Managing the Sale Process:

A User's Guide for Selling Your Restaurant Company

Auspex Capital
Financial Advisory and Investment Banking

About the Booklet

Over the last year, Auspex Capital developed and published a series of eight articles designed to help restaurant industry entrepreneurs navigate through the complex, intense and often treacherous process of selling their franchised restaurant business. The articles were designed to provide direct, straightforward and easy to follow advice on how to effectively manage what is often the most important event in a business owner's professional career. The eight articles are reproduced here in their entirety.

About the Author

Christopher Kelleher is a Managing Director at Auspex Capital, a Los Angeles, CA based boutique investment banking and financial advisory firm that specializes in the restaurant industry. In the booklet he shares lessons learned over a nearly 30-year career advising restaurant industry entrepreneurs. Mr. Kelleher and the team at Auspex Capital have advised on 275+ M&A transactions and raised nearly $11.5 billion in financings for franchisees. Since 2004, Auspex Capital has provided franchisees with innovative ideas, comprehensive analysis, value added solutions and flawless execution. Auspex builds long-term relationships with clients and partners with them to identify and capitalize on opportunities that will drive their success.

Check out the video detailing what we do for franchisees. Visit auspexcapital.com to hear from our clients!

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The Auspex Executive Team: Shriram Chokshi (left), Chris Kelleher, and Naveen Goyal.

Shriram Chokshi
Managing Director
(562) 424-5157
schokshi@auspexcapital.com

Christopher Kelleher
Managing Director
(562) 424-2455
ckelleher@auspexcapital.com

Naveen Goyal
Managing Director
(562) 424-5158
ngoyal@auspexcapital.com

Managing the Sale Process:

When is it the Right Time to Sell Your Restaurant Business?

By Christopher Kelleher

Why Are You Asking the Question?

You have been grinding away for years, never taking a vacation, plowing almost every penny you have ever made back into the restaurants and then one day you look up from your computer screen and ask yourself the proverbial question: "I wonder if it may be time to sell my restaurants?"

If this question keeps popping into your head, you need to ask yourself why:

- Bank account is full
- Tired
- Major concerns over macro-economic trends i.e. rising labor costs, commodity cost volatile, etc.
- The brand has peaked
- The capital markets are crazy good
- The tax environment is positive
- Looking for a new challenge
- Rather spend your time chasing around a little white ball or the grandkids
- Better returns are available elsewhere
- Spouse says it's time
- Doctor says it's time

Once you figure out the WHY, you can start thinking about the HOW and WHEN.

Economic Considerations

Most restaurant industry entrepreneurs don't work like dogs for years on end and take unconscionable financial risk just for the fun of it. Making a lot of money is almost always of paramount importance, and therefore, financial considerations will be the critical factor driving the timing of the exit.

From a financial perspective, the ideal time to sell is when all of the following conditions are present:

- Macro-economic trends are positive
- The overall restaurant sector is in favor
- Your segment of the restaurant industry is in favor
- Your brand has strong momentum
- Your business is firing on all cylinders
- The lending markets are robust
- Private equity is plentiful

While it is unlikely that all of these critical economic factors will be bright green at the same time, if they are, it's probably time to get out of town, and pronto. Conversely, if they are all red or mostly red and yellow, you can probably go ahead and renew your subscription to *Franchise Times*. It's important to understand that it only takes one of these factors working against you to have a significant impact on value. By way of example, consider the current plight of Domino's franchisees. The world is pretty darn good for them these days, but with the likes of Uber Eats and Door Dash having recently crashed the delivery party, there are suddenly serious questions about the viability of the pizza sector's business model.

Emotional Considerations

For some restaurant business owners this actually can be as important a factor in the decision process as the financial considerations. Managing a vibrant entrepreneur enterprise can be a pretty exhilarating experience and for most successful franchisees, managing your stock portfolio, ***not so much!***

You may not always think so, but you have developed close personal relationships with employees, fellow franchisees, vendors, maybe even your bankers and lawyers (well, probably not the lawyers). Most of those relationships will go by the wayside when you sell. You need to be ready for that. It's also important to remember that you have a lot more control over your restaurant company than you do the New York Stock Exchange. Another thing you need to think deeply about: What is your next act? Five rounds of golf a week or another deal?

You Can Have Your Cake and Eat it, Too.

If you are uncertain if you are ready to completely walk away, there are realistic alternatives to getting all the way out:

- Sell a minority stake
- Sell a majority stake
- Keep some of the stores
- Keep the real estate
- Stay on as a part-time consultant

The Wrong Reasons to Sell

- Don't like the brand's current CEO. There will be a new one soon.
- Don't like the brand's current CMO. There will be a new one soon.
- Don't like the new store prototype. There will be a new one soon.
- Don't like the new ad agency. There will be a new one soon.
- My rival brand is kicking my butt — they have the Midas touch. Right now that may be true, but it's only a matter of time before their golden boy CMO launches a couple of bone-headed promotions or a series of really awful ad campaigns.
- My longtime director of operations just told me he is moving to Tibet to become a Buddhist monk —tomorrow! That's a real bummer, but that's what high-priced headhunters are for.
- My best restaurant burned to the ground last night. Also a bummer, but nobody got hurt, you're fully insured, and it needed a remodel anyway.

What About the Kids?

Are any of the kids ready, willing and able? You need to be extremely honest with yourself on this because the answer must be a definitive "yes" to all three or it won't have a happy ending for them or for you.

Final Thoughts

Make sure you think through the decision very carefully as it is extremely difficult to un-ring the bell. If you change your mind after the sale process has been initiated, your franchisor, management team, employees and lender will all know you have at least one foot out the door which is likely to adversely impact their commitment to you.

THERE IS NO EASY ANSWER. TIMING, FINANCIAL AND EMOTIONAL FACTORS ALL NEED TO BE THOUGHTFULLY CONSIDERED.

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ARE YOU READY?

Managing the Sale Process:

Getting Your Restaurant Company Ready for Sale — Failing to Prepare is Preparing to Fail.

By Christopher Kelleher

Preparation is Key

In the immortal words of legendary UCLA basketball coach John Wooden, “Failing to Prepare is Preparing to Fail”. In the context of selling your restaurant company, failure is typically defined as not fully optimizing the sale price. Like most things in life, the best way to maximize the probability that you will achieve the desired outcome is to take the following three steps:

1. Clearly identify the objective
2. Put together a detailed plan for achieving that objective
3. Execute on the plan with passion and diligence

If after careful deliberation and thoughtful consultation with your trusted advisors, you determine that it is indeed the right time for you to sell your business, there is an extensive series of actions that you need to take to ensure that you maximize your sale price. The action items can be divided into five broad categories: Facilities; Financial Results; Leases, Franchise Agreements and Contracts; Books and Records; Intangibles.

How to Best Prepare

Facilities:

- Fix the broken stuff and not just the stuff in the dining room.
- Fill in the potholes, seal and stripe.
- The roofs are always the biggest problem. Get them fixed right and make sure you get a transferable warranty from a reputable roofer.
- Replace stained ceiling tiles. Just touching them up won't cut it.
- Paint everything that isn't moving.
- No ice build-up in the walk in. Don't just knock the ice off, fix the broken seal.
- No graffiti, not even a squiggle.
- Make sure the POS system is the current standard.
- Have at least one new piece of equipment in every kitchen. It doesn't really matter which piece of equipment. It's just important the prospective Buyer sees you haven't deferred buying new stuff because you're selling.

Financial Results:

- Keep positive cash flow trends going, but not at the expense of quality of earning, i.e., don't do things that will be perceived as short-term fixes or one-time boosts.
- If your cash flow is heading in the wrong direction take aggressive steps to reverse the trend. If possible, you should delay the sale until the turnaround has firmly taken hold.
- Raise prices, but not too much.
- Close bad stores.
- Clear out the garbage in your store P&Ls, i.e., superfluous service contracts, discretionary expenses and unnecessary costs.
- Don't cut bonuses.
- Don't skimp on overhead at the expense of operations. The buyer is going to impute his own overhead factor anyway.
- If you aren't already doing so, start taking advantage of vendor discounts for prompt payment.
- Shop your insurance.

Leases, Franchise Agreements and Contracts:

- Extend the base terms on attractive leases whenever possible.
- Negotiate additional FMV extension options on leases whenever possible.
- Exercise purchase options on good restaurants.
- Extend franchise agreements on high volume restaurants whenever possible.
- Don't sign long term contracts for anything.
- Review your contracts to see if there are any pending auto extension previsions. If there are have them removed.
- Try to negotiate more favorable contract terms whenever possible.
- Make sure your debt doesn't have big prepayment penalties
- Try to buyout of any equipment leases.
- Complete any mandated remodels or new store development.

Books and Records:

- Get lease files in shape, including all amendments and landlord correspondence.
- Get employee files in shape.
- Organize contract files.
- Make sure maintenance logs for each store are complete and up to date.
- Find all your old property surveys and environmental reports, review them and make sure you have a handle on any issues that were raised.
- Make sure that all financial records are complete, well organized and readily available.
- Understand the tax basis of your assets.

Intangibles:

- Make sure your good people stick around.
- Lock down attractive development opportunities.
- Keep your customer service scores up.
- Don't get sued and if you already are, try to negotiate a reasonable settlement.
- Fix any problems you may have with your franchisor. If he hates you, this will be the time he gets even.
- The same thing goes for your landlords.

Final Thoughts

The best way to improve the probability that you will realize the full value of your restaurant business at the time of sale is to do the hard work needed to be successful. Start the planning and preparation at least six months, and preferably a year before you plan to take your company to market. While you can't be blind to general market conditions, putting up the for sale sign before you have vacuumed the carpets and mowed the lawn, will needlessly impair value and limit the buyer pool. Do what is needed to be successful.

WHILE THERE CAN BE NO GUARANTEE OF SUCCESS, LUCK FAVORS THE PREPARED.

Managing the Sale Process:

When It's Time to Sell Your Restaurant Business, Hire an Investment Banker, Not a Broker.

By Christopher Kelleher

What's the Difference?

The Broker introduces you to the Buyer and then largely sits on the sidelines waiting to collect his commission check. The Banker is the quarterback of the team who brings a wealth of knowledge and experience to the game, is intricately involved in all facets of the transaction and is responsible for orchestrating and driving the team down field and across the goal line.

Choosing the Right Team to Represent You

When selling your business, choosing the right team to represent you is among the most important decisions you will make in your professional career. The process of selling your business is going to be expensive, time consuming and stressful. You need to hire someone you are comfortable working closely with for an extended period of time. You need more than a charming salesman to maximize value and minimize risk. You need an expert in the field. There is no room for a generalist. Learning on the job may help the next guy, but it's of no use to you.

Choosing the Right Banker

Interview Multiple Candidates - We Recommend at Least Three.

A Note on Fees: The fee is an important consideration, but it is only one of many and not the most important.

Check references: Your banker must be able to provide you with a roster of clients that will confirm that what was promised was delivered.

Understand who's on the banker's team: Depth and breadth of experience is critical. A one-man band or a weak and inexperienced support team typically translates into sub-optimal results.

Ask to see marketing materials from previous deals: Nice pictures of beautiful new restaurants and juicy hamburgers are fun to look at but how important are they really to getting your business sold?

Ask to see redacted examples of the financial analysis and valuation from previous deals: The numbers ultimately drive the deal and an effective representative must know his/her numbers.

Beware of the refrain: "I can get you 8 times.": You need to ask the question: "8 times what?" The EBITDA multiple the broker is promising is only half of the equation. A good banker will focus your attention on optimizing cash flow. The market determines the multiple.

Taxes matter...a lot!: Gross dollars are fun to talk about, but net after-tax dollars are what shows up in your bank account. A good banker will spend the time at the front end of the process working with your CPA to figure out the tax math and develop strategies to minimize the tax impact so that you're not surprised on April 15.

A Note on Price: Price is obviously very important, but it is hardly the only critical factor. "Win on price but lose on terms" is often the outcome for a poorly represented seller.

The franchisor approval process can often be a bear. The banker should have extensive experience navigating through that process. The sale process will take at least six months. Anyone that tells you differently isn't telling you the truth. Don't be in a hurry or you won't get the best deal.

Make sure there is a personality fit with the banker. The sale process is intense, time consuming and stressful. You need someone that you can trust and work closely with in that kind of environment.

> ***Price is very important but is hardly the only critical factor. 'Win on price but lose on terms' is often the outcome for a poorly represented seller.***

The Sale Process is Complicated

Historical financial analysis, proforma adjustments, franchise agreement review, lease review, capex mandates, brand trajectory, commodity cost trends, local wage rates, hold or sell the real estate, valuation, auction or targeted offering, teaser, bid instruction letter, first round bidders, second round bidders, best and final, automated data room management, LOI, APA, title, survey, phase 1, phase 2, lease assignment, franchisor approval, assignment of contracts, representations and warranties, indemnity basket-first dollar or tipping, escrow or seller personal guaranty, weekly update calls.

And then there are the lawyers. Don't get me started on the lawyers. Seller's lawyer, Buyer's lawyer, franchisee lawyers, real estate lawyers, landlords' lawyers, bank's lawyer, franchisor's lawyer.

Negotiating the asset purchase agreement is the banker's job, not the lawyer's. Obviously, there is a lot of legal crap in the APA so you need a good lawyer, but at the end of the day, this is, first and foremost, a business deal. The lawyers should not drive the business deal, they should document it.

To "win" the APA process you need the support of an experienced, creative problem solver who is a poised and skilled negotiator.

Final Thoughts

The sale of your business is typically the culmination of your professional career and the importance of selecting the right investment banker to represent you cannot be over emphasized:

DO YOUR HOMEWORK SO YOU CAN MAKE THE RIGHT CHOICE.

Managing the Sale Process:

Proforma Cash Flow Adjustments: What Works and What Doesn’t

By Christopher Kelleher

The Price of a Restaurant

The price restaurants change hands at is typically based on a multiple of cash flow. It is a Buyer’s expectation that the cash flow he is buying is:

1. Verifiable
2. Sustainable
3. Financeable

To determine if those three tests are met the Seller starts with the actual historical cash flow then makes adjustments to reflect circumstances that actually have or are virtually certain to impact those cash flows, either positively or negatively. Conflict between Buyer and Seller can arise if there is disagreement as to whether any of the proposed adjustments fail to meet these three tests. The onus is usually on the Seller to substantiate any cash flow adjustments. To maximize the likelihood the Buyer will accept the Seller's adjustments, the Seller needs to spend the time and effort required to build a well-reasoned and well documented argument in support of the adjustments. Because these adjustments are then multiplied by anywhere from five and eight times, the stakes can be enormous.

Proforma Adjustments

What Works:

- Partial year stores, both for new stores and remodel closures
- Bona fide one-time expenses
- Unusual weather-related closures. (Not snow in Minneapolis)
- Bump from remodels especially if you have multiple prior examples or system averages that can substantiate
- Renegotiated leases or other contracts
- New store pre-opening and ramp-up costs
- Sales transfer from closure of a nearby store
- Sales increases and operating cost efficiencies from a scrape and rebuild or offset
- Closure of a nearby competitor especially if you can extrapolate a clear trend line
- Excessive R&M which can be shown to be substantially above brand norms or expensed as a result of the tax code that favors expensing rather than capitalizing
- Store closure if lease and franchise agreement liabilities can be extinguished
- All non-cash charges
- Work Opportunity Tax Credits, if they have been ongoing for several years
- Reduced insurance costs as a result of better claims management
- Reduction in property taxes as a result of negotiations with local county tax assessor

What Doesn't Work:

- Cuts in advertising
- Cuts in bonuses
- Labor and benefits cost reductions
- Lower overhead other than reduction in owner's compensation and benefits
- Extrapolating lower commodity costs
- New product launch
- Generally improving economy
- Opening of a new traffic generator
- Temporary franchisor incentives
- Cash shortages
- Miscellaneous income unrelated to restaurant operations

Final Thoughts

The key to winning the negotiation with the Buyer on a proforma adjustment is to make sure that the adjustment is defendable, quantifiable and sustainable. A Seller should also focus on just the largest adjustments. Trying to push through a large number of small adjustments will burn out most buyers leading to quality of earnings concerns and deal fatigue.

DON'T BE TOO GREEDY!

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Managing the Sale Process:

More is More in the Letter of Intent

By Christopher Kelleher

Words to Live By When Negotiating the LOI

Business consultants are fond of saying: “Less is More”, but when it comes to the right strategy for negotiating a letter of intent (“LOI”) to sell your QSR business, we say: “More is More”. Here’s why:

The Seller’s negotiating leverage is highest when prospective buyers are competing to win the mandate to buy your business. When suitors are jockeying to catch the eye of the princess, they dress to the nines, send flowers and bring chocolates, but once betrothed, the bridegroom has a tendency of turning into Seth Rogan, (or for the older folks in the audience, Al Bundy or Archie Bunker). Once the winning bidder has the deal locked down under a formal LOI, the other contenders quickly lose interest and move on to the next deal. When that happens the Seller invariably turns from the hunter to the hunted.

The goal of the Seller should be to craft a thoughtful and robust LOI which will provide the complete framework for the transaction. The detail and the legalese will follow in the APA, but all of the major deal points need to be

articulated and agreed to prior to committing to a Buyer. In a traditional QSR deal the usual areas of focus are:

- **Deal timelines**
- **Reps and warrants**
- **No shop provisions**
- **Purchase price allocation**
- **Indemnity standards and limitations**
- **Expense allocations**
- **Due diligence standards**
- **Standards for assignment of contracts**
- **Requirements for lease assignment**
- **Environmental review protocol**
- **Title review protocol**
- **Employee transition issues**
- **Non-compete requirements**
- **Deposit protocol**
- **Included assets**
- **Excluded liabilities**
- **Protocol for assignment of contracts**
- **Buyer financing contingencies**

Sophisticated buyers will push hard to keep the Seller focused on the purchase price and seek to leave as many critical deal points open as long as possible. The smart Buyer knows that the longer he can delay committing to the details, the greater the likelihood the other bidders will have moved on and the fewer concessions he will need to make to retain control of the deal. Deferring the negotiation of the major deal points until the APA phase will all but assure that the Seller is ceding important negotiating leverage to the Buyer. Experienced buyers know that once a Buyer has been selected, the Seller is typically loath to restart the auction process and that a deal that comes back on the market runs the risk of being stigmatized as a "broken deal".

Waiting to negotiate the critical deal points until the APA has the added disadvantage that the process will be adjudicated by prickly M&A lawyers with billing rates higher than the GDP of Costa Rica. A thoughtful and well crafted LOI negotiated between the business people will dramatically simplify and streamline the APA process.

> ***If a buyer is going to be quirky, difficult or inflexible, better to know it before other potential buyers have been chased away.***

While you can count on the APA process being about as pleasant as getting a root canal when trying to get over a bad bout of the flu, at least with a thorough and well-crafted LOI, it will be much tougher for the buyer to re-trade previously documented positions on key issues.

A rigorous LOI process has the added benefit of flushing out the contenders from the pretenders. If a buyer is going to be quirky, difficult or inflexible, better to know it before other potential buyers have been chased away.

Prospective buyers will use a variety of excuses to avoid being pinned down on deal terms during the LOI process:

Objection: "I don't want to spend a bunch of legal dollars before I have a mandate to buy the business." ***Response:*** Agree. There is no reason for lawyers to be heavily involved in the LOI process. The LOI process is about the business people developing the framework of the deal and that process is typically most efficient and effective when the lawyers are not driving the discussion.

Objection: "I don't want to spend a bunch of time on a non-binding LOI and then go over the same issues when negotiating a binding APA." ***Response:*** The LOI will provide the framework for the deal and we have no intention of re-visiting the major deal points already negotiated in the LOI during the APA process. The APA process is designed only to fill in the details of the previously agreed to deal points.

Objection: "My CPA is too busy right now to review the purchase price allocation." ***Response:*** No problem, our CPA has already done the work.

Objection: "We can't be expected to review all the contracts before we even have a deal." ***Response:*** We don't. The QSR business is not contract dependent. There are typically only a few critical contracts the majority of which most buyers are already very familiar.

Objection: "That's not the way we do it." ***Response:***
Ok, next Buyer, please.

Final Thoughts

The LOI is undoubtedly the most critical document in the entire sale process. Make sure you give it your full time and attention.

INVEST THE TIME IN THE LOI. IT WILL PAY BIG DIVIDENDS.

Managing the Sale Process:

A User's Guide to Surviving the Asset Purchase Agreement Process

By Christopher Kelleher

The Backdrop

- The APA process is going to be a painful, difficult and expensive process. That's just the way it is!
- The process doesn't run itself. The principals need to stay in control.
- Expect anywhere from 45 to 145 days to complete the process. If you stay in control it will be on the shorter side, if you don't it will be on the longer side.
- Timelines need to be flexible. It always takes longer than you think it will.

The Advisors

- Hire a good investment banker.
- The investment banker earns a big piece of his fee in the APA process. A good investment banker will have assisted with the development of a comprehensive LOI that laid the foundation for the APA.
- Hire an experienced and solution-oriented M&A lawyer.

- If your lawyer has to be the smartest guy in the room, find a new lawyer.
- Personalities matter. Make sure your banker and lawyer understand that going into the deal.
- Don't let the lawyers run the process. They get paid regardless of the outcome. The business people must stay in control of the process.

Getting Started

- Don't start working on the APA until a comprehensive LOI has been executed.
- Non-binding LOIs should be viewed by both sides as binding.
- Don't let your lawyer start with a completely one-sided APA template. It will start the process off on a bad note that will be very difficult to recover from.
- Franchisor APAs are worse than useless in franchisee to franchisee deals.

The Right Mindset

- Positive deal dynamics are critical. Don't squander goodwill on minor issues.
- Once trust between the Buyer and Seller is lost it is nearly impossible to re-establish it.
- The other side has valid arguments.
- The low probability risks are often the hardest and the most expensive issues to negotiate.
- Everything is negotiable, but does it really need to be?
- Be flexible. You're not going to win on every issue.
- Be willing to trade issues that aren't that important to you with issues that are.
- If something is really important to the other side you can get a whole lot for it if you can be flexible on that point.
- There is a work around for almost everything.
- Win on price but lose on terms is a very bad strategy.

Mechanics

- The indemnity section is important, but not as important as your lawyer thinks it is.
- Earnest Money Deposits are a waste of time in QSR deals.
- Because of the franchisor approval and financing contingencies, the buyer will be able to walk until the day of close. There is nothing you can really do about that.
- The best way to keep a buyer engaged is to make sure he is spending lots of non-refundable dollars on the deal.
- Remember casualties and condemnations are very rare events.

- If a seller wants to make it difficult for you to do an appropriate level of due diligence don't do the deal.
- The APA disclosure schedules are always a time-consuming nightmare.
- Start the disclosure schedules early. They are going to take a lot longer than you think.
- The disclosure schedules are really important. Be diligent and thoughtful when preparing them.
- Good word processing skills are critical. Whichever side has the better word processing skills should have "control" of the document.
- Things change. There will be amendments.
- If the other side needs to change something, get something reasonable in return.

Final Thoughts

Watching (and paying for) lawyers fighting over minutiae is never a lot of fun. The best way to minimize the pain is to make sure you have a thorough and robust Letter of Intent in place before you start the APA process and that you:

STAY INVOLVED AND DRIVE THE PROCESS.

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Managing the Sale Process:

Due Diligence - A Very Important Game of Show & Tell

By Christopher Kelleher

The Positive Influence of the Due Diligence Process

Due diligence is the process by which a buyer can either talk himself into buying something or talk himself out of it. Assuming the Seller really wants to sell, he'd best get organized and take this part of the sale process very seriously. The broad due diligence categories and the critical elements in each category are enumerated below.

The due diligence process is invariably intrusive and time consuming, but a well-organized seller can greatly reduce the frustration and expense that often plagues the unprepared. Prior to launching the sale process, your investment banker should work with your CPA, lawyer, construction manager and administrative staff to build a comprehensive and thoughtfully organized virtual data room.

The Buyer's impression of the quality of the organization and its management team will be significantly influenced by the due diligence process. Done right, the potential Buyer comes away confident that he is bidding on a business that has its act together. Done poorly, the potential Buyer becomes anxious and tentative.

Transparency

Perhaps even more important than being well organized is being transparent. Hiding the soap is always a very bad idea. We are not saying to put your ugliest kid in the center of the family photo, but he does need to be in the picture. There is no harm in emphasizing the most positive elements of your story, but never purposefully provide incorrect information or overtly hide problems. If you do, and you get caught, you're screwed. If you get caught before the deal closes, the buyer will either run for the hills or become distrustful and very difficult to deal with. If you get caught after the deal closes, you're going to get sued and you're going to lose a lot of money.

> ***Be transparent. We're not saying to put your ugliest kid in the center of the family photo, but he does need to be in the picture.***

Categories and Critical Elements

Facilities—80% of the Issues are Roofs and Parking Lots

- Informal Site Visits—Pre-bid
- Site inspections—Formal post APA
- Roof inspection—Buyer or seller's roofer?
- Equipment inventory and testing
- Refrigeration and HVAC testing
- Capex history
- R&M vendor list
- In-house maintenance team should chaperone buyer's team
- Preview buyer's inspection checklist
- Buyer's repair list provided to seller on a timely basis
- Who pays for what?

Employees—When to Provide Access is Critical

- Management meeting
- Employee turnover meeting
- Employee files
- Employee handbook
- Employee benefits
- Vacation pay—paid out or transferred

Property—Maintaining Complete Property Files is the Key to Minimizing Seller Costs

- Lease review
- Lease assignment
- Title review
- Surveys
- Zoning letter
- Property tax bills
- Title objections letter
- Environmental review: Phase 1 and 2. Watch for vapor intrusion issues
- Who pays for what?

Financials—Full Disclosure Via Complete and Detailed Financial Records is Crucial

- Last three years of monthly unit level P&Ls
- Last three years of corporate financial statements
- Last three years' detailed overhead schedule
- Access to franchisor sales/royalty data
- Provide access to Buyer's forensic accountants
- Detailed back up for any proforma adjustments
- Quality of earnings test

Franchise—Hopefully the Franchisor Won't Screw Things Up For You

- Franchise agreements
- Development agreement
- Franchisor development mandate
- Franchisor remodel mandate
- Franchisor performance reviews

Miscellaneous—Unfortunately This Stuff is Important, Too

- Contracts: Safes, POS, security cameras, propane, telecom
- Contract assignment
- Permits and licenses
- Insurance loss runs
- Legal claims history

Final Thoughts

Some buyers are more focused on the financial disclosures, while others concentrate on the facilities. Typically, but not always, larger deals involve more sophisticated buyers and the due diligence process is more robust. Deals involving private equity buyers, particularly when it is the PE firm's first foray into the restaurant industry, can be extremely rigorous involving Big Four forensic accountants doing quality of earning analysis, building engineering climbing on roofs, equipment technicians testing every toaster and high ticket Wall Street lawyers going through every shred of paper in the data room, twice. If you want top dollar for your business, you're just going to have to put up with this crap. Get organized, be prepared and always remember:

YOU'RE PLAYING SHOW AND TELL, NOT HIDE AND SEEK.

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Managing the Sale Process:

The Post-Closing Adventure - It Ain't Over 'Til It's Over.

By Christopher Kelleher

You're Almost There...

At long last, your deal is absolutely, positively closing tomorrow! The culmination of your professional career is at hand. No more trying to coax pimple-faced teenagers to come in to work. No more 400-pound customers returning a cold, but half eaten, hamburger. No more 105-year old lady parking her Buick LeSabre in the dining room or the delivery driver running over the drive thru sign for the third time this month. Soon, it will all be someone else's problem. It's time to ride off into the sunset, to lay on a white sandy beach and count your money. Not so fast, my friend. Unfortunately, it's not quite that simple. While tomorrow will undoubtedly be a great day, there is still work to be done and risks to be managed.

What's Left to Be Done?

Contractual Tail Liabilities. As ugly a concept as it sounds. The APA always mandates that the selling shareholder either fund an escrow, post a bond or provide personal guarantees from the shareholders to protect the Buyer from pre-closing liabilities. If you want to avoid post-closing headaches, like chasing down minority partners for their share of a residual claim, make darn sure you clean up as much as possible prior to close.

Statutory Tail Liabilities. Another real gem. Varies from state to state. Can be up to five years. The selling entity is required by law to stay active and maintain adequate reserves to cover any residual debts. Shareholders will be liable to the extent of any distribution they receive if the company is unable to pay its contractual obligations.

Residual Franchisor Liability. Most franchisors are pretty good about getting everything they are owed prior to allowing the franchise agreements to transfer, but most also have a nice little zinger an page 73 of their franchise agreement which states: "If the guy you sold to screws up in the first year after the sale, we are coming after you."

Residual Lease Liability. Cry all you want but you are never getting off that lease guarantee you signed.

Environmental Claims. Owning a restaurant property that was a former gas station is like stepping in gum. You're never going to get it completely off.

Tail Liability Insurance. Very important to have and typically not that expensive. Call your insurance broker a month before the deal closes and get a couple of quotes.

Banker Don't Abandon Me. If you hired the right investment banker, he won't disappear the day he gets his check. If you didn't, he will come out of hibernation on the closing day to collect his check and then go back into hibernation.

Keep the Help Around for a While. There is going to be an enormous amount of post-closing administrative clean up. Expect 60-90 days to get everything wrapped up. Please keep some admin support around for a couple of months to tie up loose ends.

Buyer Complaints. The Buyer is going to do a lot of post-close complaining. For the first 30-45 days, listen and if its legit, work out a quick settlement. After that, he is probably just a whiner.

Tax Returns. You are going to need to file a stub tax return the year after you sell so make sure your controller/CFO stays around long enough to get everything completely buttoned up before they go. If he/she is going along with the deal, make sure you have an agreement with the buyer to be able to use their services for a while.

Accounting. Make sure you have clear and robust post-closing due from/due to language in the APA. Post-closing deposits are going to find their way into your credit card accounts. It always happens. Give them back (right away).

Vendors. Vendors are going to continue billing you. Keep good records and make sure you only pay what you owe.

Post-Closing Restrictions. Pay attention to the covenant not to compete. Very bad things can happen if you don't. If you signed a non-solicitation or non-hire, don't.

Former Employees. Expect lots of calls from your former employees complaining about how bad the new guy is unless of course you were a jerk to them, then expect to hear how much better the new guy is to them than you were.

Re-investment Risk. Trying to figure out what to do with all the money that just got plopped into your checking account is what we bankers call 'a high quality problem', but it is a problem nonetheless, and hopefully, a very big one at that. Plan and be prepared.

The Tax Bill. The tax bill is going to be heartbreaking and soul crushing. Try not to dwell too much on it or it will drive you crazy.

Record Keeping. Keep all of your old paperwork for at least 100 years. If you were smart enough to have gotten it digitized, keep it for 1,000.

Being a Landlord. If you kept the properties you didn't really sell, you 'partnered up'. If you are your Buyer's landlord, I hope you picked the right guy!

Seller Carry Back Note. "Neither a borrower nor lender be, for loan often loses both self and friend…." If you carried back a note, you are more than likely unsecured and subordinated to his acquisition lender. I really hope you picked the right guy!

Final Thoughts

Congratulations, you sold your restaurant business, but always remember: IT AIN'T OVER 'TIL IT'S OVER.