



Buying or Selling a Business by Courtney N. Wowryk

The process of buying or selling a business can be both exciting and overwhelming. For the purchaser it often means starting a new career with a steep learning curve. For the vender it can mean the end of an era, or perhaps freedom from the stress of running your own business. For both parties, the key to success is preparation. Your lawyer can be a valuable assets in this process.

Preparing to Sell

First, with the help of your accountant, gather all of the financial information you require to sell. For example:

- Financial statements for the last three years;
- Tax returns for the last three years;
- List of employees;
- Customer list;
- Copies of all contracts;
- Copies of any leases;
- List of fixtures and equipment, including serial numbers for larger items, and copies of any leases and warranties;
- Franchise agreement (if applicable);
- Information on monies owing to the business;
- Information regarding all liabilities and loans;

- Names of your advisors (such as your lawyer and accountant).

At this stage in the process, you and your accountant should also be discussing the income tax and capital gains tax liability associated with a sale.

Once you've collected your financial information you'll need to determine the business' value. To do this you require a good knowledge of the market. If you have this knowledge you may be able to determine the value with little or no assistance. Alternatively, you might look to the sale of similar businesses to determine the appropriate range, your accountant may also be of assistance in this process, or you can hire a professional advisor that specializes in valuing businesses. Obviously, the more the business is worth, the more outside assistance you should seek when determining the sale price. Regardless of the method you use, remember that the asking price of a business is often greater than the combined value of its assets. This extra value is known as goodwill, and includes intangibles such as the business' name, customer lists and trademarks.

When showing the company's financial information to potential buyers, be sure to maintain confidentiality. To avoid disclosing information to your competitors, only provide it to serious potential buyers, and consider having them sign a non-disclosure agreement.

If the business has employees keep them informed (when it's the appropriate time), and make sure they learn of the sale from you. If they will be remaining with the company after the sale, the purchaser should ensure they execute new contacts, as the old employment contacts are no longer valid.

Finally, execute a written agreement with the purchaser. This agreement of purchase and sale should be drafted by a lawyer to ensure you're not overlooking any issues or breaching applicable laws. At a minimum, the agreement should include the following information:

- What is being bought and sold;
- What is the purchase price, method of payment and amount of the deposit, if any;
- Possible adjustments to the purchase price;

- The closing date ;
- Any representations and warranties (promises) made by the seller (for example, regarding the value of the assets or money owing to the business);
- Any representations and warranties made by the purchaser;
- Any conditions on closing (such as obtaining financing, inspection of the financial records);
- Procedures to be followed on the closing date (for example, documents to be exchanged);

Preparing to Buy

When buying a business you want to ensure that you're paying a fair price, and that you understand exactly what assets you're buying, and liabilities you're assuming. To begin, review the business' financial records with the assistance of an accountant and your banker.

Next, get authorization from the vender to allow your accountant and lawyer to do due diligence (research on the company). Specifically, your lawyer and accountant should be contacting various departments of government to ensure that all applicable taxes have been

remitted and the business is in good standing with the Canada Revenue Agency, that there are no ongoing issues with employment standards or workplace health and safety, that all applicable licences are either in place or available, and the appropriate business or corporate searches are conducted. Also, provide your lawyer with a detailed list of all assets, including serial numbers for larger items, so that he or she can determine whether these items are free of debts or liens.

You must also conduct due diligence. First, find out if any of the business' assets are subject to lease, or if the company rents property. Then determine if you can assume these leases. Also, get a detailed list of any existing contracts, including copies where possible. Have your lawyer review both the leases and the existing contracts, for both legality and possible problems. Determine if and how the purchase price would be reduced if a problem arises relating to an existing contract. Find out if the vendor has been prepaid for services you will eventually provide, and make sure this money is calculated into the purchase price. Also, get a list of the business' suppliers and ensure it has a good credit rating

with these companies. Finally, ask the buyer if they are or may become subject to liability due to the business' or its employees' actions. Regardless of what you determine, ensure you are protected from such liability in the agreement for sale and purchase.

If after completing the due diligence you decide to purchase the business, enter into a written agreement with the vendor. In addition to executing the agreement of sale and purchase, make sure the vender signs a non-competition agreement to prevent them from simply opening up a competing business down the road. Legally, such agreements must be limited in both geographic range and length of time. For example, vendors are commonly restricted from owning or being employed by similar businesses (this should be defined) within a 100 kilometre range, for a three year period following the sale.

For more information on buying or selling a business, be sure to contact a solicitor.