



Choosing the Right Advisors when Buying or Selling a Business

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First, let's be clear that this article is not "if" you should consult an attorney, accountant and business broker when considering buying or selling a business. This article is about choosing the right attorney, accountant and business broker when considering buying or selling a business.

Transaction professionals (Attorneys, Accountants and Business Brokers) ALL have their role in the business transfer process. If an attorney says you don't need a business broker or a business broker says you don't need an accountant or an accountant says you don't need an attorney (you get the idea) the one making that statement is the one you need to deep six from your diligence team. Anyone that can effectively and appropriately serve in all three capacities is either brilliant or more likely self delusional.

Even among qualified professional advisors there are plenty of them who are deal-breakers (even some business brokers!), but that generally happens when a buyer hires the wrong consultant. Experienced advisors understand that they are engaged to provide counsel – not to make decisions for you.

I was retained by two business partners to represent their company for sale. They had a bartered trade with a highly respected law firm with significant business law experience. The partner with which they generally worked assigned a jr. attorney. Fourteen hours before the scheduled closing the jr. attorney notified my client that they simply could not close without changing a clause that had been in the purchase agreement since the first draft was delivered over three weeks prior. He told them that he was "only looking out for their best interests". The buyer was done negotiating. So the deal fell apart. (I did sell the business to the same buyer several weeks later at a significantly lower price).

Mistake number one - they hired the wrong attorney.

Now, you may be saying, an attorney is an attorney, an accountant is an accountant and a business broker is a business broker - right? Wrong! If you have a toothache, would you go to a foot doctor? Of course not! So if you're buying or selling a business you need transaction professionals who specialize in business transactions. Ideally, you'll want one with experience in transactions of businesses similar in size and type to the one you're buying.

Each professional plays an attorney plays a very important role, but you need to know what that role is. The business broker handles communications with the buyer(s), negotiation and coordinates communication amongst the seller's advisors. The accountant reviews financial data and provide diligence assistance. The broker shouldn't try to paper the deal (that's the attorney's role), the broker shouldn't try to provide financial diligence and the accountant shouldn't be negotiating.

Good deals get done between the buyer and the seller and then the accountants verify the information that was relied upon and the attorneys make sure it's papered properly. As such,

you have to be very clear with them about what you and the seller have generally agreed to and based upon what specific data.

You want the Attorney, accountant and business broker to bring all the potential issues to your attention. You need them to offer sage advice about any possible issues and opportunities you may have. You want them to review any documents that you sign with an eye towards their core competency.

You definitely need to consider every issue that your advisors raise but when all is said and done, it's your judgment and your decision.

There is always (let me reiterate ALWAYS) going to be some element of risk in a deal. The nature of owning and operating a business by definition includes risk. Your goal is to seek advice that will allow you to fully understand and quantify that risk so that you can structure an appropriate terms sheet.

Business Transactions involve many moving parts which require a complete array of advisors who understand their role and respect that you are the ultimate decision maker.