

*As Seen In The Minneapolis StarTribune on October 28, 2007*

## Attorney Polishes Up Business Deals

*Transaction attorneys like Timothy Duncan of Bloomington can help small-business owners and entrepreneurs make a satisfactory exit when they decide to sell a company.*

**By Todd Nelson, Special to the Star Tribune**

After running his own contract maintenance company for 47 years, Tom Chase knew all about cleaning office buildings.

When he set out to sell the 125-employee business, he found an experienced transaction attorney to spiff up the sale agreement and help complete the deal.

The attorney Chase chose -- Timothy Duncan of Coleman, Hull & van Vliet in Bloomington -- negotiated the terms of the purchase agreement after Chase and the buyer had settled on a price.

"He basically designed and articulated the language and the terms, as to how to put it together and have it be in my best interests," said Chase, who sold his company to a large, national-level buyer last year. "It was probably a lot cleaner of a deal as a result of him handling it the way he did than what it might have been if this had not all been in writing."

Duncan suggested some provisions that, among other issues, addressed how to handle remaining revenue after the sale and Chase's continued employment with the company he founded in May 1959, Chase said.

"We really dotted our I's and crossed our T's," Chase said. "I'm a guy who came out of school and never had a job until a year ago. I'd always been an entrepreneur and done my own thing."

It's a position other entrepreneurs and owners of closely held, private businesses likely can identify with, especially those with small to medium-size companies who are first-time sellers.

Small-business owners can be so busy running their companies that they have no idea how to go about selling it.

"Businesspeople aren't necessarily familiar with the process," Duncan said. "The whole process is incredibly new to them, and it can be incredibly frustrating as a consequence."

As Chase found, however, a transaction attorney can help an owner with initial preparation for a sale, negotiating first a letter of intent and then a purchase agreement and finally aiding with the closing.

Sellers who involve transaction attorneys as part of a team with other professionals, such as accountants and financial planners, can go a long way toward maximizing a company's value while minimizing tax liabilities and other consequences.

That's a strategy that Duncan recommends and one that's also suggested by Tom Lyons, founder of Faelon Business Brokers in Golden Valley and author of "Exit Strategy," a guidebook to selling businesses. The book includes a chapter concerning the transaction attorney's role in the process.

Transaction attorneys typically charge for their work by the hour, because they don't know in advance what they will encounter from lengthy negotiations to complex documents they might have to draft, Duncan said. Fees can range from \$1,000 or less for a sale involving a purchase price of \$50,000 or less to \$25,000 for multimillion-dollar deals, Duncan said.

The place for a seller to begin, Duncan said, is making sure the company's legal house is in order.

That includes reviewing and updating, if necessary, corporate records, contracts with manufacturers or sales representatives and employee agreements, plus making sure that no outside claims or litigation could threaten the transaction, Duncan said.

Updating those documents can take weeks or months. Negotiations, often intense, also can be time-consuming and disruptive for owners.

"I often liken it to an endurance contest," Duncan said. "Whoever can get through it without going crazy."

When the negotiations lead to a purchase agreement, a section that sellers must pay particular attention to is the one involving the representations and warranties they make about the company, Duncan said. These can address such topics as the seller's authority to enter into the transaction, intellectual property rights, real estate, litigation and liabilities.

Breaching a representation can trigger a claim from the buyer that could reduce the purchase price, Duncan said.

"It's the job of the lawyer and the accountant to make sure those representations and warranties are drafted in a fashion that, if you're representing the seller, protect the seller so they're not nicked-and-dimed to death."

### **A deal lawyer**

Duncan can relate to small-business owners because of the entrepreneurial direction in which he has taken his career.

A graduate of the Hamlin University School of Law, he began practicing law 20 years ago at a large Minneapolis firm, Winthrop & Weinstine.

He left in 1991 to form his current firm with other lawyers who also had left larger firms and also wanted more control over their practices.

### **No shooting elephants**

"I soon realized that I wasn't going to be able go out and shoot elephants," said Duncan, a partner and one of 15 lawyers at Coleman, Hull & van Vliet.

"I was going to have to find smaller clients, and so I networked with people that did the same: accountants, bankers and insurance guys."

Duncan estimated that he works with 200 to 250 clients whose businesses he formed as legal entities. Some have grown to hundreds of employees and end up selling for millions of dollars. He continues to form as many as three companies a week.

"I'm just like them," Duncan said. "Our firm is a small business, just like theirs, and as a partner in a smaller firm, you're kind of in an eat-what-you-kill mode."

Todd Nelson is a freelance writer in Woodbury. His e-mail address is [todd\\_nelson@mac.com](mailto:todd_nelson@mac.com).