



By Bradley G. Marlor MBA, CBI
Utah Business Consultants

When Buying or Selling: Attorneys Should Be Deal-Friendly and Sale-Wise

Whether you are buying or selling a business, your legal counsel can make or break the deal. It is important that you emphasize to your attorney that you want the sale to go through. In many instances, the sale of the business fails to close because the attorney for one side or the other makes too many demands of the other side. Certainly, you want your attorney to protect your interests, but not to the point where the demands are so strenuous that the other party or his or her counsel balks. If your attorney understands that you really want to buy--or sell, as the case may be--he or she will be less apt to make outrageous requirements or demands. Below are some things to consider when dealing with your attorney in the buying or selling process.

- Has your attorney reviewed the Letter of Intent executed between buyer and seller? Fixing problems early on in the negotiation process is crucial. Also important is covering essential items like price, structure, terms, financing, contingencies, appraisals, etc. The Buyer and Seller must both be at a meeting of the minds on all substantive issues.
- Typically, the Buyer's Attorney prepares the definitive purchase agreement. The Seller's Attorney will then review and counsel with the seller on points of contention.
- Both Buyers and Sellers should get a "ballpark" idea of what their respective attorney will charge for all services.

- Buyers and Sellers should be careful to select only an experienced merger and acquisition attorney, qualified for the scope of services demanded by the transaction.
- Corporate records should be current and complete, and reviewed by Buyer's Attorney.

Good communication between all of the parties involved is a priority. Unless they are told, outside advisors may not realize how much the buyer and the seller want to consummate the sale. The attorney needs to know from the client that this is a serious-minded transaction and that, unless something completely unanticipated is discovered, his or her job is to pull the deal together. Too often what happens is that after the offer is signed and everyone appears to be in agreement, the ball gets dropped. Everybody assumes that everybody else is following through and that all is fine.

The attorney for one side or the other attempts to push on an issue that is, normally, not particularly important--and suddenly, what was once a simple transaction now falls apart. Unfortunately, the attorney thinks he or she knows what is best for the client and draws paperwork or demands something without even discussing it with their client.

Your attorney is an essential member of your professional services provider team. He or she should truly be a "counselor" and confidant during the purchase or sale process.

Bradley G. Marlor MBA, CBI is a Managing Partner at Utah Business Consultants and a Certified Business Intermediary with the International Business Brokers Association. Utah Business Consultants is a full-service Business Brokerage and Valuation firm. He can be reached at brad@ubcutah.com.