

YOUR COMPANY IS BEING ACQUIRED.

What now?

Your company is being acquired. You worry about losing your job and your valuable stock options. What happens to your options depends on the terms of your options?

Let's examine **the importance of your options' terms.**

TERMS OF YOUR OPTIONS

Your stock option provisions appear in at least two places:

- 1) in the individual grant agreement
- 2) in the plan

You received both with your option grant package. The terms that apply to mergers & acquisitions are usually found in the "change in control" or "qualifying events" sections. Depending on the company's plan, individual grant agreements can have specific terms on acquisitions that either mimic or are more detailed than the terms of the plan document under which the grant is made, or they can just cross-reference the plan.

UNVESTED OPTIONS

The focus of concern is on what happens to your unvested options.

Some plans provide latitude to your company's board of directors to specify the details for acceleration of unvested options. The agreements can provide the board with full discretion as to whether to accelerate the vesting at all. Or, the stock plan documents may require acceleration.



VESTED OPTIONS

Your options are generally secure; but not always. Your vested options should remain intact in a merger or reorganization scenario. But check the agreements to be sure. In an acquisition, they buy your company assets, rather than its stock. In this case, (common in smaller & pre-IPO deals), your rights under the agreements don't transfer. Your company as a legal entity will eventually liquidate, distributing any cash. Look at what your company received in exchange for its assets and at any liquidation preferences that the preferred stock investors (e.g. venture capital firms) have in order to determine what you may receive for your vested options.

ACCELERATED EVENTS

The agreements or board may say that any of the following constitute an acceleration event:

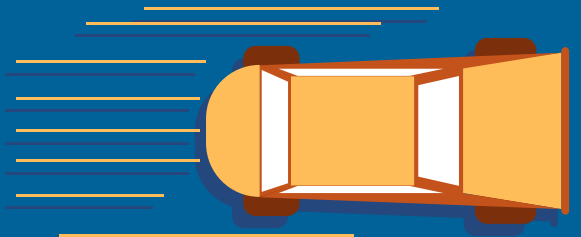
- Hostile takeover
- Purchase of at least 40% of the company voting stock of by any entity
- Acquisition by another corporation
- Approval by the shareholders of a 60% or more liquidation or dissolution of the company
- Approval by the shareholders of a sale of assets comprising at least 60% of the business.

ACCELERATION 101

Typically, acceleration can have:

- All unvested options vest right away; or
- A portion of your unvested options accelerates

With partial acceleration, the provisions vary, and it can be based on time. When you have a graded vesting schedule, another common method is to accelerate your vested percentage by the same amount in which you are already vested.



THE DISADVANTAGE

A buyer may be interested in acquiring your company, but the provisions in the option agreements may make your company a less attractive target. **You may think that accelerated vesting mandated by your agreement is a pro-employee feature of your plan. However, it can be a constraint,** affecting how a deal is structured, as well as the costs to your company and the buyer. It can even cause the deal not to happen at all.



TIMING

The actual date of acceleration is generally the effective date of the merger or "qualifying event," which likely requires shareholder approval. **Acceleration most commonly occurs at the moment just prior to the merger or "qualifying event."** The unvested options usually are not accelerated earlier than the date of closing in case the deal does not go through. Should the deal not close, your options will not be accelerated. Check your plan documents for guidance on the timing. When not specified, the timing of acceleration is at the board's discretion.