



**Mike Ertel is a Certified M & A Advisor and a Principal Broker with Legacy M&A Advisors, LLC, a full-service M & A Advisory firm with an office in Tampa, Florida specializing in representing sellers and buyers of small- to mid-sized companies. Prior to joining Legacy M&A Advisors, LLC, Mike's business career spanned 30+ years with Fortune 500 and Fortune 1000 Companies, with senior management roles in Marketing, Operations and Logistics. Mike also served as President, COO of a mid-sized Manufacturing company headquartered in Tampa. Mike also holds a BS in Electrical Engineering and an MS in Industrial Administration, both from Purdue.**

## **A, B, C, or D: Exiting Your Business Multiple Choice Style**

**Roman A. Basi, MBA/Attorney at Law  
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How are you going to end the relationship with your business? Believe it or not, that day will come. Fortunately, you have a number of options to plan your exit and watch your legacy continue. Four good, viable options exist to spin off your business. These options involve a) selling to family members, b) selling to a key employee, c) selling to a competitor, or d) selling to an investor. Business succession and exit planning are somewhat different in concept, but will be used synonymously for the purpose of this article. Though containing important differences, succession planning and exit planning will not necessarily be differentiated for this article.

Family involvement is often the simplest form of business succession planning. Knowing your successor creates a level of trust. Because family members are often involved and familiar with a family business, they can be called upon to either take over or purchase the business.

Rendering the business in one form or another to a family member is often emotionally fulfilling because the owner can see the business and its benefits on their own families. The transaction can generally be done through either sale or gift. However, selling the business to the next generation will eliminate many uncertainties that can occur with gifting.

Selling your business outside the family is an option as well. On the positive side, key employees know the business, employees, suppliers, and the customers. They may also know the company overall including bank accounts, the financial situation, the equipment the company owns, and for that matter where the files and keys are kept. The business essentially becomes their turn-key operation. However, problems do exist in business sales to key employees.

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## **A CASE STUDY**

### **Equipment or Inventory?**

The IRS Chief Counsel has determined that a corporate taxpayer may not depreciate equipment primarily held for sale or use that equipment in a tax deferred like-kind exchange. The taxpayer claimed he rents, sells, services, and finances certain equipment. The taxpayer claimed depreciation on equipment held for rent, but was selling the equipment before it was rented. Equipment held for rent may also be sold and when it is, the taxpayer structures the sale as a like-kind exchange.

The Chief Counsel concluded that the equipment should be treated as inventory held primarily for sale to customers. Inventory held for sale is not eligible for depreciation or a tax deferred like-kind exchange. The Chief Counsel held that the taxpayer failed to show the primary use of the equipment was not as inventory. A significant factor was that substantial amount of equipment listed as rental equipment was sold to customers before any rental revenue was earned from the property.

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First, some key employees make “great employees”, but terrible bosses and business people. There is also the problem of financing. Many employees are not wealthy people. A lot of their wealth is in the form of retirement accounts and home ownership. With this financial structure, it is nearly impossible for them to get the full financing to take on the challenges of an acquisition. This often means the seller must finance the acquisition for the key employee. The seller must lend credit to the key employee to finance the purchase. On the upside of this, the owner retains an interest in the business for which he can retake the business if the key employee/buyer defaults.

An investor, for many smaller businesses is hard to come. Many investors are happy to invest money, but typically they are seeking companies established and operating similarly to a publically held company.

Many or most smaller companies operate for the benefit of the owners’ and their families making them a less attractive option for investors.

There is a clear advantage to selling a business to a competitor. Competitors generally know your suppliers and even your own customers on some level. Competitors also tend to have cash and liquid assets allowing them to be solvent and pay for things like other companies. On the down side, selling your life’s work to a competitor or getting your business back in the event of a default can be impossible once it is combined with another operation.

Being aware of the possibilities concerning what type of successor you will have for your business can give you a clear vision of what your transition could look like. Not all people have families. Also, not every business has key employees who could take over the business. With the four options discussed above in mind, the business owner can now begin to think about implementing a succession plan.

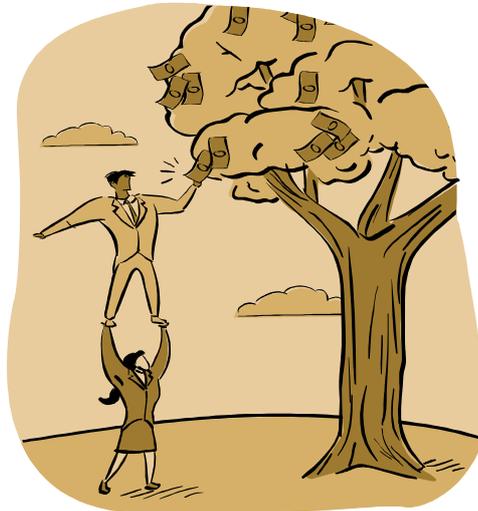


#### About the author:

**Roman A. Basi, President of The Center, is an Attorney, Real Estate Broker, and Title Insurance Agent. Roman speaks and advises The Center’s clientele on such matters as Business Law, Succession, Estate & Tax Planning and Real Estate.**

### Points of Interest

- **Fortunately, you have a number of options to plan your exit and watch your legacy continue.**
- **Because family members are often involved and familiar with a family business, they can be called upon to either take over or purchase the business.**
- **Being aware of the possibilities concerning what type of successor you will have for your business can give you a clear vision of what your transition could look like.**



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## A CASE STUDY CONTINUED:

**Editor's Comment:** The Chief Counsel's advisory does not appear to affect a company that has legitimate rental equipment. A company that has equipment held primarily for rent will still be able to capitalize the equipment and claim depreciation as an expense. Only equipment held clearly as inventory carries the restrictions noted above.



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## Florida Enacts M&A Broker Statute

The Florida Legislature has passed, and Governor Scott has signed, the Florida M&A Broker statute [FS 517.12(22)], which becomes effective July 1, 2016.

Under this new statute, Florida business brokers and M&A advisors who hold current, active, FL Real Estate licenses and who meet certain other conditions outlined in the statute, will be exempt from registering as FL securities broker dealers in the context of facilitating the purchase /sale of a qualifying Florida business.

A qualifying Florida business must have total revenues of not more than \$250M, and/or earnings before interest, taxes, depreciation and amortization (EBITDA) of not more than \$25M in its last fiscal year.

Some of the conditions imposed on the business broker /M&A advisor are:

- Must NOT be engaged in raising capital,
- Must NOT hold funds or securities of either party,
- Must NOT invest funds for the accounts of others,
- Must NOT have the power to bind either party to a transaction,
- Must NOT facilitate the purchase /sale of a publicly traded shell,
- Must NOT be a "Bad Actor," i.e., subject to a suspension, revocation or disqualification from registration elsewhere.

Also, the buyer must be a "control person" in the acquired company post-closing, i.e.,

- Is a director, general partner, member or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);
- Has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or
- In the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital

If you know of a business owner who's thinking of selling or buying a business and who might benefit from a **free, confidential**, consultation, have them contact me at [mertel@lmaallc.com](mailto:mertel@lmaallc.com)

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## Frequently Asked Questions...



**Q: What is the difference in selling my business to a competitor as opposed to a family member?**

**A: One main difference is that the IRS will be more interested in that transaction and somewhat suspect of it. When selling to a competitor, those getting out of the business are hoping for the highest price possible. On the other hand, a sale to a family member may be motivated more as a gift as opposed to a competitor.**

**Q: I did not file my tax return, nor extension for 2015, what do I do?**

**A: File your taxes! Many believe if they miss the deadlines, they are subject to criminal sanctions. Highly unlikely.**

**Q: Do I charge sales tax on items purchased with a coupon?**

**A: It depends on whether it is a manufacturer's coupon or a store coupon. If it is a manufacturer's coupon, you charge sales tax for the entire item. If it is a store coupon, you assess sales tax for the reduced price.**

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