

Planning for Success: Five Considerations for Selling Your RIA

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Every RIA owner will at some point need to transition their business, whether through internal succession, a sale of the business or otherwise. If the transition could be via a sale, the day to start planning to sell your RIA is the day that it is formed.

To be best prepared for a sale, RIA owners should consider the following steps.

Plan for a sale in your formation documents

When you start your RIA, drafting your entity's formation documents will likely be a check-the-box exercise. There is pressure to stand up the RIA quickly because, after all, your livelihood depends on it.

Regardless of whether you realize it, your formation documents will make or imply hundreds of different decisions about how your RIA operates from a legal perspective. Many of those decisions will govern if and how a sale of the RIA occurs and how sale proceeds will be distributed.

At the formation is the time to consider closely and document this myriad of items as well as matters like which partners must agree to a sale of the RIA and if and how a partner can be bought out of the company.

Strategize for negative consent

The sale of your business will very likely be deemed an assignment to the buyer of your client advisory agreements. To properly assign its client agreements, an RIA should expect to be required by relevant law to obtain consent to the assignment from each of its clients.

That consent can be positive—meaning that each client must affirmatively sign a document consenting to the assignment—or negative—meaning that the client receives a notice of the assignment and must in turn notify the RIA if they do not agree to the advisory agreement being assigned.

As you would expect, a negative consent process is significantly easier for an RIA to execute than a positive

consent process. Which form of consent is required is, most of the time, dictated by the language in the applicable advisory agreement.

So, you should resist the urge to simply recycle the advisory agreement from another firm you've worked at or hope that a sample you found online works efficiently. Instead, you should confirm from the beginning that the assignment provision in your form of advisory agreement permits negative consent.

Keep good records of your RIA's assets

The buyer of your RIA will conduct detailed due diligence on what assets your RIA owns. Accordingly, it is important that you maintain detailed records showing what assets are actually owned by the RIA.

It is all too common for RIA owners to be lax with purchasing and record keeping. For example, if you need a new chair for your office, do you think about whether you buy it with the RIA's credit card or your personal credit card?

Ideally, all purchases for the business are done through the RIA and you maintain receipts and detailed accounting records reflecting those purchases. But if that has not happened, it will be important to work with your tax, accounting and legal advisors prior to a sale process to ensure that you properly and tax efficiently identify, inventory and document the ownership of each asset.

Contingent consideration will require your own financial planning

The buyer of your business will be very concerned about ensuring that your clients are effectively transitioned and, if you are continuing with the buyer, your business continues to grow. Therefore, buyers of RIAs very commonly structure the purchase price for an RIA so that a significant portion is contingent upon client retention or the growth of your book of business.

Of course, there will be no way to know if your clients are retained or your business grows without time passing. As a result, the buyer may not actually pay you for your business achieving those conditions for likely years after the sale of your RIA, and you should plan then for a significant portion of the purchase price to be at risk and not paid for several years after the sale.

The sale process will be your second job

Selling your RIA will be one of the most time consuming and challenging experiences that you have during your ownership of your RIA. You will spend countless hours preparing and compiling documentation about your RIA, working with your investment banker to present your RIA's value and financial performance and speaking with your lawyer about hundreds of pages of technical legal documents. The result is that you will almost undoubtedly feel that the sale process is itself a full-time job.

Despite that time commitment, clients will of course still have questions and need your attention. So, to the extent possible, you should prepare to work a significant number of extra hours from the time your sale process starts until the sale closes.

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