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Business Sale Transactions

The specific aspects of a small business sale transaction can vary widely. The legal and financial issues involved in the sale of a retail business can be quite different from those involved in the sale of a construction company or a services business. But some issues arise in nearly every business sale transaction. They include:

1. Will it be a cash sale or will some or all of the purchase price be paid over time?
2. If part of the purchase price will be paid over time, what will the payment terms be? Consider such matters as monthly or quarterly payments versus annual payments. Also consider the rate of interest to be charged on the deferred balance of the purchase price.
3. What security will the buyer give the seller to help assure that the buyer will make the payments? It is customary for the seller to be given a security interest in the assets of the business being sold. This security interest should be secured by a Uniform Commercial Code lien filing. In addition the seller may want security in other assets owned by the buyer such as real estate owned by the buyer.
4. Will the transaction be structured as a stock sale or an asset sale? This issue can have significant tax consequences as well as liability risk implications.
5. Will the seller be expected to enter into a noncompete agreement? If so for how long and what geographical area will be included?
6. Will the seller stay involved with the business for some period of time to train the buyer and to assist with the transition? If so an employment agreement or consulting agreement may be appropriate. Will the seller be compensated for such training or consulting time or is that already factored into the purchase price for the business?

This is not intended as a complete list of issues to be addressed in a business sale but can provide a good starting point. For assistance with business matters please contact James Coons at (541) 686-9160 or jcoons@eugene-law.com.