FLB Law

FOGERTY | LAMBERT | BERNHEIM

CASE STUDY

FLB Law Creates Deal Structure that Facilitates Business Sale, Protects Client's Interest and Allows for Retirement

SITUATION

A client decided to sell her small family-owned business to an existing employee. She had been operating the business for a number of years and was looking to retire and spend more time with her family. Another long-standing FLB Law client in the same industry referred the company to the firm. FLB Law drafted the initial framework for the sale, which involved the employee purchasing all the company's assets, with the seller financing the transaction. The framework required the buyer to make an up-front payment at closing, with a note for the balance due in five years as a balloon payment.

CHALLENGES

As we progressed through negotiating a Letter of Intent, FLB Law learned that the buyer lacked the funds to make the initial payment. He was planning to obtain a Small Business Association (SBA) loan to fund the initial payment, which would require that he put up the company and other assets as collateral to the SBA for borrowing the money needed.

However, since our client was financing the purchase, we needed to have our own collateral to protect the remaining amount owed. Unfortunately, the SBA would only lend the buyer the funds if it was the first position lien holder on all business assets. FLB Law discouraged our client from closing in a second lienholder position, so we had to find another way to structure the transaction.

SOLUTION

Despite the challenges of structuring the deal, we were determined not to let it disrupt the sale since our client was eager to enter retirement and enjoy more time with her family. Together with our client, we explored different scenarios and ultimately decided to modify the deal structure from an asset purchase to a stock purchase. In doing so, our client agreed to revise the terms to allow the buyer to come up with less money at closing. The transaction would still be seller-financed, with a larger balance due to our client via a promissory note. This new arrangement eliminated the need for the buyer to borrow funds from the SBA.

By avoiding involvement with the SBA, we could fully secure our client's interests and place her in a first lienholder position. Additionally, we implemented safeguards such as a key man life insurance policy, which is designed to pay death benefits in an amount sufficient to cover any balance on the note to our client upon the death of the buyer. A key man life insurance policy is a tool we often use to protect our clients who finance the sale of their business.

Once the deal was restructured, we moved quickly to closing, and our client is now happily enjoying her retirement.