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3 Deal Killers to Avoid When Selling Your Business

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Nothing is more discouraging for a business owner than to have the right buyer at the table and have negotiated a terrific deal, and then have it fall apart. With proper planning, anticipation, and positioning, most deal killers can usually be defused or avoided.

Here are three deal killers we've encountered recently – and how to prevent them before they take shape.

(For more on getting ready for a transaction, download **The 12 Critical Steps to Prepare Your Business for Sale** at **www.dakgroup.com/12-critical-steps/)**

1. A key employee decided to leave right before the sale.

If you are dependent on one or several employees for sales or other key areas of your business, a buyer will want to know that these critical employees will continue with the business after the sale. In many cases the new owners will depend on them as much as you do. If they decide to leave, or want an incentive to stay, this could cause a renegotiation or kill the deal entirely. Consider having these key employees enter into a non-compete or non-solicitation agreement before you even consider selling. You can do this in conjunction with awarding bonuses or promotions.

For example, we completed a transaction a short time ago with a food company, whose owner had not told the Head of Research & Development of his intent to sell. When the Research Head found out, she tendered her resignation. She headed up a core area of the business, and the new owners were counting on her to run the lab as she had always done.

With some hand-holding and careful negotiations we were able to keep her on board — at a price. She required additional compensation as well as stock options. The buyer and seller both agreed to split the difference. This was a fortunate outcome, but the situation could have been avoided entirely with some advance preparation.

2. An outside contractor owned key IP.

Many business owners are surprised that often employees or vendors may control or own certain intellectual property. You can take steps to protect your IP and assure buyers of your control on patents, copyrights, trademarks, licenses etc., but it is not unusual for others to lay claim to what you believe is proprietary and protected property. You don't want a buyer to be attracted to your company based on specific IP, and then learn you don't own it.

A few years ago we were engaged by a manufacturing company known for its innovative product design. Before we began the transaction process, we requested an inventory of all patents, trademarks, and copyrights. Unfortunately the company had not been keeping careful controls in this area. It turned out a number of copyrights had expired and one key patent was created by an outside contractor, with no record of a work for hire agreement. It took the company an additional three months to gather their records in one place and bring everything up to date including paying outstanding fees. In this case, the client benefited from our request: by the time the company was put up for sale, all records were in place and prospective buyers were pleased with the excellent record keeping. Ideally, these IP controls would have been set in place years earlier and maintained on a regular basis.

3. The company's outstanding taxes exceeded the value of the deal.

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Aggressive taxing authorities, including many states, are now asserting nexus. As a result companies are discovering that they may not have paid significant taxes. Particular attention should be given to sales/use tax in advance of a transaction.

In the course of a recent transaction, a state asserted that the company should have been collecting use tax on a software service they were providing. The company had sought the advice of their tax advisors, who assured them that they did not have any obligations to the neighboring state. However, the buyers counsel asserted that the tax, plus penalties, plus interest accumulated over the past decade, amounted to a number that exceeded the value of the transaction. This led to negotiation with the state taxing authority which granted tax amnesty, so long as certain de Minimis penalties were paid.

By putting systems and controls in place as part of their daily operation well before considering a sale, a well prepared seller can avoid most of these deal killers and focus on maximizing the value of the transaction.

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