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By Marcel Bernier, Partner, Murtha Cullina

Why You Need a Business Attorney to Sell Your Business

Editor's Note:

We all learn from our experiences and (hopefully) the experiences of our peers so let me share one of mine. Several years ago I was able to negotiate a significant synergistic/strategic premium for my client's company but the buyer needed to close in 30 days. I recommended an experienced M&A attorney but my client insisted "saving" on legal expenses by retaining his local attorney against my vehement objections. You can guess what happened; the owner's attorney was unable to close the deal in a month and it "cratered" soon after. That experience prompted me to ask my friend, Marcel, for a letter outlining the reasons for a Seller to hire counsel experienced in the sale of businesses. I patterned my own letter after it.-Michael Camerota

You have engaged our firm to assist you with the sale of your business and we have suggested that you add an experienced business attorney to your team. We are sometimes asked, "Why get an attorney now, since we have just begun the process, and we have engaged you as our broker?" I thought it would be helpful to answer that question.

You have worked a long time to grow and increase the value of your business. An experienced business attorney who has negotiated and closed many business purchase and sale transactions like yours will be able to help with many of the following:

- There are certain things you may be able to do, from a legal perspective, to maximize your chances of your realizing the full value of your business – the attorney will help you do that;
- When we first begin serious discussions with a potential buyer, and the buyer makes an offer, you will need to have a letter of intent which states the material terms of the sale. Your negotiating leverage will decrease after you sign the letter of intent because the letter will prohibit you from negotiating with any other prospective buyer. While we will help you get the best business terms, we are not acting as your attorneys. Your attorney, based on years of experience working on many transactions, will either prepare the letter of intent or advise you regarding what is missing from or what needs to be revised in the letter of intent to protect your interests;
- As the seller, you will need to enter into a lengthy and detailed purchase and sale agreement. Legal issues always arise when negotiating the purchase and sale agreement.
 - The attorney will help you navigate and address those issues, including providing alternative solutions so ultimately the transaction will be closed and the business will be sold;
 - The attorney will often provide advice regarding "what is market" for terms based on experience and familiarity with business transaction agreements;
 - If you need to extend credit for any portion of the purchase price, or if there is an earn-out, the attorney will advise you regarding the protections which you should request;
 - As the seller, you will be required to make many representations and warranties regarding the business. The attorney can advise you about how to reduce the risk of being subject to a claim by the

buyer that you breached your representations and how to limit your potential indemnification exposure for such any breach;

- Minimizing income taxes is a factor to be considered in the sale of a business. While we may raise the tax issues for you, you will need an experienced attorney working with your accountant to advise you on how to minimize income taxes and maximize your after-tax proceeds with respect to the sale of the business;
- You may need other professionals to assist with the transaction, including accounting, employment, employee benefit, environmental, and tax professionals with specific areas of expertise. An experienced business attorney will know when it would be beneficial to you to obtain advice with respect to these matters.

The attorney we recommended to you is someone we have worked with in the past on behalf of other clients who has successfully negotiated and closed many transactions similar to yours. He would be happy to meet with us by telephone or in person to discuss your situation and transaction.

You will decide which attorney will work with you on the sale. We recommend that you hire a business attorney with significant experience in negotiating and completing many business purchase and sale transactions because it will maximize the likelihood of your completing the sale and realizing the full value of your business in this once in a lifetime transaction.



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employment agreements and over 100 buy-sell agreements. He has completed hundreds of business purchase and sale transactions. His accounting and tax background are helpful in structuring and negotiating business transactions.

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