

Selling your business - Preparing your business for your graceful exit, partners, or investment  
(S3E57)

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**00:06 Autumn Witt Boyd:** Welcome to The Legal Roadmap Podcast for online and ecommerce entrepreneurs. I'm your host, lawyer Autumn Witt Boyd. I'm an experienced copyright and trademark lawyer. With my team at the AWB Firm, I leverage, grow, and protect multimillion dollar online businesses. My goal in every episode is to teach you about the sophisticated legal and business strategies to build your own seven or eight-figure business. If you're a new business owner, go back and listen to episodes one through 12. You'll learn the basics to set up a strong legal foundation.

**00:37 AB:** The Legal Roadmap Podcast is sponsored by the AWB Firm. You can find show notes for every episode, and learn more about how we help our clients achieve their next level goals, at [AWBfirm.com](http://AWBfirm.com).

**00:52 AB:** Hi, everybody. Lawyer Autumn Witt Boyd here. I am delighted to be with you this week, especially if you are new to my Facebook page, Facebook friends, or if you are new to the Legal Roadmap Podcast. I was really privileged to be featured in an article on Forbes.com last week; you may have seen it. I will put the link in the show notes for this episode and in the Facebook comments just in case you missed it, but if you are new here because you saw that article, welcome! I am delighted that you are here. My friend Kelly Hoey wrote an article after doing an interview with me. So it talks a little bit about how I've used my podcast, what you're listening to right now, and also a new strategy that I'm doing that I mentioned a couple weeks ago, which is doing CEO dinners for online CEOs, the people that I am wanting to connect with and how bringing them together has really helped me build my business as well.

**01:43 AB:** So, welcome. If you are new, hello. If you are returning, we are starting for the month of October a new series. And there are five Mondays in October, so we will have five podcast episodes in this series all about preparing your business if you think you might want to either sell it, take on investors, or if you've got some sort of other exit in mind. If you don't plan to run your business forever, what are some things that you need to be thinking about early on, in the middle, or if you are wanting to make an exit fairly soon, you definitely wanna be hearing some of these things. So I'm gonna do five episodes in this series about preparing your business for sale, investment or another exit.

**02:24 AB:** We're gonna talk about today some of the basic things that really every business should be doing, but especially if you think you might be either bringing on an investor or a partner to your business or selling it to a third party. Things you definitely need to be doing, just some basic foundational legal things that every business owner needs to be doing. So this episode is really going to be relevant to pretty much any business owner. Even if you haven't started yet, you will learn a lot from this episode, and if you are about ready to get out of your business, you definitely want to listen.

**02:52 AB:** Some other topics... You'll see me look over here, I've got my notes... We're also gonna talk about what's called due diligence, which is the period if you are looking to either take on an investor or sell your business where the other person basically wants to pull back the curtain on your business and see inside. So I wanna let you know what that looks like and how that process works so that you know what you need to get ready for it. We'll also talk about... I'm going to have an interview with someone who works in the valuation field; that is a question I get all the time. "I wanna sell my business, how do I figure out what it's worth or what I should be asking for it, or what someone else might offer me? Is that a good deal or not?" So we're gonna be speaking with a valuation expert and I'm super excited about that.

**03:33 AB:** We're also gonna talk about how do you figure out what it is that you are selling? What assets are you including? How might you wanna structure the deal? These are all things that my team and I love to work on. There's a million different ways that you can structure taking on investment or selling your business, but I wanna talk about some of the most popular so you kind of know what your options might be. And then the last thing we're gonna talk about is how do you need to be building your team now if you are wanting to make an exit from your business? So there's definitely some different things you will want to think about, then, if you plan on running your business forever. So I'm super excited about this series. I think it's gonna be really valuable for all my listeners.

**04:10 AB:** So let's dive in. And I will give my standard disclaimer: I am a lawyer, I am not your lawyer unless you hire me and we decide to work together one-on-one. So nothing in this podcast or Facebook Live is legal advice; this is all just information. This is meant to get your wheel spinning, help you figure out some things that you may not have thought about, but if you need individual advice for your situation, definitely talk with your own lawyer whether that is me or someone else. This is just information, not legal advice. Alright let's dig in.

**04:38 AB:** I wanna let you know I am going to be using my ten-step legal road map as I go through this episode. This is what I use with all of my own clients when we are working together in the beginning, and then I use it also as just a check-in to make sure... This is, as I mentioned, goes over some of the foundational legal issues that you're gonna wanna take care of in your business. So if you want to download this worksheet, you can get it yourself at my website [AWBfirm.com/checklist](http://AWBfirm.com/checklist), and you can download it right there, very easy. I'm not gonna go through every single of the ten items today, we would be here a long time. I usually spend an hour to an hour-and-a-half going over this with my clients when we talk about this. But if you want the whole list, including every single thing, definitely go to [AWBfirm.com/checklist](http://AWBfirm.com/checklist) to get your own copy.

**05:24 AB:** Alright, so the first thing that we always talk about, I know people always wanna talk about "do I need an LLC or what do I do on taxes?" That is important. We'll talk about it in a minute. But the first thing I always want people to think about is: What are their contracts? Because for most businesses, this is going to be the most important legal protection that you really need, and that hopefully you have. So I'm just gonna go through a couple of contracts to think about whether you have these, and if you're looking for a sale or taking on investment, you are gonna need to be rounding these up because the other side is probably going to want to look at them.

**06:00 AB:** So if you have not looked at these in a while and you are considering getting out of your business, definitely might wanna pull them up because you probably don't remember what they say. And if you are like most of us, myself included, we kind of set it and forget it with contracts. We spend a lot of time and energy maybe negotiating them; or if it's your own contract that you use with clients or customers, you spend a lot of time thinking through how you want it to work, and then once you get it going, you never look at it again. You just use it. You don't update it very often.

**06:28 AB:** So this is another time, if you have not looked at those client contracts, customer contracts, if you've got key vendors or people that you work with, contractors in your business, might be a good time to just pull those out, see what they say. See if you're really using them the way they're written or if maybe they need some tweaks, could be updated. So some things to think about: I mentioned if you've got a client, if you're a service provider type business, your main contract is going to be your client contract; your client services agreement. So that is definitely a key contract. If you already have a partner, if you had a co-founder, maybe if you've done a joint venture or if you've done any collaborations... We see this a lot with product companies, especially collaborations. So maybe you're a stationary maker and you collaborate with Target to do a line exclusive for them. That's gonna definitely be a key contract that is going to be an issue, and maybe hopefully the terms are good, and maybe an issue when you are looking to set up an exit or take on an investor. So you wanna check out those contracts.

**07:28 AB:** If you have partnerships, collaborations, you've got a co-founder and you don't have a contract, now is an excellent time for you to sit down and take what maybe was a hand shake maybe in the beginning when nobody was sure if this company was even going to take off, much less be profitable... Maybe a handshake deal was fine at that point. But if you are looking at bringing someone on, or getting out, selling the business altogether, you are definitely going to want to iron out those agreements and have them in writing. And something important to think about as you're doing that is a term that it's in that boilerplate that most of us, you see it at the end of the contract when you're tired of reading the contract and so nobody pays any attention, but it's called an "assignment clause."

**08:13 AB:** So what that means is whether or not you are allowed to assign, so basically transfer, the contract to someone else. So this becomes really important if you are bringing on an investor or if you're getting out of the business altogether, and maybe another company is going to absorb your company into their own company. Maybe someone else is just gonna take over. But sometimes those assignment clauses have really strict rules about whether you can transfer that contract to someone else. So if you have a key contract that's part of your business, maybe you've got one major client that is supporting your business that you do almost all of your work with, or maybe you have a really key supplier for the products that you make and you've got really great negotiated terms with them and you definitely want to make sure that whoever takes over your business can keep those terms, you wanna definitely look at that assignment clause.

**09:03 AB:** Or maybe there isn't one at all. If it's silent, that's maybe something to think about as well. But you wanna make sure that if there are any restrictions on your ability to transfer that contract to keep those terms, you wanna know that. And if it's not assignable, that may be

something that you need to talk about with the person who's buying your business or who's taking it over. If they are gonna have to renegotiate those terms, that may be a bit of a sticky point. So you definitely want to read those contracts carefully with an eye towards whatever the thing is that you're thinking about doing.

**09:34 AB:** If you're thinking of bringing on someone else to take over... I see this a lot with service contracts, where someone hires you because they appreciate your particular skill or your expertise, and if you sell your business to somebody else, maybe they don't have your same creativity or your same level of skill or expertise. And so I have seen some contracts that even have a change in control term, where if the change of who's running the company changes that may terminate the contract. So these are just things that you probably didn't think about in the beginning when you were negotiating these contracts because you maybe weren't thinking about exiting or taking on an investor, but you definitely need to be looking at those things carefully now.

**10:12 AB:** So again, if you have investors, let's say you have family or friends who gave you money early on, and maybe you didn't have anything in writing. Again, now is the time to go ahead and put all of that in writing, make sure everyone knows what is going on. Are you paying them back? Do they just keep a piece of the company? Are they profit sharing? Do they have decision making authority? All of those things, again, that you may not have thought about in the beginning now are going to start becoming much more important.

**10:38 AB:** Key independent contractors and definitely employees. You wanna look at what kinds of contracts you have with them. Do you have confidentiality provisions? Do you have nondisclosure provisions? Do you have non-compete provisions? And again, would those transfer if someone else is taking over your company? If you have licenses, so this is where other people give you permission to use their copyrights or trademarks that's gonna be another thing to definitely look at because those are often very particular. If someone, let's say a college is giving you a license to use their logo on apparel, that may be not transferable because they wanna make sure that they know what the quality is of the items that you're gonna be putting their logo on. So you wanna, again, take a close look at the assign-ability.

**11:20 AB:** And for things like licenses, you might wanna also be aware of: Is there a term? Sometimes the license is only going to be for one year or five years, so you wanna know where all of those stand as you're starting to negotiate. Because, let's say with the example of the college logo on apparel, if that's a key part of your business and that's a lot of your revenue is related to those products and your license is about to expire, that's something the buyer is gonna wanna know about. And it's something that may affect the negotiations and your valuation of your company. So I know we all think we sign a contract and it just goes on the shelf, but this is where it really becomes important. So we wanna definitely take a look at this.

**11:56 AB:** All right, so the second thing we are gonna wanna think about is: What intellectual property do you have in your business and have you protected it? So we have, typically with most businesses, we're gonna be looking at three types of intellectual property. Your copy rights: So that is gonna be any creative work that you have created; things like photographs, any written work, books, blog posts, digital products like worksheets or if you have workbooks or other kinds of

resources that you use in your business. Maybe you're an education type business, it could be sculptures, it could be movies, it could be music. Anything that you think of as a creative work is going to be protected by copyrights, so your business may own some copyrights, especially if you are in the kind of business that I work with mostly: Online businesses who are creating content all day long. Their main asset is going to be that content. So that's gonna be protected by copyrights.

**12:48 AB:** Your trademarks are going to protect things that are associated with your brand. So that is generally going to be your company name, or if you have key product names that are well known in the industry. So I think about, the Coca-Cola is a brand name. It's a product name; it's also a company name. They have other product names under that like Sprite and... I don't think Dr. Pepper is actually owned by that company, but that's another example of a strong trademark. In the online business world, we have Marie Forleo with B-School; that is a registered trademark and a very well-known online education product.

**13:19 AB:** So you wanna kind of do an inventory of what copyrights and trademarks you have in your business. It could also be logos, could be a trademark; slogans could be a trademark. Anything that people identify your business with. So you wanna kind of do an inventory and figure out, "What do I have? What is valuable in my business?" And you probably are gonna wanna start to make a list if you have done any registrations of that intellectual property. So with the copyright office or with the trademark office. You may also have some patents. In my experience, most online businesses are not getting into patents, but you may. That would definitely be something you would want to inventory as well.

**13:56 AB:** And then the last thing that I think people forget about but is a really important type of intellectual property... And I should say this is all based on US Law... Are trade secrets. And so these are not actually registered anywhere. They are a more informal type of intellectual property, but they can be really important. And this is like the secret sauce in your business. So these are the things that give you a competitive advantage over your competitors in the market place.

**14:20 AB:** So these are things like customer lists. They could be your systems and processes if you have those documented. If you have, let's say you're a product maker, if you have a special process that you use in your business to make your products that's not public. The key about trade secrets is that they have to be secret. It can't be something you talk about all the time. So it's that secret sauce. Great examples of this would be like the recipe for Coca-Cola; it is not registered anywhere. The way you keep a trade-secret secret, and the way you keep those rights, is just by keeping it secret. Keeping it under lock and key, making sure you have protections and that you have a limited amount of employees or contractors who can access the secret; that you've got agreements in place that have really stiff consequences if they do try and disclose your secret. So that's another kind of intellectual property that you'll wanna think about: Are there any critical trade secrets in your business that you would want to include as part of a sale or a merger?

**15:14 AB:** Are there any you would want to exclude? So as you're thinking about leaving a business, if there are pieces that you want to keep and take with you, that is going to be a really key negotiating point. And we see this a lot with entrepreneurs who maybe have dabbled in a bunch of different things. So they've got the main thing that their business does, and then they've also got a

side hustle or a passion project. So if there are things you're gonna wanna carve out if you are looking to transfer the business, that's gonna be something we definitely wanna think about. So again, as part of looking at all of your intellectual property, we want to start to inventory, figure out what's been protected. And think about, if we haven't protected it, maybe it's time.

**15:53 AB:** So especially if you're not looking for an immediate exit or an immediate investor; if you've got some time, if you've got a year or two, then you would have time to do something like a trademark registration, or a copyright registration, or to start putting some of those trade secret protections in place. So start thinking about your intellectual property.

**16:10 AB:** Alright, I am unsurprisingly being a little long-winded. I get excited about all this stuff. So we're gonna talk about a couple more points and then we will wrap up.

**16:18 AB:** The next thing I want you to think about is what corporate entity is right for you. So a lot of us start, especially if we're a sole opener, as just a sole proprietorship. So this is going to be what happens, whether you mean for it to or not, as soon as you start a business, you start selling goods or services in exchange for money, you are now a sole proprietorship. It's a common law entity; it's a state law entity. You don't have to register in the beginning. Once you start making money, then there are all kinds of rules and regulations that you will have to start complying with, but in some states you never have to register a sole proprietorship. There may be other taxes and fees and licenses that you have to register for. But in Tennessee at least, you don't actually register a sole proprietorship.

**17:00 AB:** One step up, if you are looking for some protection in case something goes wrong with the business: I think about a corporate entity, so an LLC or a corporation, as kind of building a fence around your business. So you have the business in the middle. Anything that goes wrong with that business kind of stays inside the fence, and you and your family and all of your personal belongings and assets, bank accounts, cars, house, anything that is of value to you and your family, is outside that fence. And so if something goes wrong in the business, whoever is trying to come after assets of the business cannot come after your personal assets 'cause they're outside the fence.

**17:35 AB:** So if that's something that is important to you, if you are in a business where you could have something go wrong, that someone would want to sue you or maybe you take on a debt that you can't meet, or you have a contract that it turns out you can't fulfill the obligations... Basically, think of all the things that could go wrong in your business. If you would like to insulate your personal assets from that, and this is going to be most businesses once you get up and running and are actually making some money. I can't think of very many businesses that are above six figures that would not want to have this corporate protection. You need to look at your state law, talk to your CPA or your financial advisor, and figure out what corporate entity makes sense for you. There's lots of different considerations there with the new tax change in 2018, end of 2017, that's gone into effect this year.

**18:20 AB:** There's been a lot of changes in that analysis. So I always say there are two kind of flip sides of the same coin with figuring out if you wanna be an LLC or a corporation, or just stay a sole proprietorship, and that is the legal part of it, which is the liability protection. And then there's the

tax side of it, which I'm not a tax lawyer. I do not get into that. I work side by side with my clients' tax advisors. And you really have to look at it from both sides; you can't just look at one side. So as you're preparing to maybe take on an investor, that may make a big difference to them, especially if you are a sole proprietorship and you're thinking about forming an LLC in order to take on an investor or in order to sell or maybe as part of a merger. There's definitely gonna be a lot of considerations there.

**19:01 AB:** So that is something where you're gonna wanna get a lawyer involved early on so that you're not wasting time and money on doing the wrong thing. If you've got certain goals, or if the investor or purchaser of the company has certain goals, there may be different structures that make more sense in that transaction. So you're gonna wanna definitely go over that with a lawyer and your CPA because there are always tax consequences and legal consequences.

**19:24 AB:** So after you figure out your corporate entity, we're gonna look at some of the more just basic business protections and, really, compliance. So this is the part that is no fun, that nobody likes. This is where we have to make sure that we are complying with all of the state, federal, local rules and regulations that are involved in running a business. And they are going to be different depending on where you are located. So as I mentioned before, some states are going to require that you register with a taxing entity, some are gonna require that you register with the Secretary of State, others will not.

**19:58 AB:** It really is going to depend; this is state-by-state. I cannot give you one answer, but this is definitely an area where if you've gotten to the point where you're thinking about an exit, the person who is either investing or wanting to purchase, as part of due diligence, they're gonna ask for all these things. They're gonna ask for your corporate documents, and for your filings with the Secretary of State, and your tax returns, and all of your licenses, and they're gonna want you to show all the things. So now, while maybe it's early, you wanna start researching all of that.

**20:30 AB:** And I'll drop a link in the comments: My favorite resource for this, especially if you're just starting out, I know this can feel very overwhelming, but the Small Business Administration, the SBA, has locations in all fifty states and really most large cities and even some small cities... Chattanooga has one, we're not a very big city... They're called Business Development Centers, and they offer tons of free advice. They offer workshops and counseling, and a lot of it is very low cost or free. And because they do this all the time, they deal with new businesses and small businesses, they will probably have a checklist. I may put in the comments on Facebook attached to the show notes, we just did a seminar with the Tennessee Small Business Development Center, our local chapter, and they gave me their checklist that they use with new businesses. So it's super helpful; it just has, "If you're trying to start a business, here are all the places that you're going to need to register." Or, "Here are all the forms you need to fill out." And it makes it really simple because you could spend hours and hours and hours trying to figure all this out on your own, and you might miss some. But since they deal with it all the time, or... I have to say, you can hire an attorney to do this for you, but if you're just starting out, it's going to be very expensive because it is not all in one place and it's usually not very easy to figure out.

**21:39 AB:** So I highly recommend that you contact your local SBA office. Start there. If you are

further along, hopefully you've at least got the basics covered, but there may be rules and regulations that you are not aware of for your specific industry. So especially if you're in a more technical field or if you're manufacturing, or you're worried about maybe there could be some environmental requirements, you wanna make sure you got all your ducks in a row on that side of things before you are trying to hand off your business to someone else. Because here is what is going to happen as you're trying to sell: The other party to the sale... We call them parties in the legal world. It's not a party, but that's what we call them. The other person or company, they're gonna want you to either probably promise that you're compliant with all rules and regulations; and if you're not, then now you're in breach of the contract, or they're gonna want you to maybe set aside some of the money from the sale as a hold back in case they find there's some issues that they have to spend money to resolve.

**22:38 AB:** We see this a lot with especially with land deals. If there are environmental issues or potential environmental issues, that can be a big, big issue. So just getting all of your ducks in a row, doing that research early on so that you know. Maybe you're in the alcohol industry; there's all kinds of rules and regulations if you're making alcohol, serving alcohol, selling alcohol. Now with CBD oil and the cannabis industry, tons and tons of rules and regulations. So again, it's much better to start figuring this stuff out early on, and do your best, but when you get into that exit or investor scenario, the stakes are gonna be a lot higher. So you're gonna save yourself a lot of heartache and time and trouble and tears, if you can kind of figure it out on the front end and start to get things in order before the stakes are so high.

**23:23 AB:** So I hope this was helpful. As I mentioned, if you want the whole ten-step checklist, which we did not cover everything, definitely go to my website, [AWBfirm.com/checklist](http://AWBfirm.com/checklist). Again, I'll throw that in the show notes. If you are driving while listening to this or don't have access to write it down; if you are listening to this and realizing, "Oh my gosh, I don't have a good client contract. I've just been kind of using email," or, "I borrowed a client contract from a friend, and I'm not sure how good it is," or, "I have a co-founder and we don't have anything in writing..." If you have a need for contracts in your business, we have a contract template store on my website. I haven't talked about it much lately, so we're gonna start talking about it more. You're gonna hear about it more. It's an amazing resource, especially if you are just starting out and you are not ready to make the investment of working with an attorney one-on-one on a custom contract.

**24:13 AB:** That's what we do with clients all day long; we work with them to create custom contracts that are really tailored to their needs. But these contract templates are a great first step. They will give you a ton of protection. They will probably include a lot of things you would not have thought about, including they will ask you questions, make you think about how you want to do things in your business. And you will customize it for yourself. That's the beautiful thing. So they are very, very, very affordable. They're written for online and creative businesses, so they are geared towards you guys, towards my listeners.

**24:41 AB:** So definitely check those out if you are realizing that you might have a contract hole in your business after listening to me talk about this. Those are at [AWBfirm.com/contract-templates](http://AWBfirm.com/contract-templates), and I'll drop that link in the show notes and the comments as well.

**24:53 AB:** So as I start to wrap up, next week as I mentioned, we're gonna talk all about due diligence. This is like the most boring word ever. But it's basically when the other side is kind of doing an investigation into your business. And what I think the best thing to do is, before the other person starts looking into your business, is for you to basically pretend like you are them and do your own due diligence into your own company so that you can better prepare yourself for that. You don't want any surprises during the due diligence period because usually, at that point, you've already negotiated a purchase price. You've already set the key terms of the deal, whatever that's gonna look like. And if a big surprise comes up in due diligence, it can either totally derail the deal, or it can change the deal, and either of those is not necessarily great.

**25:40 AB:** So next week we will dig into that, so you will know what to expect there. If you are wanting show notes for this episode and every episode, those are on our website at [AWBfirm.com/podcast](http://AWBfirm.com/podcast). You can also sign up there for our five-minute IP audit. If after hearing me talk about trying to figure out what copyrights, trademarks, trade secrets, you have in your business, if you would like a guide for that, that's what that is for. So that's on the show notes page: [AWBfirm.com/podcast](http://AWBfirm.com/podcast).

**26:07 AB:** I know I've thrown a lot at you guys today, so I appreciate you listening. I hope that you enjoy this series on selling or taking an investor in your business. I will talk to you next week.

**26:23 AB:** Did you know that you could be making more money from your copyrights and trademarks? Intellectual property is probably the most valuable asset in your creative business, but most entrepreneurs don't know how to identify it. And you can't monetize what you can't find. Download my free five-minute IP audit worksheet at [AWBfirm.com/podcast](http://AWBfirm.com/podcast). You'll find out what parts of your brand, logo, images, website, courses, digital downloads, or other content could be protected by intellectual property laws. And you'll create an inventory of your most valuable trademarks, copyrights, patents, or trade secrets, so you'll know what's worth protecting as you build a more profitable and sustainable business. Get your five-minute IP audit worksheet now at [AWBfirm.com/podcast](http://AWBfirm.com/podcast).

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