

# Informing Stakeholders

## THIS WHITEPAPER EXPLORES:

Strategies for informing stakeholders about ownership transitions to minimize risks and maintain stability. We'll cover key considerations for communicating with employees, competitors, customers, and vendors to ensure a smoother transition and greater success.



## Informing Stakeholders

Business owners often dread telling their various stakeholders of their intent to sell the business. Done poorly, this process may negatively impact the business or deal process. Taking time to craft a strategy for informing stakeholders will help mitigate many of the risks associated with the M&A process.

### Employees Defecting:

Ownership transitions bring about uncertainty and anxiety with employees. Proper communication of ownership transitions will help minimize those fears and reduce defections. Unbiased outside perspectives on many issues.

### Competition:

The best time for competitors to hear of an ownership transition is after the money has been wired to the seller. Competitors acting on rumors of an ownership transition have the ability to poach anxious employees, move aggressively to acquire customers, and even disrupt the ongoing transaction.

### Customers:

Customer concerns are company and industry specific. The more involved an owner is with the customer acquisition process, the higher degree of risk involved with customers reacting to rumors of ownership change.

### Vendors:

Usually vendor relationships are not owner-centric and should not be impacted by an ownership change. The more pressing risk is a vendor spreading rumors of ownership changes, resulting in a negative reaction from other stakeholders.

Most transactions require the endorsement of these stakeholders to some degree to be considered a success. While understanding each transaction is different, the concepts discussed herein are transferrable to many situations.



## Messaging

If done correctly, stakeholders will learn of the business sale at different times. This natural staggering of information can lead to situations of rumors or misinformation being leaked to uninformed stakeholders. To minimize the damage of these leaks, it is crucial to craft a message that is true to ownership's intent and circumstances.

- Be transparent and offer specifics appropriate to the stakeholder. Having trust in your leadership team will help safeguard against information leaks.
- Whenever possible, inform key stakeholders in person.
- Remain confident with the transaction and the prospects of the ongoing business post-sale.
- Be consistent with your messaging. While the level of detail in messaging will vary between stakeholders, being consistent with the intent and circumstances will help minimize the spread of misinformation and rumors.

## Informing Employees: Who and When

A business sale will create fear and anxiety with the employees over concerns of losing their livelihood.

The reality is, most or all of the employees will remain with the company post-sale because the buyers are relying on the employees to continue growing operations. While it is impossible to guarantee an employee's continued employment post-sale, there are strategies available to help mitigate many of the fears of the employee and risks to the company and transaction itself.

Depending on the company and ownership, informing employees will occur in either 2 or 3 stages. Typically, the more important an employee is to the company, the earlier in the process that employee will learn of a business sale.

### 1. Critical to Transaction (Optional):

The necessity of the first group is highly deal-specific. Companies with passive ownership may require a small group of employees to assist with the creation of marketing materials (gathering financial details, sales growth projections, etc.). These individuals drive the company's vision and operations and are key to the company's growth potential.

**Examples: Director of Sales, Chief Financial Officer, Chief Operating Officer**

- This group is naturally the first to know of a possible transaction due to their required input in preparing the company to go to market. Involvement typically happens very early in the process, often during the "Data Gathering Phase" of the marketing process.
- This group will effectively be a part of the "deal team" and often will receive bonuses related to a successful transaction.
- Individuals in this group are typically at low risk of losing employment post-sale.
- This group consists of the leadership team of the company and their full buy-in to the process and opportunities will be critical to suppressing the concern of the "Rank and File" group.

## Informing Employees (cont'd)

### 2. Rank and File: All Other Employees

This group is last to be informed of the transaction and will have the least control over the situation, resulting in increased fears and anxiety.

- Wait until the deal has finalized (or as close to finalized as possible).
- It is best to communicate to this group in person and in a group setting.
- It is likely that some members of this group will be aware of the transaction (or at the least have a strong hunch) and gathering all employees for a meeting will immediately drive suspicion and fear. Stay positive to help ease these fears.
- Have the leadership team present when you inform the Rank and File. The general employees will naturally look to their leadership team for reassurance. This is why it is critical to get the leadership team onboard prior to informing the Rank and File.
- Reinforce why you are selling and remain consistent with your original messaging.
- Express confidence in the transaction and buyers.
- Be candid and available to answer questions.
- If possible, have the buyer available to provide their vision for the future and answer questions after the general employees have been informed.

### Informing Employees Summary

The key to informing employees is to craft a meaningful message, identify the various groups of employees to be informed, communicate clearly and with purpose while reinforcing your messaging, remain positive, and maintain a level of transparency to diminish the uncertainties related to a business sale.

While your objective is to ultimately sell the business, you need to consider how this change in ownership impacts the stress and productivity of your employees.



## Informing Customers

The need to inform customers is very deal-specific and largely driven by customer concentration and any existing contracts between the business and customers. For the businesses that have high concentration with relatively few customers, expect the closing of the deal to be contingent upon a specific set of customers acknowledging the transaction and agreeing in principle to continue their existing relationship with the business post-sale.

The time to inform customers of a transaction is as late in the process as possible and the messaging will be focused on the positives of the transaction, while reinforcing ownership's objectives with the sale (e.g., retirement, infusion of growth capital, etc.). No part of discussions with customers should invoke concerns about the business or the services offered to the customer.

## Who “Owns” Customer Relationship?

Sometimes the selling shareholder “owns” the relationship with important customers. In these situations, it is best to start laying the groundwork of a transition as early as possible. Most of the time this is as simple as the owner meeting with the customer and identifying a personal need to reduce involvement in the day-to-day operations while introducing another salesperson as the point of contact.

It is important to move as much of the company's operations from the hands of ownership to the management team as early as possible.

## Informing Minority Shareholders

Timing of informing minority shareholders of a pending transaction is largely dependent on the company's shareholder agreement, the ownership stake of the minority shareholder, the demographics of the ownership pool, and the strength of the relationship between the minority and majority shareholders.

## Shareholder Agreement

The shareholder agreement will likely provide sound guidance regarding when to inform minority shareholders of a possible transaction. Understanding the rights of the minority shareholders is crucial to knowing when to inform these stakeholders of a potential sale.

- Does the shareholder agreement require a simple majority to approve a sale? A super majority?
- Do minority shareholders hold tag-along rights?
- Does the majority shareholder hold drag-along rights?
- Do minority shareholders hold the right of first refusal?

Reviewing and understanding the rights afforded to each shareholder will impact when minority shareholders are informed of a potential transaction. Commonly, minority shareholders are also employees of the company, and depending on their status within the leadership group, may be driven by fear and anxiety if informed of a potential sale too early.

## Ownership Stake

Not all ownership is created equal. A minority shareholder of <1% of ownership will likely not be presented with the same information as a 30% shareholder. Likewise, an employee critical to the long-term success of the company may have a relatively small ownership percentage but may learn of a transaction earlier in the process than a passive owner with more ownership due to their importance to the company.

Commonly, shareholders will be informed of a transaction based on their ownership percentage (higher percentages first). Though, this is not always the case, and the timing of informing shareholders is driven by a number of factors, each situation being unique to the facts and circumstances of the company and transaction.

- Does the Shareholder Agreement require more “buy-in” than the majority shareholder holds? If a transaction requires more than the majority shareholder’s approval (e.g. 75% approval vs. a 65% ownership stake), be sure to seek endorsement prior to accepting a Letter of Intent (LOI).
- Does the Shareholder Agreement include provisions which allow a minority shareholder to delay or end a deal? If so, it’s in your best interest to notify shareholders early in the process.
- Otherwise, informing minority shareholders of a transaction is largely guided by the minority shareholder’s importance to the company, the strength of relationship between minority and majority shareholders, and the demographics of the minority shareholder in question.



## Informing Minority Shareholders

### Demographics

Most privately held businesses have relatively small ownership pools and the possibility of a company sale will likely be a group decision or will have been discussed previously to the extent that taking the company to market won't be a surprise. Occasionally, businesses will have deep ownership pools due to stock bonusing or some other means to diversify ownership amongst employees. In instances of diverse ownership pools, communicating a sale will likely follow a similar strategy as informing key employees:

1. Critical Employees
2. Key Employees
3. Minority Shareholders
4. Non-shareholder employees

### Strength of Relationship

Shareholder relationships can often become contentious as shareholder's personal objectives evolve. When combative minority shareholders are involved, it may benefit the transaction to wait to inform the minority shareholder until contractually obligated by the shareholder agreement. This could be when an LOI is received or when the Purchase/Sale Agreement is being drafted, but the goal is to minimize the risk of a contentious shareholder putting a transaction at risk.

### Rule of Thumb

Selling a business is a difficult, long process and it's generally beneficial to wait to inform minority shareholders that aren't involved in the decision to go to market until;

1. Required by the Shareholder Agreement (right of first refusal, super majority required, etc.)
2. The sales process will benefit from their involvement (typically Critical or Key Employees)
3. The sale is imminent, and you are informing minority shareholders before informing the general employee pool



## Informing the Board of Directors (BOD)

Informing the BOD will occur early in the process of going to market. A well-structured BOD will be able to bring valuable insight into the process and could provide resources or relationships to key advisors specializing in selling a business. An active BOD will provide guidance for the marketing materials, helping position the company in a manner to maximize any offers. Your advisors should leverage your BOD to gain an understanding of the company's growth initiatives, the general competition in the industry, and identifying the company's highest value proposition.

## Non-Disclosure Agreements

The best-laid strategy to manage the communication of a business sale can be negated by one poorly addressed email, a document inadvertently left in the open, or a slip-up by a stakeholder in the know. As the list of informed stakeholders increases, the probability of a leak increases dramatically. The use of non-disclosure agreements, possibly paired with a deal bonus, can be useful tools in minimizing the risk of stakeholders inadvertently (or maliciously) leaking information of a probable transaction.

## Contact Us

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