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COUNSELLORS AT LAW

Joseph Aboyoun  
Partner



## The undesirable buyer, or don't approach your buy-sell like a blind date

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By **Joseph S. Aboyoun, Esq.**

You have spent most of your adult life building a phenomenal dealership or even a major platform of stores and franchises. Your organization matches any in terms of performance and pound-for-pound is right up there with the best in the industry. However, you have come to that inevitable moment in your life when it is time to move on. Unfortunately, your next generation is either not interested in a succession plan or, worse, incapable. A third-party sale is the natural course to pursue.

To your pleasant surprise, the interest in your store(s) is immediate and strong. You have several suitors, some of whom you know and others whom you do not. You need to decide which prospect to pursue. To say that this is one of the most significant business decisions of your life would be a gross understatement. The decision cannot simply be a function of price and terms. There is a major intangible factor that must, in my experience, be considered above all else: The quality of the buyer.

The evaluation of that quality is not just a review of the buyer's business/franchise experience and financial wherewithal. Even the most qualified buyer in terms of experience and wealth can potentially be your worst nightmare. The real and essential evaluation must focus on the prospect. Unfortunately, as we learn in life, there are both good and bad people in the world. More to the point, there are some people that are incapable of honoring a contract and those where a simple handshake would be enough.

So, how does one determine if the buyer falls into the former or the latter category? I submit to you that the correct analysis of this aspect may prove to be the most significant decision in your buy-sell transaction, overshadowing price, terms and the like. I have been involved in too many deals where the buyers was an unmitigated disaster. I recall one particular deal where the buyer reneged on every promise, including the price and the terms, and endeavored to renegotiate right to the end of the transaction – at the closing table itself. There was nothing sacred about the deal to this buyer. We should have seen it coming, but we did not evaluate the buyer adequately at the inception.

As I looked back on those negotiations, I saw the signs of an undesirable buyer. The intention of a buyer can be revealed during the early stages of the relationship. One must learn to look for these indicators from the outset. While not exhaustive, these telltale signs can include the following:

- Protracted negotiations.
- The interjection of new terms as the negotiations ensue.
- The inability to finalize the buy-sell agreement and related documents within a reasonable period of time. Multiple drafts do not bode well for a deal.
- I have found that the pace of a deal is many times the strongest indication of where it is headed. If the deal is moving smoothly and swiftly, the prospects of a successful transaction exponentially increase.
- Adversity among the professionals involved in a deal, especially the lawyers.
- Non-automotive investors in the buyer group.

Unfortunately, we have the tendency to overlook these, especially when the deal looks so good on paper. However, as in sports, a transaction is not performed on paper; it is performed through the actions of the players whether in good faith or with bad intentions. To proceed in a deal without an in-depth assessment of the true character of the buyer is ill-advised, if not reckless. It relegates your buy-sell to nothing more than a blind date.

Let's explore additional ways that this problem can be avoided:

- Look beneath the surface of the buyer’s credentials. Do not take his/her/its franchise or experience at face value. Ask direct questions and do not settle for vague or evasive responses.
- Ask for references and check each of these thoroughly.
- Inquire about prior deals and obtain the names of the other parties and get permission to check with each. This particularly pertains to deals that your buyer pursued, but did not complete.
- Check with the professionals in the industry, including brokers, automotive accountants and automotive attorneys. It is likely that one of these might have dealt with the buyer and has some significant input.
- Check with factory representatives involving the franchises owned by the buyer.
- Check with the lending arm of those franchises.

For the most part, people will be forthcoming upon inquiry. If they are not, this should raise your eyebrows and give you cause for concern.

The exercise of due diligence and extreme scrutiny of your buyer is a critical step in the buy-sell transaction. If you avoid it, you may end up with dire consequences. In many cases, it may not matter since most buyers do, indeed, act in good faith. However, it is that one seemingly stand-up buyer who, in the end, could turn your deal into your worst nightmare.

*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@aboylelaw.com](mailto:jaboyoun@aboylelaw.com) and [www.aboyounheller.com](http://www.aboyounheller.com).*

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