

CONFIDENTIALITY

in General Business Brokerage by
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It is important to understand the various aspects of confidentiality when it comes to selling a business. This can involve understanding what to disclose and when, and the legal obligations that need to be met by business sellers.

Knowing what to disclose and when

Knowing [what to disclose and when](#) can have a significant impact on the sale of your business, so hiring a business broker who can advise on such matters is an important step. From a buyer's perspective, they want to know as much as possible about the operations and performance of the business so that they can make an informed decision whether or not to offer and at what price.

Account details such as cash flow and existing contracts may be requested. Because of the sensitive nature of some of this information, particularly when it comes to existing relationships and contracts with suppliers and customers, business sellers may be reluctant to reveal more information than is absolutely necessary.

Once people invested in the business — including suppliers, employees and customers — learn that the business is for sale, various knock on effects can have a detrimental effect on the sale price.

Managing uncertainty

This is because of the element of uncertainty that appears when a business is put up for sale. Suppliers, employees and customers have an existing relationship with the business. This relationship can change when it is sold in various ways.

Customers, for example, expect a certain level of quality from the business, but there is no guarantee that they can expect to receive the same levels of quality once it is sold. Loss of sales can damage both the business and the sale price. Suppliers may request different terms. And employees may be understandably concerned about their job security, productivity can fall and they may even start

to look elsewhere.

For these reasons, confidentiality is paramount. Sellers can benefit from a Confidentiality Agreement that prevents the buyer passing on sensitive information. In this way, buyers can access the information they need to make an informed decision but third parties will not be able to learn of the sale of the business from the buyer. Brokers, with their understanding of confidentiality and its potential impacts, can advise on the creation of a Confidentiality Agreement.

What details need to be disclosed?

Business sellers can give the buyer warranties and indemnities about the business. Warranties are factual statements about the company. Breach of warranty in the case of false information being provided could open the seller up to claims for damages from the seller at a later date.

Indemnities are promises to reimburse the buyer in the case of certain events causing a loss to the buyer. Writing warranties and/or indemnities into the sale agreement therefore gives the buyer an understanding of the business's current position together with a measure of protection. However, their inclusion also typically pushes the sale price up.

Use a broker

Business brokers can advise sellers whether warranties, indemnities or both are most appropriate and what should be included, for example, a statement that the company's assets reach a certain value. Limits can also be placed on the seller's liability.

This can partly be done by the process of disclosure, where the seller and their broker draft a disclosure letter with more specific clauses and exceptions to warranties and indemnities.

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