The TIP of the ICEBERG

It's the part you *don't* see that sinks the ship

It Ain't Over Till It's Over!!!!

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One crucial aspect of a business acquisition transaction which first-time buyers lose sight of (or never acknowledge the importance of) is what I might call the "End Game." Remember: there **is** no transaction if it doesn't actually **close**!

The process of buying a business consists of several distinct phases: (1) Figuring our what to look for; (2) Finding a suitable acquisition candidate; (3) Negotiating a deal with the owner/seller; (4) Arranging financing as needed; (5) Due diligence, and (6) Closing the transaction. Most first-time buyers focus on steps 2 and 3…that's the sexy part, the thrill of the chase (I will save for another issue the whole issue of first time buyers who start down this path with no idea what they are looking for). And most buyers acknowledge the importance of the due diligence process, even if many leave the nitty gritty to their hired professional advisors (lawyer, accountant, etc.).

The critical sixth part, in which the transaction is actually closed and the business legally changes hands is for many buyers just a matter of some annoying (and often quite large) fees, as well as the process of drawing up the mountain of documents that feed the beast and somehow magically make the whole thing happen. If only the reality was so simple….

Most buyers focus on the closing in terms of "Closing Costs", and they understand those costs to be paying the bill for their various advisors, any brokers involved, as well as fees payable to the lender (if any), registration and licensing fees, etc. These are the normal out of pocket closing costs, and are usually summarized by a lender or an advisor in a list or table as the transaction nears completion.

However, there is a different kind of closing cost, which a buyer must **never forget**. Those costs are associated with delays that happen because the parties to the transaction can't settle a disagreement, or because a new disagreement emerges that they had not anticipated, or costs associated with having to start the whole process over. These costs can be far more damaging to the ultimate goal of the buyer (to successfully close on and own a business) that the out of pocket costs, because for many buyers they steadily eat

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away at the pool of investible capital available for a down payment, or as working capital.

What can a buyer do to avoid this?

First, be thorough in your due diligence process. Get involved yourself, and do not leave the process up to your advisors. If you are going to run this company successfully, it is critical that you understand what it is and how it works under the hood.

Second, use your advisors as a sounding board, to help spot problems you need to address with the seller…and address them early in the process, not later when you both have spent a lot of money on advisory fees.

Third, and most important: Understand that the heart and soul of any successful transaction is the Definitive Purchase & Sale Agreement, or "P&S Agreement." This is a highly detailed summary of the transaction, outlining the rights and obligations of both parties. *It is **critical** that you take the time to read, discuss and understand it thoroughly!!* When deals fall apart in the 11th hour, it is most often because of details that come up in negotiating the terms contained in this document.

True "War Story": One deal I was involved in recently fell apart three separate times during the course of negotiating this P&S Agreement because the seller (the other guy…my client was the buyer) had not adequately anticipated the costs or consequences of some of the terms to which he had agreed in a Non-Binding Letter of Intent. While the deal finally did close successfully due to the patient perseverance of the buyer, these delays ended up costing each party tens of thousands of dollars in extra legal and accounting costs, to say nothing of the monetary value of the extra time during which the buyer was not involved in running the business and drawing a salary.

Moral of the story: Never lose sight of the importance of the "end game." Work with your advisors (including your lender, if there is one) to anticipate potential sticking points and address them with the seller sooner rather than later, because they almost certainly will not go away. Try to encourage the seller to take the same pre-emptive attitude in working with his/her own advisors. Yogi Berra was absolutely correct when he observed that "It ain't over 'till it's over"…and at any point up until the final papers are signed and filed, a deal can come off the tracks and unravel.

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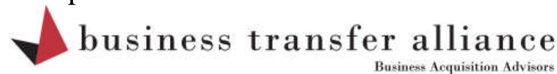

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