



by Robert Goff

## **Five things your attorney can do when you're buying a business**

Your attorney can handle at least five important issues for you when you're buying a business. The earlier you involve him, the more proactive he can be in advancing your interests.

1. Your attorney can advise you whether to structure the purchase as a sale of the business assets without taking the corporate shell or a stock purchase, where you take the corporate shell with the assets in it.

For tax reasons, sellers generally prefer stock sales and buyers generally prefer asset sales. Because a corporate shell may contain unknown liabilities that the buyer does not want to assume, the buyer will also generally prefer an asset sale for non-tax reasons. However, a buyer might prefer a stock sale if the business is a party to important contracts that cannot be renegotiated or transferred to the buyer on favorable terms. Your attorney can help meet your individual needs.

2. Your attorney can provide valuable assistance in the due diligence, or investigation, phase of the purchase.

In this phase the buyer examines the business to determine if he is truly getting what he thinks he is buying. Your attorney can help make sure that you take the following actions in this phase of the purchase:

- Investigate the business premises.
- Ask the seller key questions about operation of the business.
- Have the buyer's accountant examine the business's financial statements.
- Have your attorney examine the UCC records in the state where the business is located and the state of the seller's principal place of business to determine if there are any liens filed against the business assets.
- Have your attorney examine the county clerk's records in the county where the business is located to determine if there are any liens filed against the business assets.
- Have your attorney ask key questions to determine if any un-filed liens may exist.

3. It is essential that you seek your attorney's assistance in drafting and negotiating the sale

agreement. The agreement should serve the following purposes:

- Provide a road map for the closing.
- Provide the timing of the various actions to be undertaken by each party.
- Memorialize certain representations and warranties that the parties have made or are making to each other.
- Allocate risk in the event of loss by neither party's fault.
- Provide for meaningful remedies in the event that a party breaks the agreement.

4. Your attorney can supervise the closing to make sure that the proverbial i's are dotted and t's are crossed. Business closings are often hectic and confusing places where essential documents and important steps can easily be overlooked.

Your attorney will serve as an additional set of eyes to make sure nothing is overlooked. Since your attorney drafted or reviewed the sale agreement, he will be familiar with the items that must be crossed off at closing.

Furthermore, in the event that a snag is encountered, he can serve as a quick reference to resolving it as quickly and efficiently as possible.

5. In the event that a loss does occur during the purchase process or thereafter, your attorney will be available to tell you how it is covered in the agreement, who is responsible for fixing it and how it can be legally resolved.

While not all risks can be foreseen, your attorney's involvement in the process may mean that the loss was anticipated and allocated so as to minimize its impact.

Read more: [Four Rivers Business Journal - Five things your attorney can do when you're buying a business](#)

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