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THE LAW & YOU

SELL YOUR BUSINESS THE RIGHT WAY

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One of the most important phases of an entrepreneur's business career is the decision to sell an established business. Most business owners in the South Asian community work very hard and sacrifice greatly to reap the financial benefits from the sale of a profitable business. Since the likelihood of a sale and amount of financial gain is significantly dependent on a qualified buyer and the best possible price for the business, it is vital that the seller of a business have a plan before taking any steps to sell.

Before any business brokers are approached or buyers are sought out to purchase a business, the business owner should determine the valuation of the business. That is, how much is the business really worth? Is the price that potential buyers would be willing to pay dependent on current market conditions? Is it advisable to wait out any downturns in the economy that may affect the optimal selling price? While many analysts and business brokers offer complex formulas for determining the value of the business, a simple rule of thumb is to determine the present market value of the business and then add the projected future earnings based on current profits. Present market value of a business should include all assets of the business, including real estate holdings, lease income, and investments. If determining the present market value of the business is difficult, the services of an appraiser may be retained for a complete analysis and report on the market value of a particular business.

Once the value of a business has been determined, the business should be prepared for the sale. That is, the business owner should collect and review all relevant financial statements, resolve any pending issues with creditors or customers, and gather all relevant documentation that shall be required to eventually complete the sale transaction. Examples include securing consents from landlords or authorities, paying off or making arrangements to pay off any pending judgments/liens against the business, and clearing up any tax issues that may be outstanding. Organizing and resolving issues prior to negotiating with potential buyers helps avoid unnecessary delays, frustration, and possible cancellation of the sale. Most business owners retain the services of an attorney to perform the necessary tasks in preparing the business for sale.

The process of finding qualified buyers for a business can include the use of brokers' services or can be done by the business owner directly. The primary advantages of utilizing a business broker for the sale of a business is that the business broker can market the sale of the business to a larger pool of potential buyers and that potential buyers are pre-screened for qualification and motivation. Obviously, the primary drawback of retaining the services of a broker are the broker's commission fees that can be quite significant, depending on the type of business and market conditions. Conversely, since a broker's fees are generally a percentage of the selling price, most brokers work very hard to negotiate the best (and highest) price that can be secured simply so that their fees can also be considerable.

Even if a business owner is working with a broker, it is important to realize that many of the buyers that show interest in purchasing the business may not buy the business at all. This is due to the fact that some may be competitors, suppliers, crooks, or just not have the means to ultimately buy the business. It is of utmost importance to reserve all financial and detailed information about the business until there is a contract between the parties that includes a confidentiality clause. Instead of wasting time and resources on unqualified or wrong prospective buyers, efforts should be concentrated on sifting out the potential buyers and making the sale happen in a reasonable amount of time to ensure maximum profitability.

Once a qualified potential buyer is selected, a business owner should give a memorandum to the potential buyer that presents information about the business in a positive manner without making any deceptive statements that may jeopardize the transaction later. If negotiations proceed well, then a letter of intent is usually prepared and entered into between the parties. Although still subject to a formal contract, a letter of intent records the basic provisions of the agreement between the parties, including sales price and closing date. It is recommended that information on other qualified potential buyers should not be discarded since if the transaction is not completed with one particular buyer for whatever reason, then the other potential buyers may be contacted without too much delay.

The letter of intent is followed by a formal contract of sale between the parties. It is absolutely critical that both seller and purchaser of a business retain the services of an experienced attorney to avoid unforeseen delays and hassles in the transaction. The contract may include provisions for due diligence by both parties, as well as the rights and obligations of all the parties. It should be noted that since due diligence usually grants buyers the right to inspect the business financial records, it is crucial that business sellers discuss any possible issues with their financial consultants and attorneys before entering into a contract. Retaining the services of an experienced attorney can help the business owner avoid some of the problems that arise due to non-compliance, lack of knowledge, and unexpected circumstances. Once the contract has been fully executed, it should be understood that all negotiations are deemed to have been concluded and that no further negotiation should take place without a formal written agreement attached to the contract.

The final phase of selling a business is the closing, which is handled by an attorney. Care should be taken to ensure that all requisite paperwork has been complied with and that there are no outstanding contingencies which could give rise to a claim later. Arrangements should also be made through a financial advisor as to the allocation of all financial gains to avoid paying substantial penalties.