

Checklist for a Safe and Smart Acquisition

- ❑ **Seller financing:** Not only does seller financing help minimize the equity required, it provides ready and meaningful recourse in the event the seller breaches duties, obligation, representations or warranties. Try to get “right of offset.”
- ❑ **Assets, not stock:** Buying stock is risky. A foolproof method for reducing risk is to buy only assets. Asset purchases also reduce taxes.
- ❑ **Real and physical possession of important assets at closing:** Regardless of how well you know and trust the seller, resist all temptation to allow trust to override prudence. Money and fear can make people do incredible things.
- ❑ **Fair compensation:** If the business can't safely pay, beginning on day one, a fair compensation for you and a comfortable repayment/return to debt and equity, you're paying too much.
- ❑ **Each promise in writing:** Don't accept the ol' “I'll agree to such and such, but I don't want to put it in the agreement.” Insist that it be written into the purchase/sale agreement.
- ❑ **A clear, actionable penalty for every seller promise:** Seller promises are weak and often meaningless if your agreement doesn't have specific, clear, actionable and valuable recourse outlined for each.
- ❑ **UCC/lien search and releases:** Search filings for secured creditors a month before the purchase and the day of purchase. You must ensure that all secured creditors are notified of the pending purchase, provide current payoff terms in writing and agree to release and remove the lien upon full payoff at closing.
- ❑ **Payoff of unsecured creditors:** Unless you're purchasing assets out of bankruptcy, you want to be sure all unsecured creditors are paid in full, or agree to settlement terms, before or at closing. Sure, you may not have a legal obligation, but if some get stiffed, they can blame you and cause all kinds of problems.
- ❑ **Verify seller's ownership and rights to sell:** Don't trust that the owner actually legally owns anything, especially intellectual rights like trademarks, trade names, web domains, websites, formulas, patents, copyrights, etc. Similarly, have him prove that he has the right to authorize a sale.
- ❑ **Ensure that the non-compete is enforceable:** I can assure you, no matter how sick or old or ill or tired or incompetent the seller says he is, nor how far away he says he's moving, get a non-compete that your competent lawyer says is enforceable and has “teeth.”

- ❑ **Run both a background check and credit check on the seller:** Charlatans usually leave a trail, and greed can make a guy an incredible salesperson. No matter how well you think you know him
- ❑ **Pay no more than can be comfortably serviced by proven, historical cash flow:** Feel free to analyze and estimate all the synergies and cost reductions you'll gain after the purchase, but pay only for the profits that are historically stable and proven.
- ❑ **Get personal recourse for seller breaches:** For each and every promise, get the seller to agree to be held personally liable for any breach.
- ❑ **Title search on any real property:** Of course. And your mortgage lender will require it.
- ❑ **Environmental audit on any real property being purchased or leased:** Just ask any attorney.
- ❑ **New, valid, long-term lease on important real estate or assets.** Never assume that a landlord will renew a lease or keep the same terms. Get it in writing, firm, unequivocal, irrevocable, unchangeable, etc.
- ❑ **List the three things that could put you out of business the fastest.** Then, for each one, answer: "When x occurs, how will I survive?" Don't accept, "Oh, it won't happen," as an answer. If it "could," you better plan for it.

Assure that all these are covered, and I can almost guarantee you'll be spared any of the following fates:

- a. personal financial demise
- b. a nomination for "dumbest person in the solar system award" (or worse, win the darn thing!)
- c. your friends avoid you because they're so tired of hearing you say, "I just, never in a million years, thought ..."

Note: This article, as are nearly all articles in *The Business Owner Journal*, was written by me, David Perkins. If you buy a company, no matter how large or small, I urge you to exercise extreme caution before you waive a single one of these items. In buying a business for my own account, I failed to heed my own advice and in each instance, to my peril. I suffered the fate of "b" and "c" above, and narrowly avoided "a." In consulting others in the purchase and sale of companies, I've also seen these items save and sink. Do as you wish, but now that you've read this my hands will be clean!