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Post-Closing Seller Liabilities When Transferring A Company

Atlantic Highlands, New Jersey (February 7, 2018) – A Neumann & Associates, LLC, a New Jersey-based Mergers & Acquisitions and Business Brokerage firm, describes post-closing liability exposure to business sellers

Post-closing, life will be without the same challenges as running a daily business – even though it is ‘very lonely at the top’ for many entrepreneurs. Short of re-investing into a new venture, gone is the need for great leadership over large teams. And often the skillset of a great business leader does not transfer to social settings or tasks. Furthermore, the influx of a considerable amount of money might very well change the ‘circle of friends’ going forward.

“Despite the aforementioned many business owners are ‘burnt out’ after fifteen to twenty years,” says Achim Neumann, President, A Neumann & Associates, LLC, a New Jersey based Mergers & Acquisitions Advisory firm, “and simply want ‘out’. They often approach us to put a team of transaction attorneys, CPAs and M&A experts together to facilitate a business transfer in an efficient, confidential manner.”

One key consideration in every business transfer is the post-closing liability for the seller. Naturally, every buyer will attempt NOT to assume any liabilities; neither does a seller want to continue carrying liabilities.

For example, this can include explicit liabilities such product or service warranties, customer pre-payments, vendor payments, environmental or tax liabilities. Or such can include hidden liabilities, such as a negative change in customer structure, pending competitor pricing pressures or endangered supply routes.

It’s important that ALL knowable liabilities are clearly disclosed and allocated to the party assuming (or retaining) such - in order to avoid any post-closing litigation. Very often, such assignment is a negotiation of ‘give and take’ among the respective attorneys of either party during the Definitive Agreement formulation, but it can sometimes already be resolved in the early stages during the deal negotiation phase by the M&A advisor (at much lesser costs).

Often, a part of the liabilities transfer can be avoided by structuring a deal as an asset sale, whereas the buyer creates a new company acquiring clearly defined assets and liabilities.

Obviously, the lesser liability exposure a buyer has, the higher the deal price as any buyer will fold liability into a transaction price.

Sellers beware: a seasoned business buyer or investor - certainly a smart buyer's transaction attorney - will most definitely identify liability risks during the due diligence phase.

Trying not to disclose such liabilities – in an ultimately fraudulent transfer – will in all likelihood surface subsequently, resulting in litigation expenses at a multiple of the original liability expenses – if such discovery was not already made in the due diligence phase, at which time there will be a complete loss of the seller's credibility resulting in an aborted transaction by the buyer.

In short, post-closing many facets in the life of a seller will already change, and litigation due to improper liability limitation should be one aspect to be avoided.

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About A Neumann & Associates, LLC

A Neumann & Associates, LLC is a professional mergers & acquisitions and business broker firm having assisted business owners and buyers in the business valuation and business transfer process through its affiliations for the past 30 years. With an A+ Better Business Bureau rating and over 5,000 valuations performed through its affiliation, the company has senior trusted professionals with a deep knowledge base in multiple field offices in Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, DC, Virginia, North Carolina and Florida. The firm's competitive fees are based on successfully completing transactions.