

THINGS TO CONSIDER WHEN BUYING OR ACQUIRING A BUSINESS

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Whether you are thinking of buying your first business, or ready to scoop up a competitor, the purchase of an existing business can be a very stressful endeavor. The following are some (but not all) of the things to consider as you move forward to make wise, informed decisions along the way:

- 1) **Have a well-drafted purchase agreement signed by the Seller.** Don't make the mistake of pulling a contract off the internet and thinking it will work right for you and the business you want to purchase. Contracts should be crafted to meet the factual and legal needs of a client buying a specific business in a specific state. Laws are different in different places, and also change all of the time. Industries have different challenges, legal constraints and operational needs. Further, the more written representations and warranties to you from the Seller about what you are (and are not) buying, the better you will be able to sleep at night. Be careful to have representations and warranties that are specific to the business you are buying. Relying on important oral promises from a Seller is a disaster waiting to happen. In addition, you need to have myriad ways of backing out of the deal if you change your mind. Don't be locked into buying the business too early in the process.
- 2) **Lean towards buying the assets of the business,** not the ownership interests of the entity (e.g., corporate stock or LLC unit sales). While there are a few exceptions, a stock sale is nearly always not the best thing for the Buyer. You will be potentially buying unknown liabilities and claims against the entity, not just the assets.
- 3) **Have professionals look over the assets to be purchased, important contracts to be assumed, and the books of the business, to make sure all is as you expect it to be.** Have a CPA consult with you on tax issues related to purchasing the business even before you sign the purchase agreement.
- 4) **Insist on a non-competition agreement, non-solicitation agreement and agreement on training from the Seller and key persons. Regardless of your own experience in the industry, there are issues unique to each business that only the Seller will know.** Further, you don't want the Seller or other key people setting up a competing business across the street.
- 5) **Make sure you have a good handle** on how you will keep existing customers or clients, the assets which the Seller will (and will not) be selling to you, and what liabilities of the business you will be expected to assume. Also, try to lock in key employees to stay with the business after the sale.
- 6) **Consider starting the work early** to get leases (and other important contracts) assigned to you so that there are no delays in closing.
- 7) **Make sure that an attorney (who is very experienced in corporate and business transactions) is doing the usual and necessary work to properly close the purchase of the business,** including ordering lien searches, tax certificates, document drafting, liability payoffs, lender coordination and escrow. In reality, very few attorneys have the experience and legal knowledge to properly negotiate and close a corporate or business transaction. Would you go to a

family doctor to perform a brain surgery? Likewise, you need to go to an attorney who specializes in business and corporate transactions.

8) If it looks too good to be true, then be very careful. Use the "smell test". If something just does not seem right, ask questions, and go with your instincts. It may be far less costly for you to back out of a deal, than buy a "lemon" and pay far more in liabilities and losses. Not all businesses are equal, and you should be aware that there are plenty of other businesses to buy.

In conclusion, while buying a business can be stressful, you can make the experience far safer and pleasant by relying on professionals and your own good business judgment. While the time and cost to take these prudent steps may not be your favorite thing to do, it may just be one-tenth of the time and expense which you would incur if you do not carefully consider these issues.

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