

Getting the Most Out of Confidentiality Agreements

When it comes to buying or selling a business, there is no replacement for a solid confidentiality agreement. One of the key ways that business brokers and M&A advisors are able to help buyers and sellers alike is through their extensive knowledge of confidentiality agreements and how best to implement them. In this article, we will provide you with an overview of what you should expect out of your confidentiality agreements.



A confidentiality agreement is a legal agreement that essentially forbids both buyers and sellers, as well as related parties such as agents, from disclosing information regarding the transition. It is a best practice to have a confidentiality agreement in place before discussing the business in any way and especially before divulging key information on the operation of the business or trade secrets.

While a confidentiality agreement can be used to keep the fact that a business is for sale private, that is only a small aspect of what modern confidentiality agreements generally seek to accomplish. Confidentiality agreements are used to ensure that a prospective buyer doesn't use any proprietary data, knowledge or trade secrets to benefit themselves or other parties.

When creating a confidentiality agreement, it is important to keep several variables in mind, such as what information will be excluded and what information will be disclosed, the term of the confidentiality agreement, the remedy for breach, and the manner in which confidential information will be used and handled.

Any effective confidentiality agreement will contain a variety of key points. Sellers will want their confidentiality agreement to cover a fairly wide array of territory. For example, the confidentiality agreement will state that the potential buyer will not attempt to hire away employees. In general, this and many other details, will have a termination date. The specifics of how confidentiality is to be maintained should also be included in the confidentiality agreement.

Parties should agree to hold conversations in private; this point has become increasingly important due to the use of mobile phones and in particular the use of mobile phones in out-of-office locations. Additionally, it is prudent to specify that principal names should not be used in outside discussions and that a code name should be developed for the name of the proposed merger or acquisition.

Safeguarding documents is another area that should receive considerable attention. Digital files should be password protected. All paperwork should be kept in a safe location and locked away for maximum privacy when not in use.

In their enthusiasm to find a buyer for their business, many sellers have overlooked the confidentiality agreement stage of the process. Most have regretted doing so. A confidentiality agreement can help protect your business's key information from being exploited during the sales process. Any experienced and capable business broker or M&A advisor will strongly recommend that buyers and sellers always depend on confidentiality agreements to establish information disclosure perimeters.

About TOGA, The Oil & Gas Advisor:

The Oil & Gas Advisor's team of M&A Brokers and advisors specialize in selling businesses related to the oil, gas, and energy industry. Clients include manufacturers, distributors, services, construction and logistics firms. TOGA is USA's expert in selling propane companies. Since 1987, they have been investment banking merger and acquisitions advisors, providing certified business broker and intermediary services. TOGA's experts are award winning industry leaders with offices in Texas, Oklahoma and Pennsylvania.

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