Three Stages in a Buyer's Process

Stage 1

Part 3: The DUE DILIGENCE Process

This information is provided as a **general** guide for the processes in buying an existing business. The steps indicated are placed in a chronological order to indicate procedure that should be completed prior to closing and taking over ownership. Some of the steps are **required by law.** The list is **not all inclusive** and other steps may be necessary.

STAGE 1 (Parts 1, 2 and 3)
Finding and Valuing, Offering, Due Diligence

This is a series of actions that allow you ample time to review all information PRIOR TO BUYING. It is a right of the buyer to obtain information and seek disclosure of facts already presented by the seller. It is your right as a buyer to be informed. Take the necessary time to complete the process to your satisfaction.

STAGE 2
Financing

A separate series of actions is required to obtain the financing. Some of the required information for banks is included in the due diligence processes and will "overlap". Usually the financing steps will take place prior to accomplishment of full due diligence, but remember that obtaining necessary financing is usually a prerequisite before a seller is willing to disclose all operational information. If you cannot finance the business, the seller is not willing to share all the information with you.

STAGE 3 (Parts 1, 2 and 3)
Operational Licensing and Closing

The legal transferring of ownership, title and equity in the business. Includes all of the necessary steps prior to your first day of ownership so that you can operate legally in Idaho. The steps should take place during the financing and due diligence stages and do overlap in both areas. As an example, you must have your federal identification number prior to accepting any SBA loans; therefore, you will need to file for the number early in the process so that you can close on the indicated date of closing. Another example is insurance. It is necessary to obtain insurance information for financial proforma as well as liability protection during ownership.

*This information is provided by **Kip F. Moggridge** of Arthur Berry & Company for general use. For questions you may contact Kip at 208-336-8000. Please consult an attorney or accountant for legal or financial assistance.*

Buyer Due Diligence

Under the terms of a Purchase and Sale Agreement and a seller's listing contract, due diligence will be required. The term signifies a "process" in which all pertinent information can be substantiated to the full satisfaction of both buyer and seller (client and customer). It is the legal obligation of both Buyer and Seller to remove all doubt and to review and approve any and all information relative to the sale. Under those requirements, the following suggested check-list is provided:

1. Make a written list of all the financial, historical and relative information you will ask to review. This list will be given to the SELLER and, at a minimum, should include verification of all information previously provided. In addition, the list MIGHT INCLUDE some of the following:
    a) Income tax reports (three to five years)
    b) After tax period reports or current business income statements, such as:
        1. Daily cash register receipts
        2. State sales tax reports
        3. Withholding tax reports
        4. Profit and Loss statements
        5. Current balance sheet
        6. Billings/payable receipts
        7. Bank accounts
    c) Current payable and expenses (actual billings)
    d) Review of all contracts
    e) Review and approval of a new lease or assignment of lease
    f) Thorough inventory and an agreement of valuation method(s)
    g) Thorough review and approval of receivables
    h) Thorough review, inspection and approval of all equipment
    i) Review of any and all maintenance contracts associated with the equipment being sold
    j) Customer lists/client reviews
    k) Real estate inspections. (Ask for a Seller's Disclosure statement)
    l) Legal issues/law suits/returns/bad debts
    m) Review all liabilities/seek assumption information

2. If real estate is a part of the sale, include the following:
    a) Appraisal reports
    b) Tax records
    c) A building inspection
    d) Complete inspection and approval of all building HVAC
    e) Review all utilities bills associated with the building
    f) Environmental issues. Check with local EPA authority
    g) Sellers disclosure statement(s)

3. License and permit review – Check with all agencies for compliance and requirements
    a) Past inspections

Seller Due Diligence

The seller should require information about the buyer. The following would be typical buyer information being provided, especially:

1. Information about the buyers
    a) Financial statements/credit reports
    b) Tax or other income verification
    c) A credit check and review of a financial statement and resumes, especially if the buyer is requesting an owner loan or carry-back financing or if the buyer will be asking for an extended closing date
    d) Partnership or corporation agreements

Non Conforming Diligence

The following items are not part of customary Due Diligence processes:

a) Working in the operation prior to closing
b) Talking directly to any customer, supplier, vendors, contractors, and/or employee without consent of the seller
c) Copies of operational manuals, procedures, or written daily activities
d) Taking sample products from the site
e) Buyer/seller breach of confidentiality (talking to outside parties without prior consent)
f) Training for any individuals prior to closing
g) Discussing your purchase with anyone other than those individuals approved by the seller. Do not use words like " I'm buying the... or "we're the new owners", etc. prior to the actual purchase
h) Performing Due Diligence prior to an accepted offer