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Legal help for small businesses

■ **S.L. firm: 2 lawyers specialize in not-so-big mergers and acquisitions.**



MAX B. KNUDSON
DESERET NEWS
BUSINESS EDITOR

When Bill Paulos, president of Salt Lake advertising/marketing/public relations firm, The Summit Group, decided to acquire a small typesetting company to bolster his firm's capabilities, he naturally called his lawyer.

Trouble was, Paulos recalled, while the attorney had experience in litigation, he had none in the area of business acquisitions. It soon became apparent that he was in over his head and his counsel "wasn't appropriate."

Paulos then turned to one of the large downtown firms to represent him in the acquisition. While the firm obviously had the needed expertise, it also had bigger fish to fry — Paulos' deal was too small to warrant much attention. "I ended up talking to paralegals," he said.

About this time, Paulos was referred to the firm of Hunter and Brown — J. Scott Hunter and Charles R. Brown — Salt Lake lawyers who have made a specialty of acquisitions, mergers and other disciplines crucial to the buying and selling of businesses.

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him what he "wanted to have happen," and the firm took it from there.

But there's an epilogue to the story, an important one to Paulos. Unknown to him at the time, the deal he was about to make would have entailed his taking on all of the typesetting company's liabilities — several hundred thousand dollars worth — while gaining no clear title to its assets. He credits Hunter and Brown for turning that around.

"I was entering a realm of unfamiliar territory, full of high risks and liabilities," said Paulos. "A lot of people unwittingly get themselves involved in bad deals simply through lack of experience."

Hunter and Brown agree, noting that owners of small and medium-size businesses are particularly prone to problems. They often avoid getting legal help because they think they can't afford it — a classic case of "penny wise and pound foolish."

"We have found that small-business men and women are reticent to pay attorney's fees," said Brown. "They think it will cost an arm and a leg, and they don't know what they will get for the money. In fact, by paying reasonable attorney's fees, they can often save very large amounts down the road."

Hunter pointed out that small-business acquisitions pose many of the complex legal problems as the huge national mega-mergers. "The deals are much the same whether they're \$100,000 or \$100 million," said Brown.

For example, their client Evolution USA, a Salt Lake-based manufacturer of custom skis, is not a volume business on a national scale, but

Please see **LAWYERS** on D13

Selling a business

Here are eight procedures Hunter and Brown believe any should follow. Before any are undertaken, however, Hunter and an experienced accountant and lawyer who, acting as a team, should

1. Determine the tax consequences of the transaction.
2. Negotiate for full payment in cash.
3. If you accept a note, get personal guarantees and adequate collateral.
4. Know which of your contracts and leases require consent of the other parties. Begin early to obtain the consents.
5. Cooperate in the buyer's due-diligence examination.
6. Get indemnification from liabilities of the business that you are selling, as well as for existing liabilities you believe should accompany the business.
7. Negotiate and narrow the scope of all representations and warranties.
8. Stipulate a cut-off date for liability for any breaches of contracts.

Buying a business

Here are eight procedures Hunter and Brown believe any should follow. Before any are undertaken, however, they should consult an experienced accountant and lawyer who, acting as a team, should

1. Perform an extensive "due-diligence" investigation of the business, including contracts, leases and licenses.
2. Consider the effect of the bulk sales law, which provides protection for the buyer.
3. Consider all tax consequences in structuring the transaction to minimize possible sales tax liability.
4. Consider all of the customer base as an asset and the effect of continued patronage through non-competition covenants.
5. Consider whether any regulatory approvals are necessary for the business licenses with a restaurant operation.
6. Get adequate representations and warranties and a price for a period while running the business to determine if the business is worth the price.
7. Understand what liabilities are attached to the business, including or threatened litigation, and get an indemnification for any liabilities of the business being purchased.
8. Form a critical-path plan of how the acquisition is to be completed, with specific tasks.

Rates at a glance

PERSONALITY PROFILE

First "real" job: Filing paid checks.

Management style: Be accessible and encourage employee participation.

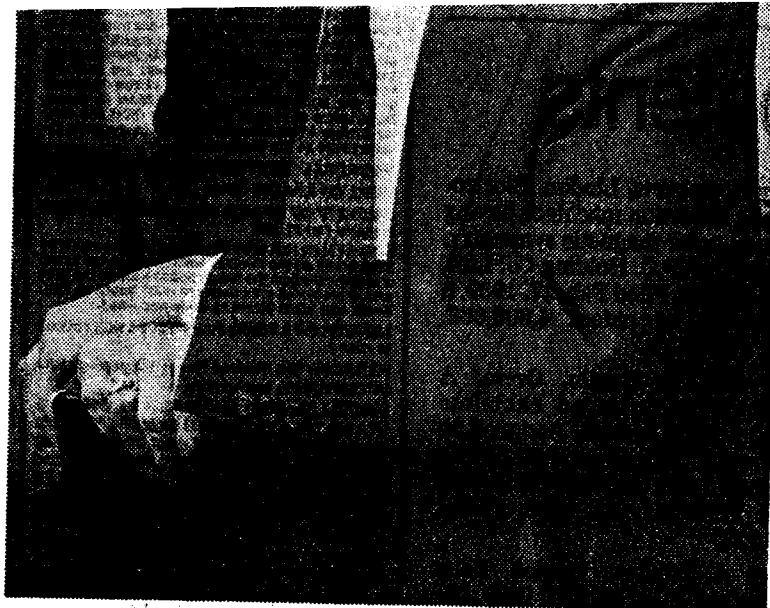
Strategy for success: Hard work and a focus on creating value.

A memorable failure: In the mid-1980s, the failure to fully anticipate and gear up earlier for Utah's real estate recession.

Heroes: The many people in our community who quietly give back more than they take from society.

Leisure time and hobbies: Skiing and hiking.

Favorite book and movie: Crossing to Safety, by Wallace Stegner; "Amadeus."



PHOTOGRAPHY/RAVELL CALL

LAWYERS

Continued from D12

Hunter and Brown negotiated an agreement for Evolution skis to be the exclusive ski for the Utah Olympic Committee bid for the 1998 Winter Games, a deal that has given the company considerable recognition.

The national economic downturn — some say recession — has put a damper on the "merger mania" that characterized much of the 1980s, but Hunter and Brown see no decline locally.

"I don't feel a downturn," said Brown. "If anything, I sense a

strengthening in Salt Lake County. We see more deals happening than even a year ago, so my sense is that the local market is still pretty strong."

Still, he concedes, much depends on the national economy — particularly the national tax issues that impact everyone — as well as the outcome of the Persian Gulf crisis.

Many times, said Hunter, the success or failure of a local business is not so much the result of the local or national economy but more prosaic elements, such as unfavorable lease terms for their facilities.

"If a small restaurant owner is dealing with a large landlord — say the out-of-state owner of a mall — he

often feels he has to take the deal or leave it," said Brown. "But with the proper representation, they could negotiate from strength. Equally important, if something goes wrong down the road, they are protected."

Somewhere between the \$500,000 business sales and the multimillion-dollar deals, there is a gap, say the two attorneys, that is generally unserved by adequate legal representation. That's the gap they are trying to fill.

"The small business owner deserves a law firm that looks after his legal matters as carefully as the big-business owner's," said Brown. "The trouble is, he often has to settle for less."

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STATE OF UTAH ADVERTISEMENT I

The State of Utah, Division of Construction and Management, invites all persons interested in leasing space in the State to submit a proposal by November 7, 1990. Specifications upon request at the Division of Construction and Management, Duane Bertoumey, Office of (801) 538-7530.

PROPOSAL IDENTIFICATION: DFCN
TYPE OF SPACE: Office

AMOUNT OF SPACE: Approx. 1,000 sq. ft.

LOCATION: Clearfield, Utah

LENGTH OF LEASE: Three years

PARKING: Minimum

OCCUPANCY: As so available

MISCELLANEOUS: Facilities must meet requirements. Facilities must conform to ADA, Energy, NFPA, UBC and state standards, state codes and local ordinances.

THE DIVISION OF FACILITIES COORDINATION RESERVES THE RIGHT TO ACCEPT OR REJECT ANY PROPOSAL IN ANY PROPOSAL IN THE STATE.

Please submit proposals to:

Joyce H. Milne

Division of Facilities Construction

4110 State Office Building

Salt Lake City, Utah 84114

Telephone: 538-3282

An Open Letter To The Amer

Burger King wishes to go on record as supporting tradition... television, especially the importance of the



PHOTOGRAPHY/RAVELL CAI

Charles R. Brown, left, and J. Scott Hunter, right, made Steve Denker's Evolution USA the exclusive ski for Utah's Olympic bid.

Legal help for small businesses

I.S.L. firm: 2 lawyers specialize in not-so-big mergers and acquisitions.



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2. Negotiate for full payment in cash.
3. If you accept a note, get personal guarantees and adequate collateral. Ensure you can be repaid even if the business fails in the hands of the new owner.
4. Know which of your contracts and leases require consents from landlords and other parties. Begin early to obtain the consents.
5. Cooperate in the buyer's due-diligence examination. It may seem disruptive of your ongoing business but resistance can be misinterpreted as deception and can destroy or hinder a transaction.
6. Get indemnification from liabilities of the business that are incurred after the sale, as well as for existing liabilities you believe should accompany the business.
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8. Stipulate a cut-off date for liability for any breaches of the warranties.

Buying a business?

Here are eight procedures Hunter and Brown believe anyone who is buying a business should follow. Before any are undertaken, however, they urge the seller to hire an experienced accountant and lawyer who, acting as a team, should:

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2. Consider the effect of the bulk sales law, which provides for notice to certain creditors.
3. Consider all tax consequences in structuring the transaction, including income tax, and possible sales tax liability.
4. Consider all of the customer base as an asset being acquired and ensure their continued patronage through non-competition covenants and similar provisions.
5. Consider whether any regulatory approvals are necessary, such as transferring liquor licenses with a restaurant operation.
6. Get adequate representations and warranties and retain some portion of the purchase price for a period while running the business to determine if there are breaches of the warranties.
7. Understand what liabilities are attached to the business, such as tax liens and pending or threatened litigation, and get an indemnification for any liabilities that should not pass with the business being purchased.
8. Form a critical-path plan of how the acquisition is to be made, with assignments for specific tasks.

Denker' cautiously bullish

in timeliness," said... a company's market capitalization must be at least \$75 million and the stock must sell for at least \$10 a share. It must have in excess of 800,000 monthly trading volume, 1,000 share-

Rates at a glance

SAVINGS YIELDS		KEY RATES	
6-mo. CDs	7.69%	PRIME RATE 10.00%	
18-mo. CDs	7.88%		
30-mo. CDs	7.96%		