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**PLAYING TO WIN:**

**4 CRUCIAL ISSUES TO CONSIDER WHEN SELLING YOUR BUSINESS**

*In this brief article you will learn about:*

- ❖ The importance of a confidentiality agreement.
- ❖ The purpose of a letter of intent.
- ❖ How representations and warranties can make or break a deal.
- ❖ Why your attorney must spend extra time reviewing your indemnity agreement.

**YOUR BUSINESS IS YOUR MOST VALUABLE ASSET**

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## INTRODUCTION

As a business owner you simply do not have the luxury of learning by trial and error! The business marketplace is more competitive than any time in history and the companies that succeed and thrive are the ones that know the rules and take action.

Are you playing to win?

The average little league baseball team spends two hours each week in practice - learning the game of baseball and honing their skills. The time that these teams spend in practice increases with the age of the children and the competitiveness of the league. Little league players and coaches understand the importance of game mastery to the success of their team.

How much time do you spend learning about your business and honing your skills to become competitive and successful in your industry?

Are your professional consultants – attorneys and CPAs – regularly sharing the critical knowledge that you need to be successful in your business.

The information included in this brief article is just a small sample of the very valuable information that our clients have access to every day through our website and other electronic resources. Yet, if you were required to take the time to accumulate this information it could take valuable time away from running your business.

It is absolutely essential that you create a winning team.

According to Entrepreneur Magazine, "hiring a good lawyer is crucial to any successful business."

Our team is committed to helping business owners and entrepreneurs achieve long-term success and profitability in their business. We are business advisory attorneys focused on providing general counsel and business transaction support for our clients.

This article summarizes very technical legal issues so that they are easily understood by non-attorney readers. Reading this article is not a substitute for professional legal advice specifically tailored for your situation. After reading this article you may be prepared to ask your attorney more detailed questions about the process of selling your business.

If you have any questions about this article or would like to schedule a free informational consultation, please call our office at (832) 582-8289. Please reference this article when you ask to schedule your free informational consultation with Olaide Banks.

## 4 CRUCIAL ISSUES TO CONSIDER WHEN SELLING A BUSINESS

**CONFIDENTIALITY AGREEMENT** – You should never disclose any information about your company before receiving a signed confidentiality agreement. A well drafted confidentiality agreement will protect you from unethical and unprofessional buyers in most situations.

There are several reasons why you would want to protect the financial and proprietary information of your company. Disclosure of information about your business processes or the way you perform certain functions could eliminate a potential competitive advantage that you have in your market, and make your company less valuable. Additionally, sometimes in the early stages of a business sale transaction, the information about your sale may not be public and the disclosure of that information may have a chilling effect on employee morale.

The confidentiality agreement should be drafted to protect the very valuable interests of the seller, and provide for remedies in case of a breach.

**LETTER OF INTENT** – A letter of intent summarizes the basic economic terms and conditions as agreed by the seller and buyer before they negotiate all of the details of the purchase contract. Generally, the letter of intent identifies the parties, states the purchase price, the method of payment and the structure of the transaction – whether it will be a merger, stock purchase or asset purchase.

The Letter of Intent may also include language addressing certain contingencies. For example, the basic agreement may be contingent on the buyer securing financing or the buyer conducting further due diligence. A Letter of Intent may be binding or non-binding. Non-binding letters of intent are typically in the seller's best interest, because very critical warranties and representations may have yet to be ironed-out, and the buyer may threaten litigation on the binding letter of intent in order to force the seller to concede on important issues. A business in litigation is a business that is almost impossible to sell, and most likely can not be sold at fair market value.

**REPRESENTATIONS AND WARRANTIES** – Representations and warranties are statements about the company made by the seller to the buyer. The buyer relies on the truth of these statements about the company in making the decision whether to buy the company and at what price. Representations and warranties are an important part of the final sales contract.

A buyer is entitled to know everything about the business from the day it started up until the moment that the sale is complete. There are some things that a buyer will not uncover through its own due diligence, and will need to rely on the seller's statements in making its decision. The seller's attorney must ensure that the representations and warranties are reasonable.

**PERSONAL INDEMNITY AGREEMENT** – In many transactions involving the sale of a closely held business, the seller may be required to sign an agreement personally indemnifying the buyer. That is, the seller agrees to pay certain amounts to make the buyer whole if the seller breaches any of the warranties and representations. For this reason, it is very important that the seller's attorney vigorously negotiate and carefully review the language in the representations and warranties, and ensure that the final language in the indemnity agreement matches what was agreed-to during negotiations.