ROAD BLOCKS TO DEALS AND PATHWAYS AROUND THEM

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Rare is the intermediary who has not been frustrated by roadblocks which delay or forestall the consummation of a deal. No matter how carefully he has performed the research for his assignment, qualified the capabilities and financial strength of the prospect, and successfully orchestrated negotiating sessions, a variety of obstacles always seem to surface which stand in the way of a deal. The process can be very discouraging.

If the intermediary anticipates the barriers which may arise, however, he can develop strategies to find a way around them. It is exactly for such service that he is being employed.

What are the roadblocks and how do deals get done in spite of them? Sooner or later the intermediary will be faced with many of the following situations which stand in the way of the deal.

ROADBLOCK: 1

The seller has placed an unrealistic value on his business. The intermediary must then develop benchmarks which lead the client to accept a lower valuation.

Strategy:

1. Recognize when the seller needs to be educated and communicate your own analysis of valuation at the beginning of the assignment.
2. Work with the client to establish a range of values which he will accept.
3. Research sales of similar businesses in the private and public market and share this information with your client.
4. Encourage prospects to make conditional offers in letter of intent form in a detailed fashion supporting their valuations with logic, reason, and comparative transactions.

ROADBLOCK: 2

Seller's concern for confidentiality which inhibits an approach to the most likely buyers. The intermediary must endeavor to convince the client that a controlled approach to the most synergistic prospects can be structured to protect the business and realize the highest price.

Strategy:

1. Careful preparation and use of confidentiality agreements and blind inquiries.
2. Release of proprietary and financial information in stages so that the client has the opportunity to gain confidence in the integrity of the prospect as negotiations proceed.
3. Qualification of the prospect's strategic objectives and financial capacity.
4. Research of previous acquisitions completed by the prospect and its reputation in its industry.
5. Encourage contact with competitors, suppliers, and customers as the assignment progresses and as the seller becomes more relaxed about confidentiality. The client must be made to realize that such parties will place the highest value on his business.

ROADBLOCK: 3

Negative changes in the trend of business which develop during the assignment or during due diligence. In such instances the intermediary must work to minimize the impact of the negative trend on the prospect's offering price.

Strategy:

1. Determine if negatives can be explained logically. Raise the question "Should the business be taken off the market?"
2. Provide full and timely disclosure of the changes to the prospect as issues develop to build confidence between the parties.
3. Recruit additional prospects in order to create a competitive environment.
4. Utilize a "when and if" letter of intent under which the seller will receive his asking price of the trend should reverse.

ROADBLOCK: 4

Environmental problems involving the seller's plant and real estate.

Strategy:

1. Remove environmental issues as a source of problems by requesting a site appraisal at the outset.
2. Review insurance coverage applicable to a potential environmental problem.
3. Utilize an asset rather than a stock sale leaving potentially contaminated assets with the seller.
4. A warrant from the seller that he will be responsible for any clean up that may be required within a specified time limit.

ROADBLOCK: 5

Sellers emotional reluctance to "let go" of the business even after he has agreed to the offer. Patience and understanding are required here.

Strategy:

1. A deal structure in which the seller retains an equity in the business and continues in management.
2. A seat on the Board of Directors of the prospective buyer.
3. Employment contracts with family members in management and with key employees.
4. Agreements as to the future conduct of and strategy for the business.
5. Solicitation of offers from interested prospects with "drop dead" time limits.

ROADBLOCK: 6

Where the selling client has a "hidden agenda." Such an agenda may occur, unknown to the intermediary, when a client wants to obtain a market price for the company for use when he is negotiating a sale with family members or with prospects outside of the scope of the intermediary's contract.

Strategy:

1. An exclusive contract.
2. A discounted fee to apply if a sale is made to a party not introduced by the intermediary.
3. A substantial retainer.

ROADBLOCK: 7

Concern for the future of family members working in the business.

Strategy:

1. Contracts for the family members and key employees.
2. Investigation as to buyer's dealings with family members in previous companies it has acquired.
3. Spin-off of sections of the business before the sale to family members.

ROADBLOCK: 8

Problems in financing the deal.

Strategy:

1. Qualification of the buyer to determine its capability to complete a transaction of the size contemplated.
2. Discussion at the outset with seller as to his willingness to help finance the deal by accepting notes, non-competes, and employment contracts as part of the purchase price. The client should be aware that some businesses cannot be bank financed.
3. An investigation of financing sources used in the client's industry at the outset of the assignment.
4. Discussions with the client's banker when this step will not jeopardize the client's banking relationship.

ROADBLOCK: 9

Differences in culture between the buyer and the seller which most often develop in international transactions.

Strategy:

1. Develop a relationship of trust with the prospect as well as with the client.

2. Anticipate issues which may arise from cultural differences and prepare the client for this problem.
3. Be sensitive to the need for the intermediary to communicate and to "translate" for both client and prospect.

ROADBLOCK: 10

Client or prospect's attorney's participation in negotiations. The service of the attorney is always required in preparing the purchase and sales agreement after the deal has been reached. The attorney's role, however, is to protect its client from every possible liability. When attorneys are involved in negotiations, they often inhibit a deal and they are expensive.

Strategy:

1. Advise the client not to bring in its attorney until after a non-binding letter of intent has been signed.
2. When the client insists on his attorney's participation, work out an agreement with the attorney relative to their respective roles during negotiations.

ROADBLOCK: 11

When the client loses confidence in the intermediary. If this situation develops, the intermediary must take steps to reassure the client as to his competence and integrity.

Strategy:

1. Preparation of a detailed, written report on the steps already taken and the work performed in the assignment.
2. Increase telephone contact with the client as contracts continue to be made and steps completed during the assignment.
3. Demonstrate by diligence, extra effort, and communication with the client that the intermediary's interest in the assignment goes beyond the fee.
4. As a last resort, offer to waive balance of the retainers and continue the assignment for the accomplishment fee.

The primary function of the intermediary, beyond the identification of prospects, is to apply his experience and creativity to anticipate road blocks to deals and find ways around them. Persistence, diligent research, frequent contact, and success in developing trust on the part of both client and prospect will generally enable the intermediary to reach his objective and earn his fee.