



Legal Perspectives

from Abrahams Kaslow & Cassman LLP

Buying or Selling a Business - Proper Planning Early in the Process is Essential

by Kathryn A. Kotlik and Nicholas T. Dafney

Are you considering buying a business? Do you own a business and are ready to “cash out”? There are many aspects involved in the purchase and sale of a business that both buyers and sellers should carefully consider. Proper planning and appropriate documentation early in the transaction process can help avoid unintended risks and financial consequences.

Among the most important early-stage considerations in the sale of a business is determining the structure of the transaction. There are two primary methods used to structure the sale of a business: (1) selling the assets of the business or (2) selling all of the equity ownership in the business. The interests of buyers and sellers often are not aligned when it comes to determining which structure to use. While buying the assets of the business is often in the best interest of a buyer for both tax and liability reasons, selling the equity ownership of the business is often in the best interest of the seller for the same reasons. Determining which structure will be used has significant implications on important aspects of the transaction, including financial and tax components and potential liabilities and risks.

In addition to evaluating the structure of a potential business sale, there are also some early-stage documents that buyers and sellers should consider. A common mistake that occurs in the sale of a business is that the buyer and seller often dive right into the primary transaction document used to facilitate the purchase and sale of the business. This document is commonly referred to as the Purchase and Sale Agreement. While the Purchase and Sale Agreement is ultimately the most important document in the transaction, sellers and buyers can avoid unintended risks and costs by entering into one or more “pre-deal” agreements before committing the time, money and effort required to prepare and negotiate the Purchase and Sale Agreement.

The most important early-stage document that should be used in a business sale transaction is some form of confidentiality agreement. A confidentiality agreement should be signed before the business terms, including the structure of the transaction, have been agreed upon or even discussed. A seller will need to provide the buyer with sufficient information about the business, including financial and employee data, to enable the buyer to evaluate and price an offer. Confidentiality agreements allow the seller to share such information while protecting against the risks associated with releasing confidential and proprietary information about the seller’s business.

Another common and useful early-stage agreement is the letter of intent, which is used to establish some of the basic business terms to be incorporated into the Purchase and Sale Agreement. Areas of a transaction that are often addressed in a letter of intent include deposits, financing conditions, due diligence procedures, timing considerations, exclusivity requirements and pre-closing covenants. A letter of intent can help ensure buyers and sellers are in agreement as to the most important business terms and conditions of a transaction before devoting the time, money and resources necessary to draft, negotiate and close on the Purchase and Sale Agreement.

The foregoing represent just some of the important aspects of a transaction that buyers and sellers should consider. Engaging experienced and trusted attorneys, accountants and financial advisors early in the process can help buyers and sellers minimize the liabilities, risks and costs associated with the purchase and sale of a business. Please contact one of our business attorneys if you are considering buying or selling a business.



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Litigation Trends - Trade Secrets, Family and Medical Leave Act (FMLA) and Workers' Compensation

Join attorneys Jeff Blumel and Ryan Kunhart for a FREE seminar on Litigation Trends.

June 3, 2014

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Trade Secrets

- Identifying and protecting trade secrets.
- Considerations for trade secret litigation.

FMLA

- Guidance on FMLA issues in light of recent court decisions.

Workers' Compensation

- What to expect after an employee files a workers' compensation claim.

Location: Our office located at:
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What to do When You Receive a Wage Garnishment

by Nicole Seckman Jilek

A garnishment is a request to withhold an employee's wages or other earnings to satisfy a judgment against the employee. Garnishments are time sensitive and, if not handled correctly, could subject your business to significant liability.

The garnishment may be served by certified mail or delivery to your corporate registered office or an officer, director, or managing agent of your business. All employees should be familiar with the steps that need to be taken when a garnishment is received.

Once a garnishment is received, it should immediately be delivered to a person designated to handle garnishments for the business. Garnishments are effective on the date received by the company, regardless of when they are actually received by the person designated to handle them. You must respond to the garnishment in writing within ten days of the date the garnishment was received. This is true even if you do not owe the employee wages and even if the employee is no longer employed by you. Failure to timely respond to the garnishment could subject your business to being liable for the entire judgment amount. Having appropriate procedures in place to handle garnishments when they are received is critically important.

If you still employ the employee, then you should follow the employer instructions on the garnishment to determine if there are any wages that should be withheld and the amount to withhold. The employee will receive notice of the garnishment and if the employee believes that his or her wages are exempt from garnishment or he or she does not owe

the judgment, the employee will have the opportunity to raise these issues before the court. Even if the employee disputes the garnishment, you must respond to the garnishment in a timely manner and withhold wages until the garnishment is released by the court or judgment creditor or the Order of Continuing Lien expires.

If there are sufficient wages to be withheld, they should be withheld from the employee's paycheck and held until you receive either an order from the court directing that the money be paid into the court or an order from the court allowing you to release the wages to the employee. If the court orders the wages be paid into the court and the amount paid into the court is not sufficient to pay the entire judgment, it is likely you will receive an Order of Continuing Lien, which orders you to continue to withhold nonexempt wages. When funds are paid into the court, the business is responsible for informing the court as to which case the funds should be applied. This is important especially if the same employee is a debtor in multiple cases. You should not stop withholding wages until the garnishment is released by the court or judgment creditor or the Order of Continuing Lien expires.

A number of factors can complicate your response to a garnishment. Because of the possible liability and expense your business could be subjected to if the garnishment is not handled properly or timely, we recommend contacting one of our attorneys when you receive a garnishment.

Key Man Life Insurance - Is Your Business Protected?

by James A. Tews and Jennifer L. Rattner

What would happen to your business if you, another owner, partner, or key employee suddenly died? The loss of a key business person is particularly difficult for small and medium sized businesses that rely heavily on the contributions of a small number of very talented people. Key man life insurance, when structured properly, can provide financial protection for a business at a time of great loss.

Key man life insurance is life insurance owned by a company on the life of an owner, partner, or key employee who is critical to the continued successful operation of the business. The insurance benefits are payable to the company. A "key man" or "key business person" is someone who the company considers irreplaceable. Someone who has the client connections that make the business successful or someone who has special knowledge required to keep the business operating are examples of a "key man". Small and medium sized businesses, in particular, benefit from having key man insurance on these key individuals.

Typically the company will pay the insurance premiums with after-tax dollars, which will ultimately allow the company to receive the death benefits tax-free when the covered individual dies. The cash the company receives as the beneficiary under the policy can be used in a number of ways. For example, it can be used to continue operating the business until a replacement employee can be hired and trained; to cover the expenses of finding and training

the replacement employee; to pay off debts of the company; to distribute money to investors; to pay severance to employees and close the business down in an orderly manner; or, if ownership rights of the business are involved, to buy-out the deceased owner's heirs.

Prior to purchasing a key man insurance policy, it is important to ensure certain actions are taken. First, the company must obtain proper authorization from the company's leadership. If the company is a corporation, the board of directors must consent to and authorize the purchase of the insurance policy and record such consent and authorization in the board minutes. Second, the company must provide the employee to be covered by the policy with written notice of the company's intentions. Finally, the employee to be covered must provide written consent and acknowledge that the employer is the sole beneficiary of all death benefit proceeds. It is important that the company provides the notice and obtains the employee's written consent and acknowledgement before the policy is issued because if either the notice or the consent and acknowledgement are given after the policy is issued, then some or all of the death benefits of the life insurance policy will be taxable.

If you have any questions regarding key man life insurance for your business, please call and speak to one of our attorneys.

Inclusive Communities Lifetime Achievement Award

Congratulations to [Howard J. Kaslow](#) for receiving the Lifetime Achievement Award from Inclusive Communities. Howard currently serves on the Board of Directors of Inclusive Communities (IC). He has been involved with IC and its predecessor organizations, including the National Conference of Christians and Jews, for more than 35 years.



Howard J. Kaslow

Since 1938, through its powerful human relations work, IC has provided education and advocacy in diversity and inclusion by working with schools, businesses and the community.

Ten Outstanding Young Omahans

Congratulations to [Nicole Seckman Jilek](#) for being selected by the Omaha Jaycees as one of the Ten Outstanding Young Omahans (TOYO) for 2013! TOYO honors individuals between the ages of 21 and 40 who show exemplary commitment to improving the community through selfless acts of kindness while excelling in their professional careers.



Nicole Seckman Jilek

Nicole is a member of the Omaha Jaycees and has served as the TOYO Director and the Vice President of Membership and is currently serving as President. She is a member of the Junior League of Omaha. She has been active in the Robert M. Spire Inn of Court since 2007, and has served on its Executive Board and as Membership Chair. Nicole is a member of the Omaha Bar Association, Nebraska State Bar Association, and was a member of the 2013 NSBA Leadership Academy. She serves as the Treasurer of Leadership Circle and is a member of CREW Metro Omaha and the Omaha Executive Club.

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The Nebraska Rules of Professional Conduct for attorneys require the following statement on newsletters of law firms:

This is an advertisement.



Attorneys in the Spotlight

B2B Winner, Four Years in a Row!

Thank you Omaha for voting Abrahams Kaslow & Cassman LLP Best of B2B Winner for best law firm again in 2014.



Aaron D. Weiner was on the faculty of the Landlord-Tenant Law: Leases, Evictions & Litigation, and Settlements seminar hosted by Sterling Education Services.

Harvey B. Cooper and Ryan M. Kunhart presented a seminar on ADA/FMLA for the Association of Corporate Counsel Mid-America Chapter and attended the DRI Civil Rights and Government Tort Liability conference in New Orleans.

Thomas J. Malicki was elected to the Methodist Hospital Foundation Board.

Ryan M. Kunhart joined the Big Brothers Big Sisters Service League.

Kathryn A. Kotlik joined the Catholic Charities Junior Board and joined the Accounting and Financial Women's Alliance.

Harvey B. Cooper and Ryan M. Kunhart recently won dismissal of a personal injury negligence case filed against a Nebraska municipality. Mr. Cooper and Mr. Kunhart were successful in arguing the municipality was exempt from suit under the Nebraska Political Subdivision Tort Claims Act.

Engage Event - Girls Nite Out

Thank you to our guests Cheryl Campau, Tiffany Stork, Angela Terry, Christina Knowles, Maggie McGlade and Audrey Dobbe for joining the AK&C ladies for Girls Nite Out, a fundraiser for Girls, Inc. What a great night of networking, shopping and laughing thanks to comedian Kelly MacFarland.

