might be more or less than true value or arms length situation or where event is not normal.
Note: Other pricing methods may apply. A full appraisal may be needed before taking certain actions.

Outside Route Term Sheet ☑

If and when we sell ownership to an outside buyer, we are willing to consider the following overall Outside Route financial and business terms:

- ☐ **Transition**. Stay on as key officer for a period of time after the sale.
- ☐ **Consultant**. Stay on as a consultant for a period of time after the sale.
- ☐ **Deferred Compensation.** Receipt of deferred compensation as part of the package.
- ☐ **Consulting Fee**. Receipt of consulting fee as part of the package.
- ☐ **Asset Retention**. Retention of certain assets (such as building, equipment and/or intellectual property) to be leased/optioned to buyer in exchange for rent/royalty/license fees.
- ☐ **Restructure**. Restructure the business to sell a division and keep a division.
- ☐ **No compete**. A no-compete covenant payment.
- ☐ **Structure**. Sale of business assets or sale of stock ownership.
- ☐ **Phased**. A two phase or multi-phased transfer of part (minority) ownership initially followed by sale of control later.
- ☐ **Control**. Sale of majority control initially, followed by the balance later.
- ☐ **Price Concession**. Receipt of less than full value to help my desired successor owner.
- ☐ **Net Cash**. Net (after tax) cash-in-pocket of at least $_____.

Outside Route Sale ☑

At this time we wish to do the following:

- ☐ **Not Sell Any Now.** Not sell any ownership to an outside buyer at this time. We want to complete the Pre-Sale Exit Planning process first.
- ☐ **Sell Part Now**. Move forward with the Partial Exit Route I have selected above.
- ☐ **Test The Market**. We will engage an M&A Advisor ("Market Maker") to do some initial testing of the market to see how well the Company would do. This will be done confidentially to the extent to be discussed with our M&A Advisor.
- ☐ **Sell All Now**. We are fully ready. Move forward now to sell all of my ownership to an outside third party buyer. To accomplish this, we will engage an M&A Advisor (investment banker, transaction intermediary or business broker),
- ☐ **Assets Retained**. Assets (or divisions) to be retained (and possibly leased to or joint venture with the buyer) include:

  _____

  _____
- ☐ **Market Maker.** Discuss and move ahead with lining up discussions and selection process with an M&A Advisor (investment banker, transaction intermediary or business broker, as appropriate).
- ☐ **Potential Outside Route Buyers We Are Aware Of Would Be**:

  _____

  _____

  _____

  _____

ATTORNEYS FROM OUR

PRE-SALE EXIT PLANNING AND BUSINESS SALE OR PURCHASE TEAMS

Pre-Sale/Exit Planning

NICK NIEMANN
Phone: 402.633.1489
nniemann@mcgrathnorth.com

MATT OTTEMANN
Phone: 402.633.9571
mottemann@mcgrathnorth.com

Business Sale or Purchase

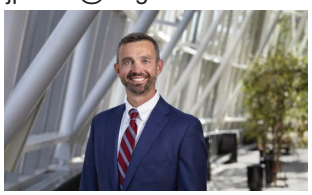
ROGER WELLS
Phone: 402.633.1453
rwells@mcgrathnorth.com

RACHEL MEYER
Phone: 402.633.6882
rmeyer@mcgrathnorth.com

JEFF PENNE
Phone: 402.633.1426
jpenne@mcgrathnorth.com

STACEY SHADDEN
Phone: 402.633.9591
sshadden@mcgrathnorth.com

PATRICK STRAKA
Phone: 402.633.1494
pstraka@mcgrathnorth.com



TOM WORTHINGTON
Phone: 402.633.9554
tworthington@mcgrathnorth.com

OTHER SALE OR PURCHASE TRANSACTION ATTORNEYS

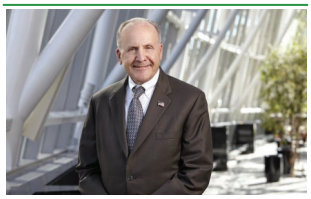
(depending on needs or complexity of transaction)

Tax

JON GROB
Phone: 402.633.9560
jgrob@mcgrathnorth.com

COURTNEY FOLTZ
Phone: 402.633.9572
cfoltz@mcgrathnorth.com

Real Estate



LEE HAMANN
Phone: 402.633.1423
lhamann@mcgrathnorth.com

RON COMES
Phone: 402.633.1411
rcomes@mcgrathnorth.com

Labor and Employment

ABBEY MOLAND
Phone: 402.633.9566
amoland@mcgrathnorth.com

RUTH HORVATICH
Phone: 402.633.1521
rhorvatich@mcgrathnorth.com

Securities

GUY LAWSON
Phone: 402.633.1402
glawson@mcgrathnorth.com

JASON BENSON
Phone: 402.633.6864
jbenson@mcgrathnorth.com

Intellectual Property

CLINT CADWALLADER
Phone: 402.633.6870
ccadwallader@mcgrathnorth.com

Commercial Contracts

DAN PAPE
Phone: 402.633.9551
dpape@mcgrathnorth.com

Employee Benefits

PETER LANGDON
Phone: 402.633.1425
plangdon@mcgrathnorth.com

Environment & Regulatory

STEVE CASE
Phone: 402.633.1479
scase@mcgrathnorth.com

McGrath | North

PRE-SALE EXIT PLANNING AND MERGERS, ACQUISITIONS & DIVESTITURES PRACTICES

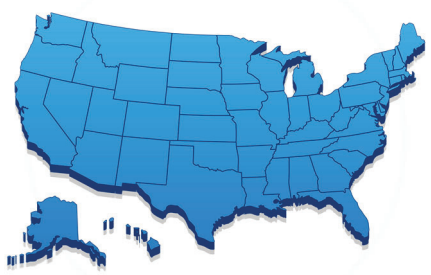
McGrath North's Pre-Sale/Exit Planning and Mergers, Acquisitions & Divestitures practices represent clients nationwide. Some of the industries we work in include food & beverage, construction, real estate, distribution, human resources, agribusiness, farm & ranch, industrial manufacturing, commodities, commercial manufacturing, retail, services, franchise, security, banking, energy, consumer products, biofuels, insurance, technology, accounting, healthcare, telecommunications, leasing, education, warehousing, finance, consulting, hospitality and information processing.

We have worked on hundreds of transactions, ranging in size from a few hundred thousand dollars to several billion dollars.

We have advised public companies, private companies, entrepreneurs, family businesses, private equity groups and others in a myriad of transactions, including mergers, tender offers, initial public offerings, stock and asset purchases and divestitures, joint ventures, ESOP transactions and reorganizations. We have worked on transactions with most of the other "big name" M & A law firms across the country.

The McGrath North Pre-Sale/Exit Planning and M & A teams are recognized regionally and nationally for their experience, high quality service and practical business insight. These include a top rating from Best Lawyers® in Mergers & Acquisitions Law, and the highest ranking from Chambers USA in the Corporate / Commercial category. Our team members are also individually recognized as Best Lawyers®, Super Lawyers®, BTI Consulting Group Client Service All-Stars and M&A Client Choice Award Winners.

We have worked on transactions in nearly all 50 states.



We have worked on transactions in 6 of the 7 continents.

REPRESENTATIVE M&A CLIENTS

BlueCross BlueShield Nebraska
CONAGRA BRANDS
CONDOR HOSPITALITY TRUST
fiserv.
GAVILON
ICF INTERNATIONAL
JBS
LDC Louis Dreyfus Company
NGL Energy Partners LP
Pilgrim's
SFoods
valmont
westinfoods
World Fuel Services

FAMILY BUSINESS LEADERS

Results Not Wanted

Results Wanted

Results Achieved By

What Is The Financial + Personal Cost of Being Too Late or Out of Time?

What Is The Financial + Personal Value of Each Great Play Deployed In Time?

Inspired By Excellence. Committed To Your Success.

When we work with Family Business Leaders, we ask about your story and the story of your family business. We get to see the heart and soul of America's family entrepreneurs, that is, America's new breed of Family Business Pioneers.

We get to see your passion and your excellence. We get to see the grit and determination which drive you. We get to see the love and respect you have for your colleagues and for those you serve. In short, we get to see the pioneer spirit which drives you and your team. Just as it has driven me and our team.

For over 60 years we have been working with our nation's food companies, restaurants, farmers and ranchers to feed people better. We have been working with contractors and companies to build better and more affordable homes and new business facilities.

We have been working with technology companies to develop new ideas that improve lives. We have been working with inventors, startup companies and health care providers to develop patented medical devices, leadership teams and joint ventures that save lives. We have been working with energy companies to help fuel our homes and the businesses we all rely on.

We have been working with bankers, key partners, manufacturers, distributors, retailers and transportation companies to finance, produce and deliver better products and services to communities around the world. We have been working with family business pioneers and their other trusted advisors to transform, grow, carry on and transition the family business dream, the backbone of our great country.

We have been working with our community leaders to improve our cities and our schools. We have been working with our elected leaders to improve the business climate to create and attract new and better jobs for families.

For over 60 years, this has been the McGrath North Law Firm.

Working quietly behind the scenes closely with the talented leaders of great organizations around the world to make lives better.

Working together. Working stronger. Working faster. Working better. Overcoming Roadblocks. Avoiding Train Wrecks.

Inspired by excellence. Committed to your success.

Our diverse team isn't waiting for the future. We are helping to produce new, incredible, sustainable results right now.

We invite you to join us as we move quickly ahead towards the next 60 years.

Nick Niemann, JD
Family Business Continuity Attorney
Partner, McGrath North Law Firm
1601 Dodge Street, Suite 3700
Omaha, NE 68102
402-633-1489
nniemann@mcgrathnorth.com
www.McGrathNorth.com
www.FourthQuarterFirst.com

Member: Vistage International Family Business Network
Family Firm Institute
CEO Space International
Business Enterprise Institute
Exit Planning Institute

Matt Ottemann, JD, LLM
Family Business Continuity Attorney
Partner, McGrath North Law Firm
1601 Dodge Street, Suite 3700
Omaha, NE 68102
402-633-9571
mottemann@mcgrathnorth.com
www.McGrathNorth.com
www.FourthQuarterFirst.com

Member: Great Plains Federal Tax Institute
Nebraska Society of CPAs
Nebraska Financial Planning Association
Omaha Estate Planning Council
Creighton College of Business Adjunct Faculty