

THE M&A LAW FIRM
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“BUT DOC, I FEEL FINE”



WHAT YOU DON'T KNOW ABOUT SELLING YOUR BUSINESS CAN BE DAMAGING

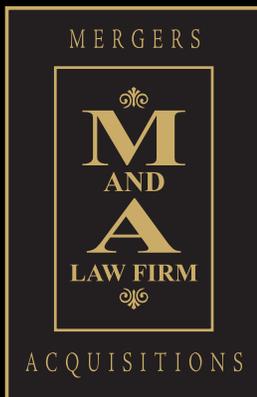
If Seller A sells his business for \$60M, believing that he received the highest and best bid, he would probably be happy with that result. But what if his business was really worth \$80M? Seller A is happy because he doesn't know how much money he left on the table. If you could be one of these “happy” people then this article is not for you. After all, you will “feel fine.”

Now for those of you that want to make sure you are not leaving any money on the table, you will want to continue reading. This article explains what you need to do differently outside of the normal M&A process to get added value. Finding this information elsewhere is about as likely as finding a wild polar bear in Mexico.

VALUE is what a seller is seeking. They are not looking for contentious lawyers, arrogant investment bankers, or accountants or auditors that don't understand their business. Value is the result of using the right professionals and conducting the right M&A process. The following five areas address key building blocks that are missing in most M&A transactions.

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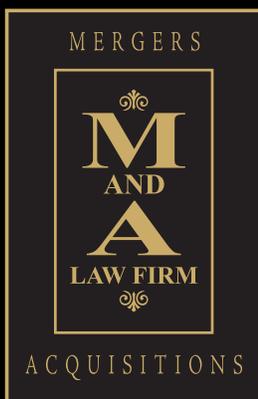
I. PLANNING AND OVERSIGHT

Sellers are excellent at running their business. They, however, do not and should not be expected to know all the nuances associated with selling their business. Just as a neurologist pin points the area of surgery and manages the surgery performed by the neurosurgeon, **a seller needs someone to plan and oversee the entire M&A process.** This includes, the identification of the appropriate members of the M&A team, how to prepare the business for sale, timing and sequencing of marketing, due diligence and closing, and making sure the client understands each phase of the transaction. If sellers understand the process, they can proceed with confidence and are empowered to make better decisions.

II. HAVING SKILLED PROFESSIONALS AT EACH POSITION

The M&A chain really is only as strong as its weakest link. Sellers should not accept referrals to investment bankers, accountants, consultants or lawyers simply because the referring party is friends with the other party. A good brain surgeon can fail if he does not have a good anesthesiologist. The starting point should be with an M&A attorney (not a general business or corporate attorney) that can manage the entire M&A process. The M&A attorney can help you identify the right investment banker and the other specialty lawyers required to complete the transaction. For example, having access to the right environmental lawyer will result in quickly identifying and resolving any environmental problems. The same concept applies in the areas of intellectual property, employee benefits, labor law, international law, tax issues, regulatory matters, insurance coverage, estate and gift planning, immigration, etc., etc., etc. **Even though specialty lawyers may only be needed for a small part of the transaction process, their use will allow sellers to quickly identify problems and resolve those problems in a way that adds value to the business.**

The investment banker is one of the most important parts of the chain. The investment banker should have; (i) a good understanding of your industry and business; (ii) the domestic and/or international reach required to find as many potential buyers as possible; (iii) qualified individuals and systems required for your transaction; and (iv) a culture and personnel with personalities that mesh well with the seller. **Often times, an extensive national search will be required to identify the appropriate investment banker.** Others on the M&A team should include your financial planner, insurance consultant and accountant.



III. UNDERSTANDING HOW YOUR BUSINESS FUNCTIONS

Understanding cause and effect in your business is just as important as the neurosurgeon's understanding of cause and effect in the brain. Sellers commonly conduct a significant part of the M&A process in reverse. Sellers generally wait until after the LOI is signed, and then frantically scramble around to answer all of buyer's due diligence questions uncovering and disclosing the inner workings and financial analysis of their business. **Sellers should be proactive at the outset of the M&A process. The due diligence information should be compiled at the outset of the transaction and not at the end, and compiled in a well laid out "seller due diligence report."**

Buyers want details on seller's product mix, sales and margins along with an analysis of customer revenue and profitability. In addition, buyers want further insight into each of the line items on the balance sheet and income statement (with a detailed "quality of earnings analysis" to show add backs and recast EBITDA). All of this and more shows the "cause and effect" in your business and the "seller due diligence report" is the vehicle to disclose this information.

Having this information available at the outset of the transaction; (i) assists in identifying the right investment banker; (ii) highlights problem areas that can be addressed sooner than later; (iii) takes the burden off the seller of having to compile all of this information after the LOI is signed; (iv) greatly assists in receiving bids that are more credible since buyers have a much more complete view of the seller before submitting final LOI's; (v) gives seller more credibility in the eyes of buyers; and (vi) speeds up closing since most of the heavy lifting has been done in advance.

Preparation of seller's internal financial statements and the availability of audited seller financial statements also need to be carefully and fully addressed on a case by case basis.

IV. RESOURCES AND NEGOTIATING SKILLS

There are many steps in the sale of a company. Think of climbing a 100 foot stair case with faulty steps and no hand rails. If Seller A wants to get to the \$80M step instead of the \$60M step, then all of the steps have to be structurally sound and hand rails should be in place all the way to the top. A properly structured "bid template" should be used in soliciting bids. Buyer due diligence should be properly timed and managed to avoid disruption to seller and all agreement terms and conditions should be fully understood and agreed upon. **Seller's agents should be excellent negotiators and have the knowledge and experience to effectively negotiate the best sale terms and conditions.**



V. CLOSING WITH THE BEST POSSIBLE RESULTS

The Closing should be the consummation of fair and hard fought negotiations resulting in mutual respect between the buyer and seller.

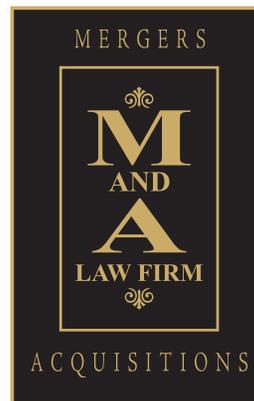
A bridge should be built between buyer and seller fostering a cooperative, and not an adversarial, relationship. It is this cooperative relationship of buyer and seller that can avoid many post closing problems. The M&A process should build value and then make sure you keep it.

THERE MAY NOT BE ANY WILD POLAR BEARS IN MEXICO AND YOU MAY "FEEL FINE," BUT THERE CAN BE A LOT OF ADDITIONAL VALUE DERIVED FROM THE SALE OF YOUR BUSINESS IF YOU IMPLEMENT AND CARRY OUT THE PROPER M&A PROCESS!



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The M&A Law Firm was founded in 1982 by Roger L. Neu, JD, CPA to provide specialized M&A legal services to privately held middle market companies (\$5M to \$250M). Mr. Neu was a CPA with PricewaterhouseCoopers, graduated from Loyola Law School with honors and has advised over 250 clients in M&A transactions. The M&A Law Firm believes that privately held middle market companies should have the best representation at every step in the M&A process to achieve maximum value.



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