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Typical Sequence of Events to Buying/ Selling of a Business

BUYER/SELLER: Seller reserves right to approve potential buyers and may require that additional buyer information/capability be submitted before confidential information is released to buyer.

THE INITIAL MEETING: At the first meeting, the buyer will want to know the seller's motives for selling the company as well as more detailed information about the business and the seller will want to know how if the buyer is the type of person to whom he wants to sell the company. If the results of the initial meeting warrant further consideration of the deal, the buyer will next begin to evaluate the company and develop a financial structure for the proposed purchase.

THE LETTER OF INTENT/PURCHASE CONTRACT: Either a contract with contingencies or a letter of intent will be presented. A letter of intent may have an escape clause in it to allow one or both parties the opportunity to withdraw from the deal at any point is written to confirm the interests of the two parties and outline the basic terms that are subject to a definitive contract. It may have. The negotiation period may take up from two days to three weeks depending on the complexity of the offer. The letter of intent will address:

- **The purchase price/ consideration** – Selling price of cash, notes, equity, or some combination of these.
- **What is being purchased** -- Assets, liabilities, and operations that are being transferred to the buyer and those being retained by the seller should be identified.
- **Structure** -- The parties need to agree about whether the sale will be a sale of assets, a sale of stock, a merger, or some other structure. Whether the SBA, bank, or owner takes back a note, the company cash flows **must** be able to support that loan. Allow 30 to 60 days for outside financing.
- **Escrow** -- The buyer will establish an escrow account with his attorney into which his initial 15-20% Good Faith deposit of monies and any portions of the purchase price will be to cover such things as unrecorded liabilities that later surface or recorded items that are only estimates (e.g., allowance for un-collectable receivables).
- **Other significant terms** -- Contingent payments, covenants not to compete, and employment contracts.
- **Other required agreements** -- Renegotiated leases and long-term purchase contracts.
- **The definitive purchase agreement** -- As the buyer begins its detailed evaluation of the company, the attorneys will be preparing the purchase agreements. The Sales Purchase contract is usually drafted by the buyer's attorney.
- **Due diligence** -- The seller will need to have ready his financial records, all corporate records, articles of incorporation, by-laws, minutes, stock records, etc., material contracts, loan agreements, pending or threatened litigation, royalty agreements, labor agreements, leases, commitments, environmental liability, employment

contracts, and stockholder agreements, leases, and all other documentations that the buyer will be requesting for review once the letter of intent or contract is signed. This will provide the buyer to analyze the company in greater depth to determine whether everything has been represented properly, whether he wants to buy the company, and, if so, the appropriate price to pay. A purchase price is usually negotiated based in part on historical financial information. A seller will want to be paid on past efforts and future potentials but the buyer will not want to pay for future risk he is assuming. The price may be adjusted for any income or losses occurring through the actual closing date. This process usually takes 2 weeks to 60 days.

- **Professional fees** – Usually the buyer and seller will bear their own costs for attorneys and accountants. It is usual for the seller to pay the brokerage fee. Should the buyer and seller consummate a transaction, the buyer should be aware that the buyer's agreement with broker will make him (the buyer) responsible for paying the commissions if the seller defaults on paying the broker any part of the earned and due commission.
- **Exclusivity agreement** -- A buyer will want to negotiate with the seller on an exclusive basis. The seller will usually grant such a right for a defined period, anywhere from 10 to 60 days.
- **Interim operations** -- They will specify that the business continue to operate in the ordinary course of business and they may place restrictions on such activity as capital expenditures, hiring, and long-term borrowings.
- **Conditions and Timing for closing**. Usually the closing is within two weeks after all contingencies have been completed.
- **Indemnification Provisions**: The indemnity section of the purchase agreement specifies the damages and rights of the buyer and seller to make claims against each other if the representations and warranties are misrepresented or the contract breached. If the buyer and seller have agreed on a deferral of any portion of the purchase price, either through an escrow account or notes payable to the seller, the buyer will probably require a "right of set-off" so that any indemnification claims can be deducted from the unpaid balance of the purchase price.

NEGOTIATIONS: Negotiations will be made at every step of the process as new information becomes available and additional analyses are performed. In a successful negotiation, both the buyer and the seller need to be flexible and to understand which bargaining points are important to win and where compromises can be reached as give and take, so that both sides feel they have won. Our Company is a **transactional** brokerage firm which means the agent does not exclusively represent the buyer nor the seller, but has limited fiduciary responsibility to both the buyer and the seller: he wants both buyer and seller to create a successful transition of ownership and will use his best efforts to achieve that result. Once all issues have been resolved, the documents are signed, and the consideration exchanges hands, the deal is in condition to close. The actual closing marks the conclusion of the process.