

Buyers, sellers use creativity to continue to get deals done

BY **SONYA HUBBARD** | CONTRIBUTING WRITER

When entrepreneurs ask Tim Skarda whether they should sell their business, Skarda often replies, “It depends.”

Skarda, the president of business brokerage Allied Business Group, said his answer depends on how the business is doing and why it’s being sold.



Skarda

“If a company’s profits are down, it’s going to be worth less,” Skarda said. “Those owners would be well served to ride out the storm and try to get their numbers back up.”

For businesses that are doing well, Skarda said a sale might make sense because of low tax rates and less competition from other sellers.

Terry Christenberry, a principal of investment banking firm Christenberry Collet & Co. Inc., said that even in circumstances in which a business owner must sell - perhaps because of poor health, or creditor insistence, or because it’s a “buggy whip business” on the verge of obsolescence - there are several methods available.

“Transactions are a little more creative than they’ve been over the last few years,” Christenberry said, adding that in many deals, a combination of techniques is used. “People who want to get a deal done can get it done.”

John Granda, leader of the corporate finance division at Stinson Morrison Hecker LLP, said a

common strategy is for a seller to finance a portion of the sales price. A risk exists because there is probably no unencumbered collateral available to secure the loan. But when the credit market improves and the buyer refinances the loan, the seller gets his or her money.

In cases in which there is a gap between the sale price, the amount the seller is willing to finance and the cash that the buyer and his or her lender have, mezzanine financing provided by hedge funds, private equity funds or venture capital firms can close the gap.

Another popular strategy is an earn-out, Granda said. In this scenario, a certain amount of money is paid at the time of closing, but benchmarks are set so that if the buyer earns a certain amount of money or sells a specific number of goods during a defined period of time, then an additional contingent sum is paid.

Granda said that in his experience, sellers who are willing to take an earn-out often can negotiate a higher sales price because their interests are aligned with the buyer’s interests in maximizing revenue.

However, in an earnout, the money the seller receives at closing may be all he or she ever gets.

Skarda said that he tells his clients to look at the cash they’re getting at closing.

“If you’re happy with it, do the deal,” he said. “Think of everything else as gravy. Hopefully you’ll get it, but there’s no guarantee.”

Granda cautioned that both parties and their legal and financial advisers

must understand the business, define terms carefully and consider whether the sale warrants any adjustments to generally accepted accounting principles.

“You’ve got to think through all the ways in which surprises and ambiguity can be avoided so the parties don’t have a dispute later,” he said. “It takes a lot of careful thinking, drafting and really drilling down to the details.”

Christenberry said he is starting to field inquiries about management buyouts.

“I have not seen as many as you might expect because the credit markets are still relatively tight on a historic basis,” he said.

However, he said that in many cases a company’s managers lack the capital to buy the company without financing from sources such as private equity firms.

Still, Skarda emphasizes that options for deals exist.

“It’s really a case-by-case basis,” he said. “Our economy is so diverse. Certain industries are not doing well, but others are doing very well. You have to drill down to your industry and to your position in the industry to answer the question: ‘Is now a good time for me to sell?’”

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