



Non- compete agreements: How do they come into play when selling your company?

There are two scenarios that immediately come to mind when someone mentions the word “non-compete”. The first time I typically have to discuss this question is when someone wants to sell their business. If the owner is not ready to leave the industry, then generally he/she must either maintain ownership of the business or work as an employee in the business that he/she previously owned.

Savvy buyers do not want to buy a business where the previous owner can potentially start up a new company after the sale and subsequently take away a significant percentage of customers from the original company.

If the previous owner decides to stay on with the buyer as an employee, he/she will have to sign an employee non-compete agreement. These agreements are viewed by the courts as having more “teeth” than the normal non-compete agreement.

The second scenario is when a buyer is looking at a potential seller’s company. If the key employees and the sales staff have not signed standard enforceable non-compete agreements with the subject company, then the buyer will either reduce the offering price or ask that the employees to sign non-compete agreements with the current owner.

These agreements can be enforceable if they are limited in geographical range, compensation is given to the employee for signing the agreement, and they are limited to a reasonable time period, which is normally one year. Consult with an attorney that specializes in non-compete agreements when treading in these murky waters!

The bottom line is this: If you are the owner of a business and are not ready to sign a non- compete, then you are not ready to sell your business; and if your key employees and sales force have not signed a non-compete agreement already, you need to have them do so if you wish to obtain the most cash for the equity in your business!

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