

Getting Your Legal House in Order, Protecting Your Business, and Maximizing Value on Exit

WILLKIE

This content is provided for educational and informational purposes only and is not intended and should not be construed as legal advice, and it does not establish an attorney-client relationship in any form. This alert may be considered advertising under applicable state laws. Our website is: www.willkie.com.

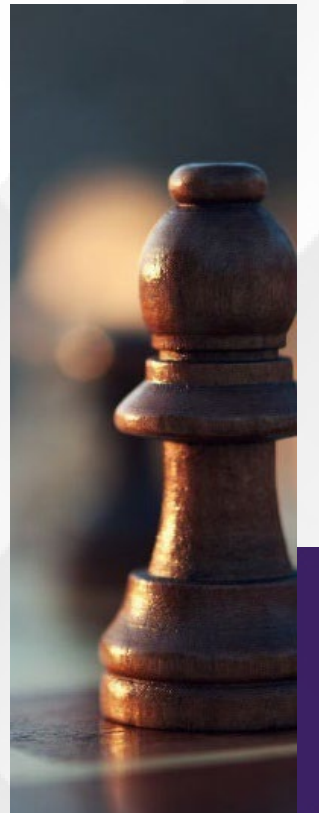
Copyright © 2025 by Willkie Farr & Gallagher LLP. All Rights Reserved.
These materials may not be reproduced or disseminated in any form without the express permission of Willkie Farr & Gallagher LLP.

How Can You Set Yourself Up for a Successful Exit?

While building out – and investing in – your core business offering will always be the primary focus, investing in your legal processes will set your business up for a successful exit.

Buyers – and their financial and legal advisors – dislike risk. If you've built a great business, but have not invested in the legal infrastructure to support that business, the Buyer will have to take those risks into account as part of the valuation equation.

Don't leave money on the table!



Getting Your Legal House in Order



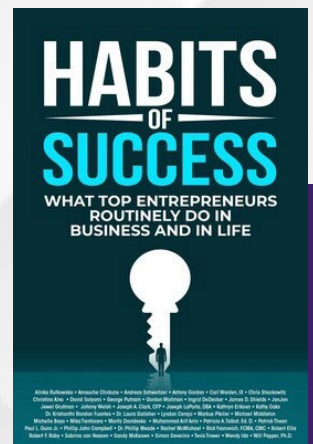
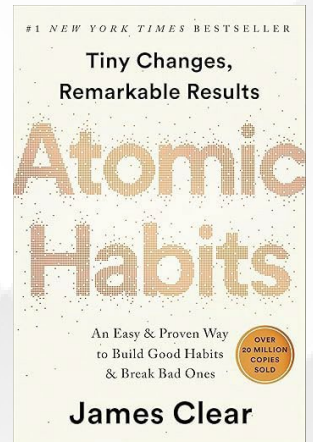
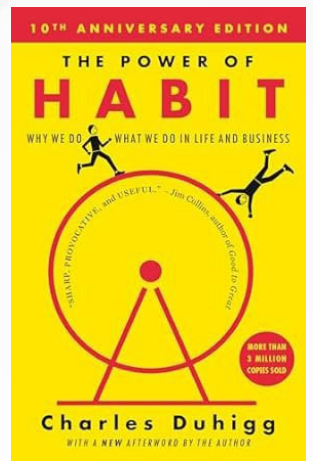
Getting Your Legal House In Order

There is endless literature about the benefits of building good habits, that applies equally to building good habits in running a business.

Invest in establishing the right processes now, so those processes scale with you as your business grows.

Do a document audit.

- Do you have copies of all of your formation documents?
- Do you have copies of all documents pursuant to which your investors acquired equity, or pursuant to which your company issued incentive equity to employees or service providers?
- Do you have copies of all customer agreements, with all statements of work, attachments, etc., countersigned by the customer?
 - Any material changes, waivers, agreements that were agreed over email should be saved with your documentation.
- Do you have copies of all employment and consulting agreements with employees and service providers?
- Do you have copies of all of you permits, authorizations, certifications?
- Do you have copies of all of your property documents (office leases, leases of office equipment, etc.).



Getting Your Legal House In Order

Establish processes for staying on top of changes in your business

Did you raise additional capital or bring in new investors?

- Make sure you have all capital raise documentation (subscription agreements, investor questionnaires, updated ownership ledgers).

Did you buy-out existing investors?

- Make sure you have all redemption / repurchase documentation and have collected and cancelled applicable stock certificates.

Did you bring on a new customer?

- Make sure your team has a process for collecting signatures on all applicable agreements, including SOWs, and saving them in the appropriate repository.

Did you hire a new employee or consultant?

- Make sure they have executed all applicable employment and consulting agreements, offer letters, confidentiality agreements, non-competition agreements, IP assignment agreements, and acknowledged receipt of the Company handbook and policies.

Did you terminate an employee?

- Make sure you have documented grounds for termination and have complied with all applicable laws. If you paid severance, make sure you have copies of severance agreements and releases.

Get Into the Habit
of Making Sure
Your Records
Always Keep Up
With Your Business!



Getting Your Legal House In Order

Leverage Technology

- Leverage technology (such as document management, payroll and benefits management, and project management services / software) that take the “heavy lift” out of managing those functions.
- Make sure your team is “plugged in” and understands how to leverage these services to ensure consistent and standard operations.

Befriend an Attorney

- We are also in the service business.
- We don't have to be consulted on every decision, but a good lawyer can work with you to create documents / templates / processes that can scale, and identify where your business can provide flexibility, and where you need “must have” protections for your business.

Protecting Your Business

WILLKIE

Protecting Your Business

Your principal asset is your people – their knowledge base, how they deliver your services, and their relationships with your customers.

Ensure all employees have entered into confidentiality agreements (either as part of their onboarding documentation or separately).

- This helps reduce the risk of your confidential business information being shared externally while employees are employed, and that they simply can't walk out with your trade secrets or customer info when they leave

Ensure key employees have entered into intellectual property assignment documents.

- “Intellectual Property” covers a wide range of law, from the obvious (such as patents and trademarks) to the less obvious (know-how and the process by which services are delivered). You want to ensure that *the unique way you deliver services* is the property of the Company, and not of any individual employee

Consider whether key employees should also be subject to non- compete / non-solicitation agreements.

- A departure of a key employee (such as one critical to a customer relationship) could be a material risk, particularly if they go to work for a competitor. Consider non-competes / non-solicitation agreements for critical employees.

Protecting Your Business

Stay on top of your customer relationships

Ensure full documentation of all customer contracts, including all statements of work.

- Stay on top of amendments, variations, or pricing changes confirmed through email, and that documents are appropriately saved.

Ensure your contracts with your customers have confidentiality provisions in your favor.

- This ensures that the advice you provide, as well as any work product (such as presentations or other deliverables to your customers) are required to be kept confidential by your customers.

Ensure resolution of all customer disputes is properly documented.

- If the dispute resulted in any accommodation (either to terms of service or financial accommodations) in favor of the customer, ensure these are appropriately documented in a change order or statement of work, and appropriate email back-up is maintained.

Protecting Your Business

Don't be afraid to phone a (legal) friend

There will always be key inflexion points in the life of any business:

- Making key hires
- Entering into material customer contracts, particularly on customer “paper” or customer forms.
- Managing employment issues (terminations / separation, claims by employees against other employees, employment litigation).
- Customer disputes (contract interpretation issues, non-performance, termination).
- Strategic transactions (fundraising, issuing incentive equity, acquisitions / combinations).

Consulting an attorney in these “high-leverage” situations can help you brainstorm options for resolution, evaluate risk / reward of any plan of action, and appropriately “box” the risk so that it is managed with an eventual exit in mind.

Planning for an Exit

WILLKIE

Planning for an Exit

First Impressions Count: You only have one shot to make initial impression on buyers. What can you do to ensure you have a compelling asset and a good story?

10 BEST PRACTICES

- Institutionalize client relationships (don't rely on one or two key contacts)
- Develop recurring revenue streams
- Build scalable delivery model / infrastructure
- Maintain strong financial controls and reporting
- Retain and incentivize key talent
- Differentiate the brand and niche
- Document and protect intellectual capital
- Clean up legal and contractual issues
- Demonstrate a track record of growth and margin expansion
- Prepare for due diligence early

10 COMMON PITFALLS

- Over-reliance on founders
- Unclear client ownership and weak contracts
- Project-based revenue volatility
- Weak bench of senior talent
- Messy financials or commingled expenses
- Unresolved ownership or equity issues
- No sales pipeline or CRM discipline
- Lack of documented methodologies
- Failure to prepare emotionally or operationally
- Tax and deal structure surprises

Planning for an Exit

Identify your goals in an exit.

- Are you planning on retiring?
- Do you want to stay in a leadership or consulting capacity, or “roll over” equity into the Buyer?
- Do you have goals for your workforce?
- You need to clearly identify what you want to accomplish in a sale so you can have a “meeting of the minds” with the Buyer, and so you can structure the deal appropriately.

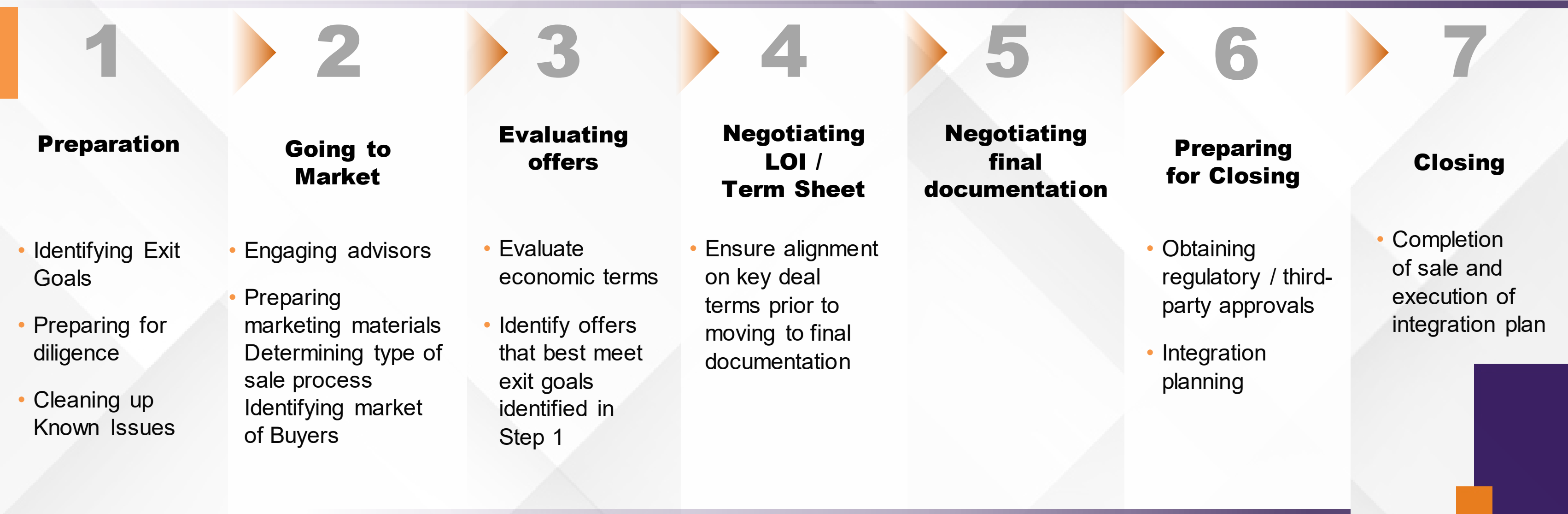
Prepare for diligence.

- Each exit transaction, irrespective of size, requires a tremendous amount of document retrieval.
- Get a head start on building out the document repository that can later be turned into an electronic data room for Buyer’s review.

Understand that dealing with an exit is like a second job.

- Need to prepare – both organizationally and emotionally – to continue running the business while managing the exit in parallel.
- Want alignment with Buyer on a quick and efficient exit process.

Typical Sale Process



About the Authors



Thomas McCaffrey
Partner | Houston
tmccaffrey@willkie.com

Thomas McCaffrey is a partner in Willkie's Houston office, where he is a member of the Corporate & Financial Services Department and Private Equity practice group. Tom advises buyers and sellers across a variety of industries in mergers & acquisitions, private equity investments and other strategic transactions, including those involving corporate and partnership law, asset and stock transactions, mergers, joint ventures, financings, structuring issues and strategic planning. Tom specializes in representing sellers of businesses, leading private equity funds, public companies, privately held businesses, boards of directors and individuals. He also advises boards of directors and committees on various governance and strategic issues in both robust and distressed environments.



Ryan Giggs
Partner | Houston
rgiggs@willkie.com

Ryan Giggs is a partner in the Corporate & Financial Services Department in Houston. Ryan is a multifaceted transactional attorney with experience advising clients on a wide range of business matters. Ryan's experience includes advising private and public companies in a variety of M&A engagements (such as leveraged buyouts, acquisitions, divestitures, and carve-outs), joint ventures and partnerships, cross-border investments, and entity formation and governance.

Getting Your Legal House in Order, Protecting Your Business, and Maximizing Value on Exit

WILLKIE