



"Growing Kansas Entrepreneurs"

Buying a Small Business – A General Overview

The Buyer Needs to Consider

1. How much do you know about this type of business?
2. Why is the business being sold?
3. What is the reputation of this business?
4. How is this business currently organized? If it is a corporation, many other laws may come into consideration.
5. Can you get a copy of the financial statements and tax returns for the past 3-5 years? Have they been prepared in accordance with generally accepted accounting principles?
6. Are you buying the "name" of the business? Can you keep the same phone number?
7. What exactly is included in the sale? Get a list of property with valuations if possible. Remember that original cost is not current value. If there is a lease, will the owner of the building transfer it to you?
8. What shape is the equipment in?
9. What is the inventory like? Is it current? Is there a lot of old inventory? Be sure you are purchasing inventory at wholesale, not retail cost.
10. Who are the customers? Is there a database? Do you get it? What is the customer attitude toward this business? Talk with the customers.
11. What is the accounts receivable status? Are you buying it also?
12. Will the employees stay? Do you want them to? Are there any pension or profit sharing plans in place?
13. Are there any contracts or leases currently held? Will you assume them?
14. Are there any court records or mechanics liens in place? Is there any litigation or government proceeding or investigation pending or threatened against this business?
15. Are there any patents, copyrights or trademarks to be aware of?
16. Are all of the taxes currently filed and paid?
17. What licenses or permits are required for this business?
18. Has an environmental assessment been done of the property? Many loans require it.
19. Who are the suppliers? What terms will they give you as the new owner? Talk to them.
20. What is the credit history of the business?
21. What is the zoning? Have there been or about to be any changes?
22. Who is the competition for this business? Everyone has *some* competition. Talk to them.
23. Does the current owner have a business plan?
24. What kind of marketing has been done and what kind do you plan to do?
25. How prepared are you to purchase this business? What are your management skills?
26. Would it be better to start from scratch?

CONTRACTS

1. Include a declaration similar to “The statements made and information given by the seller to the buyer concerning the business and upon which the buyer has relied and agreeing to purchase the business are true and accurate and no material fact has been withheld from the buyer.”
2. Include a covenant not to compete, usually for a period of time and distance.
This is VERY important!
3. Include an indemnification clause. (exemption from incurred penalties or liabilities)
4. State who pays for any fees.
5. State where the contract is entered into and which law governs it.
6. Include obligations of the seller pending closing including:
 - a. Maintain the product and facilities in good condition
 - b. Perform all obligation under agreements
 - c. Keep insurance in full force and effect
 - d. Conduct business in a regular and normal manner
 - e. Use best efforts to retain present employees and preserve the goodwill of the business.
 - f. Maintain an accurate record of inventory
 - g. Deliver documentation to buyer’s attorney for examination.
 - h. No dividends can be paid out unless negotiated within the contract.
 - i. No expenditures over a given amount.
 - j. Limitations on contracts entered into.
 - k. Limitations on increases in inventory.
 - l. Limitations on compensation paid to employees or officers.
 - m. Limitations on incurring additional indebtedness.
 - n. Limitations on creating encumbrances on assets or properties now owned or hereafter acquired.
 - o. Limitations on the sale, lease, assignment or other transfer or disposition of any property or equipment other than in the ordinary course of business.

DISCLAIMER: *This information is being offered to raise issues for a potential purchaser of a business. It is not a legal document or recommendation. It is absolutely not intended to take the place of legal consultation. The KSBDC urges clients to obtain good legal advice for any transaction of this type.*

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