

Best practices in closing

Why the professionals should handle major corporate sales and purchases **Interviewed by Amy Dison**

“Closing” is simply a formal term to signify a transaction’s end. At closing, property being sold is transferred to the buyer, and the seller receives the purchase price. Closing should be a formality with appropriate final documents and monies delivered and no negotiating, says Dale Bergman, a member of the Miami-based law firm of Kluger, Peretz, Kaplan & Berlin P.L.

Typically, business transactions may take a significant amount of time, so business owners should make sure all documents and procedures are in place prior to closing. One of the worst things that can happen is for new information to surface at the last minute that postpones the closing. This can be costly, time-consuming and frustrating for all parties involved, says Bergman.

Smart Business spoke with Bergman about the steps business owners should take to prepare for a closing and how to prevent last-minute surprises.

What steps should a business person take to prepare for a successful closing?

Start a transaction by selecting experienced professionals. While regular legal advisers and accountants may be qualified to work on your day-to-day affairs, they might not be qualified to work on a complex business transaction. Often, such transactions involve your livelihood and require the expertise of legal and financial advisers who are experienced in dealing with large assets and corporate sales. These professionals should be able to structure a deal to reduce taxes and costs.

Buyers should research the business or property being acquired to make sure they are getting what they expect. Professionals should examine the business or property and conduct due diligence, which includes examining corporate records, financial records and public records to ascertain the existence of liens and judgments. The due diligence process should be completed early. Waiting until the last minute may postpone a closing because some recorded liens and judgments show up that have to be tracked down and satisfied. Old liens



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that have been paid off without the appropriate leases recorded can be very time-consuming to resolve.

Sellers should make sure they are providing full and fair disclosure regarding the business and/or asset being sold to prevent the buyer from backing out of the deal — particularly after everyone has put in a lot of time and expense.

How can a person keep control during a closing?

Avoid surprises by hiring the right professionals who are trustworthy and experienced in the type of transaction you are doing. You should have confidence in your professionals to structure a deal that provides the best investment and the most cash out. They should work to protect you and your investments.

Communicate your business goals to the professionals at the very first meeting. Meet with them regularly to make sure all details are being addressed and goals obtained. It is crucial to make all of your professionals work together on a transaction. They should be in constant contact to make sure all aspects of the deal are covered.

Finally, ask questions. Develop a relationship with the professionals so everyone

can learn about the transaction and structure the best deal possible.

What are common pitfalls of business transactions?

- Outstanding debts and unrecorded satisfactions. Research is required to make sure such items are cleared. This process is time-consuming and may cause deals to be delayed.

- Environmental violations. These may not be addressed by the original owner but should be researched to avoid liability.

- Overvaluing a company or property without researching properly. You should not purchase on name alone. Know what you are buying.

What can prevent last-minute surprises?

Early communication is necessary. This is when professionals learn about outstanding debts, lawsuits, environmental violations or other issues that may postpone a closing. Start the deal on the right terms; complete the legwork. Professionals can only prevent and resolve issues of which they are aware. So focus on running your company and let your professionals handle the details.

Determine who will be handling your deal. Make sure you have people who are willing to focus the attention necessary to your transaction. They must have experience. When someone is selling you a professional service, make sure that he or she will be handling the transaction, not an associate.

Be willing to spend the money to do the research and get the proper professionals involved to ensure you have a properly structured deal. It will cost much more to redraw the deal and close again. This should be an investment for the future success of your company.

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