

Affiliate Spotlight – Mark Avery

Don't Forget the Existing Contracts



A seller's existing contracts can sour a business sale quickly. Whether it is an employment agreement, a loan, a vendor order, or a lease, any ongoing liability of the business can really upset a buyer's expectations - lowering the offered sales price or even killing the deal. Just because a contract is a "legal" issue to be handled by attorneys does not mean that a broker should avoid informing and preparing the seller to compile all existing contracts and work with the needed third parties to prepare for the business sale.

It is crucial for the broker to sit down with the seller early in the due diligence period to go specifically over all existing contracts. A broker may find that there is a party who has a right of first refusal, a right to receive a large payment from the seller upon sale, or a right to stop the deal altogether. Further, the most important assets of some businesses are their contracts with third parties. If such contracts are in shambles, the business may have no real fair market value!

Finally, a broker needs to monitor when their own listing agreement will terminate by expiration date. I recently had another occasion to witness a broker lose a large commission because the existing listing agreement had expired over a year prior to the closing and he had failed to get the seller to sign an amended listing agreement. I tried repeatedly to get seller/buyer (it was a merger) to still pay the broker out of principal, but the buyer hated the broker. Don't work for free. Keep your listing agreements up-to-date.

Mark Avery is a partner with Richards, Rodriguez & Skeith, LLP, a 19 attorney law firm in Austin, Texas. He works primarily on mergers, acquisitions and reorganizations of businesses, along with the financing related to it. His firm assists clients on business and commercial transactions, patent and trademark, franchising, litigation, employment, and environmental issues. He invites anyone to reach out at any time to discuss any legal issues you may encounter - regardless of whether he is involved. If he does not know that answer, he will point you to the right person to get the answer.