INSIGHT Guest Perspective

Lifecycle of a business sale transaction

Steps to take in an ownership transfer

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Over the past several months there have been several very good articles published in *The Voice* on the topic of business succession planning and ownership exit plans. In reading them, a very basic, yet common question I receive from clients on the topic of selling a business came to mind, namely: "What happens next?" or "What's the process I can expect?"

Below, I outline the basic stages of a business sale. While no transaction is the same, which is one of this reasons I enjoy this line of work, to some degree nearly every deal will involve each of the below steps, with one exception noted below.

Pre-Deal Analysis. The sale of a house serves as a very good analogy for the sale of business. When selling a home, most owners will look around at their well lived-in home, frequently with the aid of a broker, and identify various measures they can take to make their home more appealing to a prospective buyer. The same is true in the sale of a business. Just like a home for sale, a business under consideration for sale will be more appealing to prospective buyers if it is "cleaned up" and well organized. When selling a home, the process is referred to as "home staging." In the context of a business sale, this process can be referred to a "proactive due diligence," and while it is frequently overlooked, it is well worth the effort. With the aid of an experienced professional, the business is scoured for issues that might later derail a deal if not addressed. Financials are analyzed and, if necessary, recast to adjust for items that may not apply to a third-party buyer; key contracts and financing arrangements are reviewed to identify any potential assignment concerns, and physical facilities are literally cleaned up. This can be a time consuming undertaking, but one worth taking.

Offer/LOI. We jump ahead now to the point where an interested buyer (or buyers) are on the scene. After some preliminary conversations, most acquisitions are led off with an interested prospective buyer providing a Letter of Intent (or "LOI"), sometimes referred to as a non-binding Term Sheet or Memorandum of Understanding (or "MOU"). An LOI will address the most significant details of a proposed deal, and, if well crafted, will cover issues such as:

- purchase price,
- payment terms (for example, 100 percent cash or stock at closing or paid over a period of time),
- structure of deal (asset sale or stock sale),
- due diligence timing and grounds for terminating the deal, and terms relating to post-closing (such as employment agreements, non-competes).

A huge benefit of having a thorough LOI is early agreement on major deal points, before spending the time and expense of working through a purchase agreement, which is routinely 20-plus pages long. Even with a well-drafted LOI, invariably additional points of contention will still arise when negotiating the precise language of the purchase agreement, but hopefully they are relegated to less critical points of the deal itself.

Purchase Agreement. Once an LOI is in place, the parties begin negotiating the Purchase Agreement. It is customary that the buyer's counsel will prepare the initial draft within a relatively short period after the LOI is signed. Depending on the complexity of the deal and the urgency of the transaction, this can take anywhere from a week to several months to negotiate and finalize.

Due Diligence. "Due diligence" is the term used to refer to the parties' respective investigations of each other, with the emphasis being the buyer's investigation of the seller's business. Typically the bulk of due diligence does not occur until after a purchase agreement is signed. Depending on the nature of the business and a buyer's preexisting familiarity with the seller's business, this can be as simple as the seller providing some recent financials, to an extensive review of documents, financials, facilities and equipment that could take several months. During the due diligence period, it's not unusual for the parties to try to keep the deal as confidential as possible so as to avoid employees and other potentially impacted parties from getting anxious about a potential change of ownership.

Buyer Financing. Some deals are contingent upon the buyer securing third-party financing, typically a bank loan, which the buyer will work on finalizing during the due diligence period. The bank or other source of funding will insist on reviewing a seller's financials to underwrite the loan request; a seller having its financial and other key records well organized in advance (as discussed in #1 above) can be beneficial for the buyer's efforts of securing financing necessary to close the deal.

Ancillary Agreements. In addition to the purchase agreement, nearly every acquisition will also involve ancillary agreements, which will be signed at the deal closing. Typical ancillary agreements include Employment Agreement(s), a Bill of Sale, Assignment of Accounts and/or Intellectual Property, and the list goes on. In a perfect world, these documents are all completed in conjunction with the purchase agreement and are attached as exhibits, but the vast majority of the time, they are simply referenced in the purchase agreement and need to be finalized during the due diligence period.

Closing. Once the buyer has completed its due diligence and is satisfied with its investigation, financing is in place, and all the ancillary agreements are completed, the parties will close on the deal and the actual change of ownership will take place. Ordinarily this will take place at the office of one the attorneys or maybe the financing bank's offices unless real estate is being sold as part of the transaction, in which case it's not uncommon to take place at a title company.

Again, every deal is different, but hopefully the above summary will provide some background to help understand very basics of a lifecycle of a business sale transaction.

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The views expressed are those of Smith's and do not necessarily represent those of the Rockford Chamber of Commerce.

NEW LEGISLATION WOULD BAN DRONES OVER PRISONS

New Illinois legislation aims to help prevent drugs and cell phones from being smuggled into state prisons by prohibiting the use of unmanned aerial vehicles, "drones," over prisons. The legislation was introduced in response to several incidents across the country where drones have been used to drop drugs, cell phones, pornography and even escape tools into prison yards.

Sponsored by several Senate Republican lawmakers, Senate Bill 2344 adds one year to the sentence of a person convicted of bringing contraband into a prison by drone, in addition to any other penalty handed down by law. Proponents of the law noted there are inmates willing to go to great lengths to smuggle drugs, cell phones or other banned items into Illinois' correctional facilities. The legislation is a proactive measure intended to send a strong message that those who use these tools to send contraband into state prisons will face serious consequences. —*Senator Syverson's Week in Review: Feb. 22 to 26*