



{ *hello*

DESTINY CALLING?

Don't Be Afraid to Answer the Phone

A quotation from my nine year old son's favorite movie, *Bolt*, has an important message for business owners. While, admittedly, the quote comes from a cartoon hamster named Rhino who is volunteering himself to help a "super dog" named Bolt, in today's economic environment we should all take inspiration where we can get it, right?

{ *Rhino: "Ring, Ring! Who's there? Destiny? I've been expecting your call!"*

Destiny is calling business owners every day in the form of investment bankers and finders hired by private equity funds or business development executives of public companies. These professionals are looking for investment opportunities and often will "cold call" specific companies that a client has targeted to ask if the owner has an interest in a transaction. Oftentimes, business owners never return these calls for fear that it is just a business broker looking for a fee or, if they do engage in discussions, that someone will leak confidential information or spread the word they are looking to sell. Those are valid concerns, but asking two key questions can help a business owner determine if further discussions are worthwhile:



1. What is the name of your business and what is your contact information?
2. Do you get paid a fee if a transaction takes place and who pays the fee?

If the caller works in the business development office for a reputable company, tell him or her that you would like to set up a time to talk later. In the interim, you can check out the person's and/or company's credentials before the next call. You should also consider having a trusted advisor with merger and acquisition experience on the call who can bridge the gap between what is being said

and what is really meant, and an extra set of ears also helps chronicle the conversation.

At this stage, a confidentiality agreement is generally not necessary because you will be mostly listening and asking questions. You should learn why they think your business is a fit and what they know about you already. If you like what you hear, a confidentiality agreement should be signed before having any discussion that discloses material information. The confidentiality agreement should prevent disclosure of a potential transaction and also contain a non-solicitation clause that prevents hiring any of your key employees if a deal is not completed. Even with a signed confidentiality agreement, customer identities, pricing strategies, and trade secrets should not be disclosed until much later in the process.

If the caller is a finder or investment banker, the answer to the second question will certainly be "yes" and you will end up paying their fee either directly or in the form of a lower purchase price for the business. However, investment bankers and finders often can earn every penny by either obtaining a higher value for the business if engaged by the seller or finding opportunities that would not otherwise be known to a buyer. Many are also very skilled in focusing on the important issues that must be resolved in order to complete a deal. If the caller wants to represent you, then most likely there is no "real" buyer interested at that time and he or she is just fishing for an engagement. If the caller is representing a buyer, he or she should be willing to disclose the name of the buyer at the outset. There are landmines in this process, however, so you should consult with an advisor experienced in M&A to help you avoid them.

It is a pretty good time to be a seller right now (or to take on an equity partner if you want to continue to operate your business but you want to "cash out" a portion of your company's value). Federal capital gain rates are still at 15%, strategic acquirers have lots of cash on their balance sheets, financial buyers such as private equity funds are hungry for new deals after spending time on the sidelines during the recession, and banks are funding acquisitions again. Many business owners wonder how they can get started – the first step can be as simple as answering a phone call. Contact our firm if you have any questions.

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