

Mastering The Art of A Corporate Acquisition

Many endeavors contain elements of both “technical competence” and “artistic skill.” Playing beautiful music requires more than knowing which fingers hit which keys in the proper sequence. Similarly, a race car driver brings much more to the track than knowing how to use the accelerator, brake and steering wheel.

While few would compare practicing law to playing music or car racing, effective legal representation in consummating the sale or acquisition of a company requires much more than knowing the law, being able to draft standard provisions and possessing a reasonable level of general legal competence. Here are some of the things a successful commercial-business transactions attorney needs to have mastered in order to make a deal that’s in his or her client’s best interest:

1. **Know the Client.** Your lawyer must identify early on your company’s priorities, strengths and weaknesses. Assuming for the moment that you are trying to sell a business, your attorney should know how to structure the transaction so that the sale is completed in an efficient manner, ensuring that the owners obtain the maximum after-tax proceeds. In general, this requires conducting a careful analysis of tax considerations, as well as assessing how to minimize the risk that such proceeds will not be realized, either as a result of the indemnification provisions or credit terms. As the seller, you may have additional objectives beyond securing the highest purchase price. You may be interested in continued employment for senior management or certain key employees. With respect to indemnification provisions, your attorney needs to assess how much risk is tolerable. Does your company have pending litigation that is a concern? Some of these issues may be potential “deal breakers,” and your lawyer needs to decide what to include--and exclude--from the initial letter of intent. At the letter of intent stage, an astute attorney is always playing a balancing act. He or she needs to make sure there is enough common ground before expending considerably more time and effort, while initially avoiding issues that have a better chance of resolution after the transaction has moved further along.

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