Complex issues can trip up a deal if not resolved when selling a dealership with multiple owners or investors

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By: Joseph S. Aboyoun, Esq. partner, Aboyoun & Heller

Special issues arise when selling a dealership which has several owners/investors. This becomes even more complicated if some of the owners are automotive people and the others (e.g. passive investors) are not. This complexity is confronted when one or more of the owners intend to assume an equity and/or employment position with the purchasing entity. This article will explore such issues as they related to closely-held i.e. private dealerships. Publicly-held dealerships are subject to a more complex set of rules.

I. Legal Compliance

One of the principal concerns in selling a multiple-owner dealership is compliance with the state laws governing the selling entity, whether it is a corporation, a partnership or a limited liability company. The governance documents of the entity (e.g. the by-laws for a corporation, the partnership agreement for a partnership and the operating agreement for a LLC) must also be examined by the seller's counsel to ensure

that the sale process is in compliance with the rules established therein. The following are the principal aspects which may be addressed in either the governing law or the governing documents (or both) when selling:

1. Who among the owners, directors and/or offices of the selling entity have the authority to sell the store?
2. Who has the authority to engage a broker or lawyer for the purpose?
3. If owner approval is required, what percentage of owners can approve the sale? Is a simple majority (i.e. 51%) enough or is a super-majority (e.g. 75%) required?
4. Is a formal meeting required to approve a sale? If so, what are the notice requirements?
5. Does an owner have a right to object to or dissent from a sale? If so, how is that addressed and resolved? Can an owner disrupt or delay a sale?

There have been many buy-sell transactions which have faltered or, at minimum, have been disrupted or delayed for failure to address these issues in proper fashion. The seller and its counsel are cautioned to examine their legal and entity governance requirements before commencing the same process.

In many instances, a formal meeting of the owners, with proper notice, will be required. A dissenting owner will have the right to address and, if he/her holds voting rights, to vote against the deal. However, with proper compliance with the rules of engagement under the law and governing documents, the deal should not be adversely affected by a dissenting owner, assuming, of course, that he/she does not hold a controlling interest.

II. **Automotive vs. Non-Automotive Partners**

The buy-sell negotiations can vary depending on whether there are passive (non-automotive) investors on the sale side of the table. A prime example of this aspect is a covenant not to compete. Customarily, the buyer will insist upon a variety of non-compete covenants in the buy-sell agreement. These include a variety of restrictions on the part of the owners, including the ownership and/or operation of a competing (i.e. same line-make) dealership for a specified period (e.g. 5 years) and a specified geographic area (e.g. 15 miles). These also include restrictions from soliciting the employees and customers of the dealership to be sold, as well as the protection of certain proprietary information—e.g. customer lists.

These restrictions may be of no significant concern to a non-automotive seller. However, they are quite important to those who are and intend to remain as car dealers. This is where a potential conflict can arise among the multiple owners. This becomes even more complicated (if not, confrontational) if the automotive partner(s) wants a special consideration if he/she agrees to the covenant.

Of course, from the buyer's perspective, he/she does not expect to pay more money for a store just because the deal includes usual and customary covenants against competition. As such, by demanding a special payment for the covenants, the automotive partner(s) would be effectively reduced the share of sale proceeds to go to the passive investors.

Needless to say, this aspect of the deal should be fully vetted among the owners as early as possible in the process. If not, this issue can become a significant obstacle in the negotiations with the buyer.

III. Switching Teams

Further complications can arise when one of the owners decides to assume a business relationship with the buyer. This may take the form of a post-closing employment agreement with the purchasing entity and/or an actual ownership (equity) interest in that entity.

Of course, this situation creates a significant conflict of interest between the owners "switching teams", on the one hand and those that are merely cashing out, on the other. It is not unusual for the latter to question the loyalty of the former in these situations, both when negotiating the buy-sell and during due diligence. Great care must be taken to address this problem at the outset so that there are no misunderstandings among the owners or a significant disagreement (or even litigation) either during the negotiations or, worse, during the course of the buy-sell transaction.

A myriad of special issues can arise when selling a dealership owned by several people or interests. There should be careful scrutiny of these concerns as early in the buy-sell process as possible. The failure to do so can result in severe consequences for the owner and a significant impact on the transaction.

Joseph Aboyoun is a partner at Aboyoun & Heller, LLC in Pine Brook, N.J. He can be reached at 1-973-575-9600 or jaboyoun@aboylaw.com and www.aboyounheller.com.