

Preparing for an M&A Exit: ICYMI Webinar Recap

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As part of the [Morse Women Attorneys Webinar Series](#), Mary Beth Kerrigan and Elizabeth Resteghini presented on preparing for an M&A exit, reviewing topics including internal corporate clean up, structuring the transaction, and highly negotiated terms of which to be aware. Each session in this webinar series focuses on an area of law essential to the business lifecycle, start to exit and everything in between. Here are some of the takeaways from Mary Beth and Liz's session.

Liz began the presentation by discussing [internal steps a company should take](#) to get their affairs in order prior to an [M&A](#) event. During the diligence process leading up to the close of an M&A event, the purchaser will review and scrutinize the seller's records. As such, prior to an M&A event, a company should make an effort to clean up their records and address any errors or omissions before the purchaser brings the error or omission to their attention. Taking these internal steps will also help to streamline the M&A process.

The first step a company should take is to [clean up corporate records](#), such as ensuring all board consents and meeting minutes have validly authorized any necessary actions and ensuring all stock certificates are granted and recorded (whether manually or through an electronic stock record platform). Companies should also ensure that all material contracts are signed by all parties, confirm whether there are any outstanding liens on company assets, file all annual reports in jurisdictions where the company is registered and ensure the company is in good standing in such jurisdictions, and prepare necessary financial statements for the prior three years. A company should make sure that proper documentation is in place to protect the company's intellectual property. Similarly, sell-side companies should do their best to ensure that their workers are properly classified as employees or independent contractors. Once records are reviewed internally, the next step is for the company to share the records with the purchaser, often through a [secure data room](#).

Mary Beth then turned to discussing key deal terms. The first step a company needs to consider is forming their deal team, including engaging an investment banker, hiring lawyers, and selecting accountants with transaction experience. Once the team is in place, the parties should determine the structure of the transaction: as an asset purchase, stock purchase, or merger. The parties will need to determine the type of consideration (in cash, equity, or a combination of both), when they will be paid (fully upon closing or partially upon closing with an earn-out), and if any amount of the purchase price will be held in escrow. Mary Beth then discussed negotiation of representations and warranties, closing conditions, and post-closing covenants.

If you have questions about an upcoming merger or acquisition, contact [Mary Beth Kerrigan](#) or [Elizabeth Resteghini](#).

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