
CONTROL YOUR CLOSING

PROTECT YOUR PRICE. KEEP MORE OF WHAT YOU BUILT



Selling a business is not just a handshake on a headline number—it’s a high-stakes sequence of documents that determine **(1)** how much you actually receive, **(2)** how long it takes to close, and **(3)** what obligations follow you after the ink dries. Many sellers discover too late that leverage was lost at the LOI stage, that diligence gaps triggered last-minute renegotiations, or that the “price” was really a mix of working capital true-ups, escrows, and contingent earn-outs.

This guide shows owners the **five legal levers** that most directly affect deal value and exit certainty: the LOI, diligence readiness, price-and-payment mechanics, post-closing obligations (including restrictive covenants), and tax-driven structuring. If you treat these as **business economics**—not legal fine print—you improve your odds of a clean, profitable exit.

Most sellers don’t “lose” value in the final agreement. They lose it earlier—

quietly—through terms that look standard until you try to enforce them. Exclusivity that freezes your options, diligence that exposes fixable gaps, earn-outs tied to fuzzy metrics, and post-closing restrictions that reshape your next chapter. The good news: these issues are predictable, and you can plan for them.

The five seller levers that move your real outcome

1. **Make the LOI work for you, not against you**

Letters of intent/term sheets often get described as “non-binding,” but sellers routinely underestimate how much leverage is created—or surrendered—at this stage. Courts and deal practice recognize that **whether a preliminary document binds you** can depend on the wording and the parties’ conduct, and LOIs often include provisions intended to be binding (confidentiality, exclusivity, expenses, timelines).

Treat the LOI as the document that sets your negotiating ceiling and floor.

If you agree early to an unfavourable structure (for example, a buyer-friendly working capital mechanism or broad “conditions”), you may spend the rest of the deal trying to claw back what you already conceded.

What to aim for at LOI stage: A tight scope of exclusivity (only if it is truly earned). Clarity on the economic mechanics that will later determine your realized proceeds (purchase price adjustments, earn-out concepts, escrow/holdback expectations). A path to closing that rewards diligence readiness rather than penalizing you with open-ended discretion.

2. **Win diligence by being “audit-ready” before the buyer asks**

Due diligence is where deals slow down, pricing gets chipped, and buyer confidence rises—or collapses. Standard diligence requests are broad by design, commonly spanning corporate records, financials, material contracts, employment matters, and operational risk areas.

Diligence is not just disclosure—it’s negotiation leverage.

When you control the narrative with organized records and pre-identified fixes, you reduce the odds of “surprise discounts” late in the process.

Practical seller moves that translate into business outcomes: Centralize key documents and resolve obvious gaps before the buyer’s request list lands. Identify “red flag” issues (contract assignment/consents, key customer concentration, employee/contractor classification, regulatory history) early enough to fix—or to price deliberately, rather than under pressure.



3. Don't sell on a headline price—sell on what you actually collect

In private M&A, a “purchase price” is often a set of mechanisms, not a single number. That matters because post-closing mechanics are not rare edge cases; large-data studies of private deals show that purchase price adjustments (PPAs) are now “virtually ubiquitous,” appearing in well over 90% of private deals.

If you ignore the mechanics, you’re not negotiating the price—you’re negotiating the press release version of the price.

Two high-impact areas to get right: Working capital and other true-ups: ensure the target, accounting basis, timing, and dispute process are defined clearly. Earn-outs (contingent payments): Earn-outs are common enough that sellers should treat them as a primary deal term.

If earn-out dollars matter to you, the metric definitions, financial statement rules, operational control rights, and dispute resolution process must be negotiated like core economics, not footnotes.

4. Plan for the “after” part of the sale—before you sign

Many sellers assume closing is the finish line. In reality, buyers frequently expect sellers to support a transition—whether through employment, consulting, or more formal transition service arrangements designed to keep operations stable after closing.

Post-closing obligations can either preserve value (smooth transition, unlock earn-out) or quietly reduce it (unclear scope, time drain, misaligned incentives).

In addition, restrictive covenants can materially shape your future. In Ontario, the Employment Standards Act prohibits employers from entering into non-compete agreements with employees, with defined exceptions—including a sale-of-business scenario where the seller becomes an employee immediately after the sale—and an exception for listed executive roles.

Separately, Canadian common law has long required that restraints of trade

be reasonable between the parties and with reference to the public interest.

TAKEAWAY: Don't accept “standard” non-solicit/non-compete language without confirming (1) which legal regime applies to your situation and (2) whether scope/duration/territory align with what you actually plan to do post-close.

5. Treat tax planning as deal value engineering, not cleanup

Taxes can be one of the biggest differences between a deal that feels successful and one that doesn't. Under the federal Income Tax Act, a taxpayer's taxable capital gain is generally $\frac{1}{2}$ of the capital gain (subject to specific exceptions and special rules).

That baseline alone is enough to make structure matter—and proposed reforms can add uncertainty, so sellers need current, transaction-specific tax advice.

The key business point: the best outcomes often require time. For example, CRA guidance on qualified small business corporation shares includes conditions tied to the 24 months immediately before the share is disposed of, including ownership restrictions and asset-use tests over that period.

In other words, if eligibility or structuring depends on tests measured over time, “last-minute” planning may simply be too late.

As lawyers that have expertise in both M&A and tax re-organizations, RJS LAW can assist in all aspects of the deal and not just typical paperwork.

If you’re considering a sale in the next 6–24 months, the highest-ROI step is usually a seller readiness review: a focused legal and tax-issue scan designed to (1) surface value leaks early, (2) prepare for diligence, and (3) pressure-test the LOI and payment mechanics you are likely to face.

NEXT STEPS:

Book a confidential seller-side or buyer-side M&A consult to review:

- Your likely deal structure (share vs. asset) and value impact
- Your LOI risk points (exclusivity, conditions, economics)
- Your diligence “red flags” and fast fixes
- Your payment terms (PPA/escrow/earn-out collectability)
- Your post-close obligations and restrictive covenants
- Your tax-planning timeline and gating requirements

At RJS LAW, we have guided sellers through countless M&A transactions, ranging from family-owned and founder-led businesses to complex deals involving billion-dollar enterprises. Our team works closely with clients at every step of the process to anticipate issues before they arise, manage risk, and keep transactions aimed ahead, helping ensure that M&A exits lead to opportunity, and not regret.

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