

## **Negotiating Your Way To A Great Deal**

When it comes to buying a business for sale, the most exciting and anxious moments can be experienced when the time arrives for you to enter into negotiations and make an offer. This part of the process completely handcuffs some individuals. There's really no need for this to happen. Just like every other aspect to the buying process, your preparation will determine your level of success.

Keep in mind that this should be an enjoyable and educational part of buying a business. There is much to be learned during this phase. You must also realize that negotiations will evolve, and so if you approach it with an open minded strategy instead of a "take it or leave it" philosophy, you will ultimately perform much better and produce a stronger deal.

Likewise, you should also know this is the stage when many deals come apart and never recover. Most of the time this happens becomes of the inability of one or both parties to truly understand what it takes to get the other side to see their point. Or, a failure to address the other party's in a way that protects your specific interests.

Negotiating involves many independent personality issues. When dealing with a seller you must bear in mind that this is a very emotional time for them. They are looking to sell a business that has benefited from their hard work and sweat. It can be quite a personal adjustment for many and they do become irrational. They often feel as though they are losing a part of themselves. Be sensitive to their emotions but never at the expense of fabricating a good deal for you.

Your personality traits will come to light as well. Do your best to understand yourself. If for example, you're not a patient individual, then you must train yourself to avoid giving in on a certain point simply because you're tired of discussing it. You're better off to move on to something else and come back to it with the seller.

### **Find Their "Pain", Soothe It and YOU Win!**

Everybody has their "hot buttons" in a deal. These are the points that in the mind of the buyer or seller, will make or break the deal. Once you identify them and can find a way to ease their concerns, you'll win. It works all the time. As an example, if the seller wants to be certain that they walk away from the deal with a specific amount of money in their pocket after broker commissions, paying debt, etc., then the down payment amount of the deal is clearly their "hot button". There are two ways to determine this; put in an offer and see where and how they counter or, ask them pointedly: "what's more important to you, the down payment amount or the purchase price?"

The former method is usually more effective only because you can read into a variety of issues once you see the structure of a counter offer. However, asking them directly is a very accurate way to measure this as well.

Getting back to our example, if it's the down payment then it's your turn to leverage the deal. Get as close as you can to their figure but, in exchange, get reduced interest rates on the balance of sale, extend the first payment to 60, 90 or 180 days after closing, negotiate the first year without interest, include the ability to payoff the note at anytime without penalty or to make periodic lump sum payments towards the principal. There are tons that you can do once you know their pain.

An associate of mine who is an excellent negotiator always says that you should make, and get concessions. In other words, whenever you agree to something, get something in return. It always works.

### **Preparation is The Key To Successful Negotiating**

The average purchase agreement has over fifty individual clauses to be negotiated. There is far more involved than simply agreeing upon the price, down payment and terms. You will have to deal with the specific assets to be included, non-compete clauses. Lease assignments, inspection period, adjustments, employee issues, liabilities, and on and on it goes.

Think about the specific point to be negotiated, what your position is and what your rebuttal will be to the seller's comments. Play the "what if" game prior to sitting down to the table.

### **Play "What If"**

Layout the various points giving consideration to what the short-term and long-term impact will be of your decision. As an example, if you negotiate finance terms with the seller that calls for one lump payment down the road (i.e. a 'balloon payment') you must also consider that the business **MUST** be able to make that payment at that time. What if there's a cash crunch? What if you'd like to use the funds for something else at that time? What if... you want to balance that with a straight-line finance program so that you'll know what your obligations are every month and you can budget accordingly. Every situation is different but again, consider the impact for today and down the road.

### **Structuring The Offer – and Remember, It's YOUR Offer!**

The offer will, in most cases, begin the ball rolling on a potential acquisition. At times, this is the most effective way to gain insight into the guts of the business. You may also be dismayed to learn that you may in fact have to make an offer without all of the data that you would like to have. As an example, you may only gain access to the true financials after an accepted offer has been put forth.

This is fine, no need to panic. You may be asking: "how can a formulate an offer without all of the information?". A good question in theory but this is not always reality. Consider the fact that sellers may be exposed to a plethora of buyers and not knowing which ones are serious, they may choose to holdback certain information.

The offer you present is YOUR offer. You should be comfortable tabling any terms that YOU are comfortable with. Whatever the seller is “asking” is simply a guideline. Remember, it’s an “asking price” not a purchase price. On the other hand, don’t be ridiculous. Table something that forms the basis of a future meaningful conversation. Your offer is to a certain extent a tool to prod the seller into playing his or her hand. To get them to demonstrate their pain; the areas that are fundamental to the deal. From their perspective.

There’s nothing wrong if they are insulted. They may or may not be, and you can always refine your offer as the case may be. Additionally, a buyer’s value of the business will certainly differ from a seller. That’s where negotiation comes into play. There are no hard rules for what the terms of your offer should be. Each situation is different. While it’s not advisable to make unlimited offers expecting one to catch on, you MUST make offers. Don’t over engineer each potential acquisition. Once a business is of interest, you’ve done your homework, you determine that you would, under the right conditions like to buy the business, then get your offer in.

There are standard offer to purchase agreements available to use. Every business broker will have one and so too will most attorneys. The one thing that you want to be certain of is to retain the ability to rescind your offer at your “sole and absolute discretion” if you determine that the business is not what it was represented to be. However, you cannot have an unlimited time frame to do so after acceptance of the offer.

Generally, once an offer is accepted, you will have a certain number of days to perform the financial due diligence (often referred to as the “Inspection Period”). Allow yourself enough time to conduct this. The idea is that you must be able to retract the offer for any reason whatsoever right up to the last day of this due diligence period.

There are some offer contracts that stipulate that you cannot retract your offer and get a refund of your deposit if the financials are within 5% of what has been presented. This is a ridiculous clause. Never agree to it. You must be able to get any monies returned, for any reason, through the due diligence phase. Conversely, if you sign off after the due diligence and then decide thereafter you do not wish to go through with the purchase, the seller is, in all fairness, entitled to your deposit.

"The course gave me the essential information I was looking for, especially as to questions to ask when meeting the owner of a business I wanted to buy. I am now in the process of acquiring this business and will certainly recommend your course to anyone who wants to buy a business. Well done!"

**Gary Franklin**  
**Port Richmond, CA**

### **Lawyers and Accountants and Others - Everyone has an opinion**

Let’s understand one thing: lawyers cannot negotiate your deal for you. They can certainly help to ensure your protection from potential liabilities but when it comes to negotiating the actual business deal, they are definitely NOT the ones to act on your

behalf. I am certain that any attorney reading this column will disagree. That's OK. However, I have yet to meet more than a handful of attorneys who demonstrated any proficiency whatsoever in the actual art of negotiating the deal points of a small business acquisition. Most have never bought a business before themselves so even though they may have been involved in deals; it's not the same perspective. You'll want to hear their point, but their input should be reserved for the areas in which they are experts: the legal aspects of the deal.

As for accountants, they too have their role: the input from a financial point of view and tax consequences. Leverage their expertise as well, but do not let them influence the actual business deal.

### **The Last Word:**

Great negotiators are not born; they evolve. Your effectiveness will increase over time. Be creative. Be reasonable. Keep the end result of putting a good deal together in your mind. Don't lose patience. Don't be confrontational. If there is tough news to deliver, let your broker do it. After all, you will need the seller to provide you with training.

Learn from each experience. Understand that there will be set backs; work through each. You cannot win every point. It's a give and take. Prioritize. Prepare. Win/win is not realistic. The objective is clear: you win, the seller is reasonably happy