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Making legal matters easy and economical for your business

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### Buying and Selling a Business, Part I

In this article, I give an overview of buying and selling a private, closely held business. This Part I discusses how buyers and sellers find one another, and how they evaluate the business to be bought or sold. Part II (in my next newsletter) discusses the deal itself, including its structure and the documents involved.

**Finding the Deal.** The first step in buying or selling a business is to find someone to deal with. The best way to find a deal is to talk to people in your chosen industry. This is how you find win-win deals. Friends in the industry are the best source for finding a perfect fit – sometimes your friend's business is the fit, or the friend is interested in buying your business, or the friend knows of the perfect business.

After your own circle of contacts, check out the business opportunities section of an industry journal. Last, consider a business broker in your industry. A good business broker who covers your industry can be invaluable. Keep in mind that brokers take a commission at closing, and usually extract fees all along the way. When reviewing the broker's contract, watch out for fees and be sure that you can fire the broker after a few months.

**Due Diligence.** Once you've found a possible target, it's time for due diligence. The buyer performs due diligence to understand the business. The seller prepares for due diligence to mitigate (but not hide) any problems that can reduce the purchase price.

What should the buyer look for, and what should the seller prepare for? In general, a due diligence review will focus on the following issues (among a host of others):

- *Why is the Business for Sale?* The seller should have a good answer, e.g. retirement.
- *Goodwill and Client Base.* Goodwill is the seller's (good) reputation. The buyer should be sure that the seller's goodwill and client base are not tied to personal relationships (which will vanish when the seller leaves the company).

- *Employee Base.* The buyer should make sure that all key employees come along, and that it can lay-off unwanted employees. A word to the wise: the buyer should be wary of employee / independent contractor misclassification, because this leads to a hefty tax bill.
- *Financial and Tax Review.* The seller should produce the business' financial statements and tax returns for the past 3 years. Both sides should use accountants at this step.
- *Assets; Leases; Accounts.* The seller should disclose all assets including IP, all leases and other contracts, and accounts receivable and payable reports.
- *Liabilities.* The buyer should check for liens, unpaid back taxes (including sales taxes), unpaid workers compensation, unpaid trust fund taxes, unpaid vacation liability, unpaid bills, current and potential lawsuits, and environmental issues.
- *Capitalization.* For a stock sale, the buyer should make sure that it will receive clean title to a majority (if not 100%) of the company's stock. The buyer will need to know of any disputes concerning the seller's stock.

Don't miss Part II of this article in my next newsletter, where I discuss the structure and documents of the deal. Remember that buying or selling a business is a complex process. Legal, tax, accounting, valuation and psychology issues are all involved. Get help from professionals.

## Ideas

Interesting thoughts from Milton Friedman:

Many people complain about government waste, but I welcome it for two reasons. In the first place, efficiency is not a desirable thing if somebody is doing a bad thing.

Government is doing things that we don't want it to do; so the more money it wastes, the better. In the second place, waste brings home to the public at large the fact that government is not an efficient and effective instrument for achieving its objectives. One of the great causes for hope is a growing disillusionment with the idea that government is the all-wise, all-powerful big brother who can solve every problem that comes along.

## Funny Papers

Real headlines from the Onion:

- Project Manager Leaves Suicide PowerPoint Presentation
- Fritolaysia Cuts Off Diplomatic Relations With Snakistan
- Martin Luther King: "I Had a Really Weird Dream Last Night"
- Genetically Modified Chicken Lays Its Own Dipping Sauce
- Report: 98 Percent Of U.S. Commuters Favor Public Transportation For Others
- Loud Fake Laugh Misinterpreted As Loud Real Laugh In Critical Sarcasm Miscalculation