

# FRIEDMAN & FEIGER

ATTORNEYS AT LAW

## Selling Your Business Is Not Like Selling Your Home



By Robert Feiger, Esq., Partner, Friedman & Feiger, LLP

Getting your business ready to sell is not like selling your home.

Before you sell your home, you improve its presentation by touching up the paint, replacing a worn carpet, or repairing windows that may have lost their seal. These are all considered to be “cosmetic” improvements.

But **unlike** selling your home, there are many ways to **increase** the enterprise value of your business and your return on investment that extend beyond the cosmetic variety. And, many of these take time to design and implement, so starting on

them now, or as early as possible, will provide you the best opportunity to maximize the value of your company.

### 1. Get your financial records in order:

- a. **Why?** Buyers will perform due diligence on your financial records to determine how much assurance they can place on them. When buyers find “issues” in the financials, they typically ascribe the types and volumes of issues to risk. The higher the risk (that is, the more investment on the buyer’s part to try to mitigate the risks), the lower the selling price. To the extent there are questions and/or concerns, buyers will use these “red flags” to negotiate a lower sale price.
- b. **What to do:** Have a review conducted to simulate the due diligence process, identifying all of the red flags that will arise during due diligence. Red flags are essentially discrepancies or “vague” areas of your financials where sub-ledgers do not readily and apparently tie to the general ledger or where there are large balances that do not reconcile to a detailed schedule. Have someone perform a “GAAP Review” to identify all of the issues that will potentially come up at the closing table and possibly be used to reduce the sale price or delay your payment. Then, correct or mitigate the issue immediately, even if you are not closing for several months.
- c. **The benefit to you:** Maintain and/or increase the sales price. Having clean financials gives buyers confidence in the numbers, which can lead to a higher sales price.

### 2. Prepare for due diligence:

- a. **Why?** Buyers use time (elapsed time) in the deal process as a negotiating tactic. The more prepared you are for due diligence, the less time it will take to close. The less responsive you are to their requests for information, the more time it takes to close, the higher the probability your original price gets “discounted” by the buyer.
- b. **What to do:** Have someone who is very familiar with the due diligence process collect and organize the data you will need to present to a buyer. Today, many use online data rooms for this purpose, so that access is easy and immediate while controlled for confidentiality. Also, you can control when certain documents are released based on how far along you are in the process. For example, you can place a top ten customer list in the data room, but not release it until terms and conditions are finalized. **[A “Due Diligence” Checklist has been prepared to accompany this article which provides a comprehensive breakdown of the document categories a prospective buyer is likely to require as part of its analysis of your business. To request this “Due Diligence” Checklist free of charge, contact Robert Feiger at [rfeiger@flawoffice.com](mailto:rfeiger@flawoffice.com)].**
- c. **The benefit to you:** Closing on time and getting paid on time.

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## Friedman & Feiger, LLP

### Attorney Client Privilege by Carlos Morales



You may have seen attorney client privilege stamped on documents or heard it proclaimed on your favorite legal television show. But what does the “attorney client privilege” actually mean and when is it created? The attorney client privilege allows for free, open and protected communication between a client and his or her attorney. Only the client can waive the privilege and it protects

all forms of communications including verbal, email, text, or other correspondence. Texas Rules of Evidence 503 governs the attorney client privilege and reads, in part:

(b) Rules of Privilege.

(1) *General rule of privilege.* A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client’s lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer’s representative;

(C) by the client or a representative of the client, or the client’s lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. TEX.R.EVID. 503 (a)(5).

The attorney client privilege is one of the most important protections afforded a client in our legal system and is created when the client and attorney first begin communications. The privilege includes initial consultations even if the attorney is not hired by the client. There are few exceptions that will allow access to attorney client privileged communications, such as: 1) furtherance of a crime or fraud; 2) claimants through the same deceased client; 3) breach of duty by a lawyer or a client; 4) document attested by a lawyer; or 5) joint clients. TEX.R.EVID. 503 (d)(1-5). As long as the privilege is not waived by the client by a disclosure to a third party and as long as an exception to the general rule does not apply, the privilege will remain intact.

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#### 3. Have a plan for growth, and execute on the plan:

- a. **Why?** Because buyers are not purchasing your company to operate “as is”. They want to increase the return on investment, and will look for companies that have demonstrated a reasonable rate of growth.
- b. **What to do:** You need a documented plan and you need to stick to that plan. Executing a plan demonstrates your and your employee’s ability to plan strategically and execute on a day to day basis. Your budget and forecast will become a significant part of this plan.
- c. **The benefit to you:** Buyers will give more credence to projections (and thus a higher sales price) if you have demonstrated the ability to plan and execute effectively.

#### 4. Prepare a budget and forecast, then live it:

- a. **Why?** Because having targets in writing are motivational to most people, and you need everyone on your team pulling in the same direction. Buyers are looking to see how well managed the company is, and whether its management team can work together to bring the benefits of strategy to the bottom line. To the extent that the forecast is documented and you can show that you met or exceeded forecast, the buyer will ascribe less risk to continuity and possibly offer a higher price. Having a budget will also help move your company to its highest performing potential, which will have a direct effect on the bottom line and the selling price.
- b. **What to do:** Prepare a detailed forecast (including detail at the revenue driver level) and monthly budgets and manage the numbers every month.
- c. **The benefit to you:** Better internal accountability and a higher selling price.

#### 5. Maximize revenue and profit to the business:

- a. **Why?** The higher your earnings, generally, the more you will make on the sale of your business
- b. **What to do:** You may not be in a position to know what is best to be done in all aspects of the business to maximize your profit and EBITDA in advance of a sale. Your sell side intermediary or other trusted financial advisor can be instrumental in helping you plan and execute a list of “projects” to ensure you hit forecast targets/budgets and maximize your return during the go-to-market period. These projects can include, among other things, streamlining your operations to reduce unnecessary staff, eliminating unnecessary and non-business operational costs, or expanding markets/industries to include secondary and tertiary uses for your products.

**Selling Your Business (continued from page 2)**

- c. The benefit to you: Every dollar you add to the bottom line can have a “multiple” effect on value, meaning a higher sales price. Yes, buyers use multiples in their conversations about deals, but multiples are not their primary method of pricing.
- 6. Develop a second level of capable management:**
- a. Why? Buyers know that you will be leaving the company at some point in time. They are concerned about sustainability and continuity of the business at previous levels and higher. To the extent you have a competent management team that can carry on in your absence, buyers will deem the purchase less risky (meaning less investment on their part), and, therefore, pay more for your business.
  - b. What to do: Document the value-added that you personally provide the business. It may be sales, customer service, bookkeeping, or product innovation. Determine what skills are necessary to replace your contribution, and then find/hire those skills if they do not exist in the company. This point takes time; start now on fully developing your second level of management.
  - c. The benefit to you: Less risk ascribed to the sustainability of the company, which translates into a higher price or better terms and conditions.
- 7. Document what people do:**
- a. Why? Titles don’t always convey the reality of a position in a company. Buyers want to know who does what, and in what combination, so that they can make assumptions about staffing levels in their calculations. Quite often, in many companies, one person may hold the job of 2 or more people. This needs to be clearly communicated to buyers.
  - b. What to do: Document job descriptions for each of the top 2 or 3 layers of management and the supervisory level. Include key skills and attributes, certifications, degree or license requirements, etc. Also, consider developing and implementing employment agreements that transfer to the new owners in order to keep key players on board well beyond the sale.
  - c. The benefit to you: Buyers will make assumptions about replacing or adding to staff once the sale is closed. To the extent that positions and skills are documented and key players have employment agreements in place, the buyer will lower their “acquisition cost” assumptions, meaning a higher sale price to you.
- 8. Diversify your customer and supplier base:**
- a. Why? Concentration in either customers or key suppliers is a big red flag to potential buyers, especially when that concentration is based on a relationship between the customer/supplier and the current owner, who will eventually leave.
  - b. What to do: Identify concentration issues and either get long-term contracts in place, or work to find additional customers/suppliers to reduce concentration. This is easier said than done and takes time, and is generally easier to do with suppliers than customers.
  - c. The benefit to you: Less risk in the business, translating into maintaining or increasing your final sales price. Some buyers will not even look at companies with significant customer concentration issues.
- 9. Keep your customers happy:**
- a. Why? Buyers will investigate whether customers are happy with the products and services they receive from the target company. This gives them an idea of how loyal the customers will be during an ownership transition. Unhappy customers translate into risk, which leads to a lower selling price.
  - b. What to do: If you haven’t surveyed your customers recently, do so. The key question to ask is “On a scale of 1 to 10, how likely are you to refer our company to a friend or colleague?” The answers to this one question will tell you most everything you need to know about overall customer satisfaction.
  - c. The benefit to you: Buyers will see a very loyal customer base that is founded upon confidence and reliability in your products and services rather than any one individual, ultimately leading to a higher sales price.

Starting early, and getting the advice of an experienced business adviser — a competent business transaction attorney or an accountant, will provide valuable insight. Your return on investment in these professionals will be realized at the closing table.

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**FRIEDMAN & FEIGER is pleased to announce that four of our attorneys were selected to the 2014 Texas Rising Stars list, an honor reserved for those lawyers who exhibit excellence in practice. They are: Brian Shields, Carter Boisvert, Jason Friedman and Melissa Kingston. See their listing in the Texas Super Lawyers Magazine and Texas Monthly.**

**Janelle and Larry Friedman to Co-Chair Children’s Medical Center’s 100 Year Anniversary With The “Celebration Of Our Century,” Saturday, November 2, 2013**

Janelle and Larry Friedman will Co-Chair the “Celebration Of Our Century” on Saturday, November 2, 2013 at The Omni Dallas Hotel.

The evening begins with an elegant VIP reception followed by a special tribute to celebrate the past 100 years and the future of Children’s Medical Center in Dallas.

Grammy and Academy Award Winning Jennifer Hudson, The Pointer Sisters and New York City’s Starlight Orchestra will provide action-packed entertainment at the unforgettable black-tie evening. For more information and sponsorship opportunities, please contact Janelle Friedman at: [jfriedman@fflawoffice.com](mailto:jfriedman@fflawoffice.com)



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**Upcoming Events**

**Friedman & Feiger Calendar**

- October 17, 2013 Founder Janelle Friedman hosts the “Essential Energy” networking reception for female business leaders with speaker Television Personality Tracy Hutson, 6 pm to 8 pm, The Standard Pour, 2900 McKinney Ave. Please RSVP: [clegrand@fflawoffice.com](mailto:clegrand@fflawoffice.com)
- November 2, 2013 Janelle & Larry Friedman Co-Chair the “Celebration of Our Century” Gala commemorating the 100<sup>th</sup> Anniversary of Children’s Medical Center, 7 pm, The Omni Dallas Hotel, Contact for info: [jfriedman@fflawoffice.com](mailto:jfriedman@fflawoffice.com)
- November 7, 2013 Founder Janelle Friedman hosts the “Essential Energy” networking reception for female business leaders with speaker Actress Janine Turner, 6 pm to 8 pm, Highland Park Village Theater, 32 Highland Park Village, Please RSVP: [clegrand@fflawoffice.com](mailto:clegrand@fflawoffice.com)
- November 9, 2013 Friedman & Feiger Sponsors the 2013 “Yes! One Special Night” event celebrating the 60<sup>th</sup> Anniversary of the Dallas Home For Jewish Aged
- January 20, 2014 Health Care Lawyer Martin Merritt speaks to the Dallas Bar Association Health Law Section on “The False Claims Act,” Noon, Belo Mansion, 2101 Ross Avenue

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