

## **Doin' the Deed?The steps it takes to seal the deal**

So you've found a buyer! You may think the hard part is over, but the work has just begun. As always, you'll want to consult with your financial advisors, your attorney and accountant as you proceed. But here's what you can expect as you work to close the deal.

First, your buyer will sign a letter of intent. This non-binding letter lays out the terms you've come to agree on, the purchase price, and that both parties are ready to move forward. At this time, the buyer will agree to binding confidentiality and the seller will allow the buyer to begin due diligence—a deeper and more complete investigation of the company. The buyer will also make a deposit toward the purchase price, although that deposit can be returned at any time if either party would like to cancel the deal. This letter can be submitted to third parties—such as lenders—to signify the intentions of both buyer and seller. Unless a no-shop agreement is signed, sellers may continue to market their business to other buyers and may solicit more than one letter of intent.

After the letter of intent has been signed by both buyer and seller, the buyer will conduct "due diligence." This is a limited period of time in which both buyer and seller can investigate one another more thoroughly. Buyers will be given access to financial records, facilities, and other pertinent information to decide whether or not they'd like to proceed with the deal. Prudent sellers will conduct their own due diligence of their company before they ever put it on the market so there will be no surprises to either party. Additionally, records should be kept up-to-date and accessible, since buyers will likely request them at this time.

Sellers may also conduct their own due diligence of the buyer—examining everything from their credit to their experience to their future plans for the company. This is particularly important if a seller is offering financing to potential buyers.

If both parties are satisfied after due diligence and agree to proceed, the lawyer will work out a sales agreement. This agreement is the key document involved in the sale of a business and contains all the terms of the agreement. It will also include financing terms and any supplementary contracts. It should also include the following:

- The business name and the names of both buyer and seller
- Any pertinent background information
- The assets and inventory included in the sale, and the allocation of said assets
- Purchase price
- Non-compete contracts
- The Terms of the Agreement and payment terms
- Compliance with the laws of the state
- Any representation and warranties of the seller or the buyer
- Designations for the access of business information
- Contingencies
- Fees, including broker's fees
- Date of closing

After the sales agreement is in order, buyer and seller should consult with their attorneys to ensure compliance with all state law requirements. While laws vary from state to state, the most common requirements include bulk sales act, which require that the seller's creditors be notified of the pending sale; the notification of recorded security interests, including liens on the property; state tax certificates that provide proof of no outstanding taxes; transfer taxes, if applicable; shareholder approval, if necessary; and shareholder rights, if applicable. Again, laws vary from state to state, and both parties should work with attorneys to ensure that all laws have been obeyed.

At this point, all the details should be finalized, and the deal will be "closed," meaning both parties will sign the appropriate documents, expenses will be settled, and ownership will be transferred. Sellers will get the down payment, buyers will get the business, and the deal will be complete.