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Your Opinion Matters: 5 Things Attorneys Should Know That Business Owners Don't

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Your clients count on you to steer them in the right direction. In most cases, they'll be asking about law-specific topics, but, because they trust your judgment, they may also seek your advice regarding other aspects of their business. This is especially true when they or their business reach key milestones and there may be no more important time in a business owner's life than when he or she decides to sell the business. When that time comes, it is important that attorneys and lawyers have a sound understanding of the complexities of the sales process in order to provide clients with accurate guidance and information. This will not only help the client secure a better sales price, but also help solidify their confidence in you as an advisor.

So while there are certainly countless more intricacies of a business sale, here are the top five items you should be aware of in order to help your client successfully navigate a transition:

Timing IS Everything

The timing of a business sale can be tricky. There really is no perfect way to predict how the broader market will change in the coming months and what effect that will have on your client's business. What we do know, however, is that most business owners have been shying away from selling for the past few years, waiting on a recovery to boost value. But 2010 saw a slight improvement in the business-for-sale market and many experts expect that 2011 will be a turning point. Financing options are improving for buyers and banks are putting a new focus on lending; all signs that point to a rejuvenated market that should provide good opportunities for business owners ready to start the sales process. Additionally, the current favorable long-term capital gains tax rates were extended until the end of 2012, at which point they may increase. Business owners thinking about selling should be made aware of this potential change so they can aim to sell before the change takes place. Finally, your client should know that there are seasonal changes in the business for sale market that can aid them in timing the market correctly. The first quarter of the year (January – March) is the busiest time for business transactions, as both buyers and sellers take advantage of the new year to pursue their goals. Conversely, the middle of summer and the late November to end of year period are the slowest times for business sales, as both buyers and sellers focus on vacations and the holidays. Thinking through the optimal timing to list, show, and close a business for sale transaction can help your client maximize his or her outcome.

Seller Financing is a Must

In today's challenging market environment, every seller should expect to help finance their business sale. Although we have seen emerging signs of an economic recovery, obtaining financing for a business purchase from banks is still challenging for most, if not all buyers. As a result, most buyers still need help, as very few can pay all cash for a business purchase and those that do secure bank financing will still be required to have some level of seller "skin in the game." For the past few years, it's been very rare to see a closed transaction go through without some level of seller financing. For your client, this means they should expect to receive a significant portion of the sale proceeds over an extended period of time, usually 3-5 years. Beyond increasing the likelihood of a sale and maximizing the sale price, by financing a part of the purchase your clients also have the benefit of locking in a fixed income stream. Go over this process with the seller and develop a financial plan to make sure the client understands the implications.

Callers Aren't Always Buyers

This is a very important issue as business sellers can often be overwhelmed by a high number of inquiring buyers. Be sure to warn your client that many of these callers may not be viable candidates and, in fact, could be competitors snooping for information on your client's business. Often times, people will call because they are interested in buying a similar business soon, but may not have the financial resources to make a purchase now. To help eliminate these people from the candidate pool early, have your client ask questions to qualify them financially. Finding out how long they've planned on buying a business, what they expect their down payment to be and how they plan to finance the purchase will quickly tell you and/or your client if the potential buyer has put substantial thought into the purchase. By weeding these people out early, or by hiring a business broker to handle these details on your behalf, your client will have more time to concentrate on quality buyers.

Getting Help Pays Off

As an attorney, you should be able to help your client navigate the negotiation and contract portion of a business transaction. But you should also recommend that your client consider hiring a few other experts to make sure the deal and transition goes smoothly and to enable your client to continue to focus on business operations/performance (the last thing a seller wants is for business performance to suffer prior to sale!). Foremost of that group is an accredited business broker or valuation professional. Suggest brokers who are members of the International Business Brokers Association (IBBA), and who have the Certified Business Intermediary (CBI) designation. These experts can lend important business selling insights and ease some of the transition responsibilities off of you and your client. An accountant, for example, can also prove helpful when it comes to navigating the often complicated tax implications of a sale. Be sure your client is getting the best advice possible from experts in each area.

A Done Deal Isn't the End

In most small business sales, the signing of a contract isn't the end of an owner's obligations. Former owners often stay on for a negotiated period of time to help advise and guide the new owner. Discuss this process with your client early and find out how long and how many hours he or she expects to put in. Some sale contracts will also include a fee to be paid to the former owner during this time. Being prepared with your client's post-sale expectations will help ease the negotiation period and lead to a successful closing process.

Knowing these five facts will give you a good start to understanding a business sale. When it comes time to sell their business, clients will appreciate the sound advice and continue trusting you as their go-to source for information.

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