

Attorneys Should Be Deal-Friendly and Sale-Wise

Whether you are buying or selling a business, your legal counsel can make or break the deal. It is important that you emphasize to your attorney that you want the sale to go through. In many instances, the sale of the business fails to close because the attorney for one side or the other makes too many demands of the other side. Certainly, you want your attorney to protect your interests, but not to the point where the demands are so strenuous that the other party or his or her counsel balks. If your attorney understands that you really want to buy--or sell, as the case may be--he or she will be less apt to make outrageous requirements or demands. Below are some things to consider when dealing with your attorney in the buying or selling process.

- Both parties should understand just what is being sold--and purchased.
- The corporate records should be current and complete.
- The seller should have available the current insurance policies and the names of the insurance agents involved.
- If there is more than one owner, there should be a designated spokesperson representing the group. This authorization for one of the owners (or stockholders) to represent the business should be in writing and signed by all of the owners.
- The buyer and the seller must both have the same understanding of the sale and its terms. Too often, they each have their own perception of the deal. Each party to the sale must understand just what the deal is and who is getting what, or the sale may be doomed before it starts.

To help prevent wrecked deals, good communication between all of the parties involved is a priority. Unless they are told, outside advisors may not realize how much the buyer and the seller want to consummate the sale. The attorney needs to know from the client that this is a serious-minded transaction and that, unless something completely unanticipated is discovered, his or her job is to pull the deal together. Too often what happens is that after the offer is signed and everyone appears to be in agreement, the ball gets dropped. Everybody assumes that everybody else is following through and that all is fine. The attorney for one side or the other attempts to push on an issue that is, normally, not particularly important--and suddenly, what was once a simple transaction now falls apart. Unfortunately, the attorney thinks he or she knows what is best for the client and draws paperwork or demands something without even discussing it with their client. The damage is done, the other side gets angry, and another sale "bites the dust."

The use of a professional business broker can, in many cases, alleviate this problem. The business broker--having been through the process many times, usually much more often than any of the attorneys involved--knows the pitfalls. However, it is important that the parties to sale are operating on the same wave length and have the same understanding of the sale.