



## Buying and Selling a Business in Minnesota

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Selling your business or buying a new business can be a complicated, arduous process, but it doesn't have to be.

There are three basic types of legal processes the sale of a business can take – a stock sale, an asset sale, or a merger. For small, privately held businesses, the first two are the most prominent, although a merger (or reorganization) may be the right choice under some circumstances, especially given its qualification as a tax free transaction. A stock sale is exactly what it sounds like – the seller sells his or her stock in that business to another person(s) or to another corporation. In an asset sale, the business itself sells all of its assets (cash accounts, inventory, accounts receivable, contract rights, licenses, customer lists, real property, motor vehicles, furniture, equipment, franchise rights, intellectual property, etc.) to the seller, which is usually a newly formed entity created to purchase the assets. All of these have different outcomes as it concerns the liability of the parties to the sale.

The choice of how to structure the sale of the business also has differing tax implications for both the seller and the buyer. Some of these implications depend upon whether or not the existing business is encumbered by secured debt obligations, and whether or not the buyer is using financing to purchase the business, among other issues.

Further, your transaction should identify what documents the seller is required to provide to the buyer before closing, what warranties both parties are making to the other in the transaction, who is taking on the liabilities after the agreement has been signed, but before closing takes place, and what happens when either party breaches the purchase agreement.

Additional considerations include: are the existing employees (including the seller himself) staying on as employees, and if so, in what capacity?; Is the seller the only shareholder, or are there minority shareholders that will need to agree to the purchase?; Who is responsible for any environmental issues with the business; Will the provisions of the purchase agreement survive the closing and be enforceable down the road?

At Libby Law Office, we would be happy to sit down with you and discuss any questions or concerns you have if you are thinking about selling your business, or thinking about purchasing another business. We can help you identify the important issues from the unimportant ones, and help navigate you towards success in your transaction.