

Law Watch

Mansfield Tanick & Cohen P.A.

Attorneys at Law

Buyers Beware: Five Things to Consider When Purchasing a Business

by Jeffrey C. O'Brien and Kristi A. Zentner

Before you decide to purchase a business, there are a number of issues to consider. Buying the right business for you is the key to your success. Do you want to purchase an existing business? Do you want to start your own business and simply purchase the assets of another business? Do you want to own your own franchise? Below are a few things to consider when purchasing a business.

Do Your Homework

When courting a potential business to purchase, it is common for a potential buyer to review material information to assess the health of the target company. The following types of information are typically analyzed during the due diligence process: legal affairs, corporate information, regulatory issues, management and employment contracts, real property, assets, financial reports, tax returns and other material contracts and documents. In reviewing this information, a savvy buyer will review documents with a keen eye, common sense, and a bit of skepticism, and employ other professionals including an accountant, tax advisor and attorney to assist in the review. Appropriate due diligence procedures must be performed to ensure that the transaction is structured properly, the purchase price is not overstated and that all the poten-



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tial liabilities have been identified. Relevant issues identified in the due diligence process may need to be corrected by the seller before the buyer will proceed with the transaction. Alternatively, outstanding issues may be made

the subject of specific conditions or warranties in the definitive purchase agreement. In extreme cases, these findings can even result in the buyer walking away from the deal.

Asset vs. Stock Sale

There are both tax considerations and non-tax considerations when determining how to structure the purchase of a business. One benefit of an asset purchase is that a buyer can carve out and purchase only the specific and desired assets of a business. Concerns arise for a buyer in that an asset sale can involve the assignment of contractual rights (lease,

(continued on page 2)

Candidates Debate Hennepin County Attorney Race	2
Estate Planning for Business Owners ..	3
What's New	4
Know Your Rights as a Shareholder	5
Division of a Business in a Marriage Dissolution	6
Five From Firm Named 'Top 40' Lawyers	7
The Basics of the Minnesota Professional Firms Act	9

(Buyer Beware, cont. from p. 1)

franchise, etc.), which may require the consent of the contracting party. With a stock purchase, a buyer will purchase all assets and liabilities of the target company. Concerns arise for a buyer in a stock purchase transaction with respect to unknown successor or contingent liability issues of the target company. The tax and non-tax considerations will vary for each transaction. The structure of the transaction should involve input from your accountant, tax advisor, transactional and estate planning attorneys.

Seller Financing

Many buyers, when looking to purchase a business, look to seller financing as the means to finance the purchase of the business. Other buyers may feel uneasy about this kind of scenario. But many business purchases end up being seller-financed because few banks will loan money to buy a small business on favorable terms due to the inherent risks

involved with a new business or new management. A seller offering financing can generally charge a slightly higher interest rate than a bank because it is a riskier loan. With seller financing, if a buyer fails to pay, the seller can take back the business and exercise any other rights spelled out in the default provisions of the definitive promissory note.

Make Sure That You Can Afford the Purchase Price

In certain cases, the purchase price will be paid in full at the closing. In other cases, the purchase price to be paid by the buyer will be made over time to the seller. Be sure to get the valuation of the business and the purchase price right. Negotiate all of the details to ensure that you put together a deal that makes sense today and down the road.

Ask for Transition Assistance and a Noncompete

When purchasing a business, often it is necessary for the outgoing key-persons to

transition the business to the incoming key-persons through introductions to existing customers, assistance with business issues during the transition period and supporting the new key-persons through office presence, words of encouragement and advice. It is also important to the success of the buyer's business that the former owners do not open up a shop next door as a direct competitor, and as such, a noncompete arrangement is also recommended.

Next Issue: "Five Things to Consider When Selling a Business."

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Candidates Debate Hennepin County Attorney Race

The two candidates for the position of Hennepin County Attorney made a joint appearance at a ROUNDTABLE at the law firm of MANSFIELD, TANICK & COHEN, P.A., recently to discuss the race. MICHAEL O. FREEMAN (left), an attorney with the law firm of LINDQUIST & VENNUM, who served as County Attorney for two terms in the 1990s, told members of the law firm and guests at the luncheon program why he should be returned to that spot, which is being vacated by his successor, AMY KLOBUCHAR, who is running for U.S. Senate. Mr. Freeman outlined a number of specific proposals he had for the position, including emphasis on identity theft and greater focus on preventing crimes against senior citizens. ANDREW J. LUGER (right), an attorney with the law firm of GREENE &

ESPEL discussed his qualifications, including serving as a former prosecutor with the U.S. Attorney's Office, as well as handling complex civil and commercial litigation in private practice. The debate was moderated by MARSHALL H. TANICK (center) of the law firm of MANSFIELD, TANICK & COHEN, P.A., who praised both candidates for their outstanding credentials, stating that "in many elections, it's a matter of voting for the lesser evil, but in this case it is truly a 'win-win' situation, regardless of who prevails." The election

will be held this November for a 4-year spot as the top legal official in Hennepin County.



Michael O. Freeman (left), an attorney with the law firm LINDQUIST & VENNUM, explains why he should be Hennepin County Attorney, and Andrew J. Luger (right), an attorney with GREENE & ESPEL, discusses his qualifications. Both are candidates for Hennepin County Attorney. Marshall H. Tanick (center), of MANSFIELD TANICK & COHEN P.A. moderated their joint presentation.