ACQUISITION STRATEGIES

How to Prepare Your Company for Sale: The Legal Groundwork That Actually Moves the Price

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Most “how to sell your business” advice is written by brokers and focuses on the things that are visible from the outside: clean up your financials, tighten your pitch, get your metrics in order. That's necessary, but it's not what actually derails deals or erodes price in the final stretch. The legal groundwork — the stuff a buyer's counsel digs into during diligence — is usually the last thing sellers think about and the first thing that causes delay, renegotiation, or walk-away. Doing that work before you go to market, rather than scrambling to fix it during exclusivity, is where sellers actually protect their price and their leverage.

Get Your Corporate Records Actually Clean, Not Just Filed

Buyers will check that your entity records, board and stockholder consents, and cap table match reality — not just that documents exist somewhere. If you're Delaware-incorporated and there's a controlling stockholder involved in the sale, this is worth getting right structurally: Delaware's 2025 statutory changes (SB 21) created clearer safe harbors for controlling-stockholder transactions when they're approved by disinterested directors or disinterested stockholders, and the Delaware Supreme Court upheld those protections this past February. Structuring your approval process to fit inside that safe harbor — before the deal is negotiated, not after someone objects — meaningfully reduces the odds of a post-sale challenge.

Audit Your Contracts for Change-of-Control Exposure

Every customer and vendor contract with an assignment or consent-required clause is a potential closing condition you don't control. Buyers find these during diligence regardless — the only question is whether you find them first and line up consents proactively, or whether they surface during exclusivity and become leverage for a price chip or a delayed close.

Formalize What's Been Informal

Related-party arrangements, verbal equity promises to early contributors, unassigned IP from a contractor who never signed an agreement — none of these are unusual, but all of them take time to unwind, and buyers will not close around them. Papering these properly months before a sale process starts is far cheaper than doing it under deal pressure.

Address Employment Exposure Before It's a Buyer's Problem

Independent contractor classification and exempt-status issues under California's wage-and-hour rules rarely block a deal, but they become the buyer's liability the moment it closes — which means they show up as an indemnification ask or a price adjustment. If key employees don't have enforceable retention or non-solicit

agreements, address that before a buyer starts asking who's actually staying after close.

Surface Disputes Before Diligence Does

A demand letter sitting in an inbox, a former employee making noise, an unresolved customer complaint — these won't show up on a standard litigation search, but they will come up in buyer diligence, usually at the worst possible time. Getting ahead of anything that could look like undisclosed risk is worth doing deliberately rather than hoping it doesn't surface.

Know What's Actually Off Your Prep List Now

One piece of good news: if your company is U.S.-formed, you no longer need to prepare beneficial ownership reporting documentation for a sale. FinCEN's August 2026 rule permanently eliminated Corporate Transparency Act reporting for domestic companies, so a compliance item that used to be a standard diligence request is now largely moot for most sellers — though it's worth confirming directly with buyer's counsel early, since not everyone has caught up to the change yet.

Know Your Deal Size Before the Buyer Tells You

If your company's value is anywhere near $134 million, know before you go to market whether the transaction will trigger a mandatory federal merger filing. The 2026 HSR thresholds set the reportable size-of-transaction floor at $133.9 million, with a waiting period attached to any reportable deal. That affects your closing timeline and who bears the filing fee — details worth having answered before they show up as a surprise in the purchase agreement.

Final Thoughts

Sale readiness is really just front-loading the legal review a buyer is going to do anyway, so it happens on your schedule instead of theirs. Every item above is something a buyer's diligence team will find regardless — the only variable is whether you found it first, fixed it on your own timeline, and walked into negotiations without it sitting there as leverage against you.

About the Author

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