

Don't Use an M&A Attorney for an Investment Banker's Job

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Most people will never experience a merger, acquisition, or other business transaction firsthand. Of those business owners who do sell their companies, few will go through the process more than once.

Therefore, M&A professionals exist. When you're embarking on the most complex and challenging business deal of your lifetime, it pays to have a few people in your corner who know what they're doing. One of the biggest mistakes a seller can make is neglecting to build a team of experienced M&A advisors.

Yet sellers frequently go to market without sufficient support. Occasionally, they attempt to handle the entire transaction themselves. This is tantamount to representing yourself in court—you're almost always guaranteeing a victory for the other side. Similarly, when you spend less than you need to access qualified help, you can expect to get the result you pay for.

Hiring an investment banker is one necessary cost sellers too often overlook. Perhaps the seller sees a banker as an unnecessary middleman, thinks their deal is too small to warrant involving one, or doesn't understand the value the individual brings to the deal. Other times, a business owner will use an investment banker during the early stages of the transaction and dismiss them once a buyer is found.

To be clear, one of the investment banker's primary roles during a business transaction is to connect the seller to an interested buyer. Most business owners can't simply wake up one day and find someone willing to purchase their company, which is why it's important to work with a professional with a network and the ability to pitch the business.

But your banker is much more than a matchmaker. Think of them as the overall quarterback of the deal. Like a QB, they lead the team and call the plays, always focusing on the end zone.

Much of the work gets done in the huddle, so to speak. Normally, an investment banker starts by putting together a memorandum to market the business, coming up with a market strategy by analyzing the business—what it's worth, what contracts it has in place, its revenue, and so forth. It's the banker who understands the business better than anyone; they know the company inside and out and can see things more objectively than the owner can.

Once a letter of intent has been signed—i.e. the ball has been thrown—the banker acts as a buffer between the selling principal(s) and the buyer's people. At this point, they've passed the bulk of the work off to an attorney, but they remain active in the sense that they're running interference. When lawyers are emphatically arguing for our clients' interests, bankers are the ones keeping both parties calm, on track, and optimistic. They relay what are often heated messages (to put it mildly) in a composed and productive manner. Deals that lack this important cushion tend to flounder or implode as the parties argue and lose sight of their shared goals.

I've worked with several sellers who didn't realize the extent to which their bankers helped—even saved—the transaction. I've also had clients who linked up with buyers on their own, chose not to bring on investment bankers, and exposed themselves to intense periods of stress as a result. These clients had no one who could run interference.

Worse, they created serious risks for themselves and their organizations. After signing an LOI, for instance, a buyer and seller may set an agreed-upon amount of net working capital (or operating capital) left in the business. If negotiations drag on and the seller needs more money to continue running the company in the interim, who gets to decide what kind of adjustment is fair? Who can determine how much cash the business really needs to keep in the bank?

Attorneys can't—we're not financial people. And unlike bankers, who get paid at the end of the deal, we bill hourly. For these reasons, it's not in your best interest to heavily involve your legal representative in any tasks better suited for your financial partner.

Take it from someone who's been there numerous times: you need an attorney and an investment banker. You wouldn't hit the field with only a QB or only a center. Both jobs are essential, and their roles are certainly not interchangeable.

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