

We
The Buyers
of
Small and Midsize Businesses
Declare Our
Bill of Rights

Foreword

By Ted J. Leverette

The Original Business Buyer Advocate ®

This first edition of the Bill of Rights for Buyers of Small and Midsize Businesses™ exists because people envision a more harmonious, safe and profitable playing field for business buyers, sellers and their service providers.

The Institute of Professional Business Buyer Advisors began the creation of this Bill of Rights by requesting ideas from business buyers and from every kind of service provider with whom buyers and sellers interact. People suggesting ideas for the Bill of Rights are mostly from the USA and Canada. A few contributions are from Europe, South America, Africa, Asia and Australia.

Historical perspective: In the 1970s, I created the business consulting niche, Business Buyer Advocate®. It has been evolving into a global network of licensed independently owned and operated advisory practices and M&A intermediaries. They use my proprietary consulting system and trademarks to serve small and midsize businesses. Until recently all my focus was on building my consulting / licensing company. Now I am helping to build and improve the dealmaking industry.

From my perspective as the founder and executive director of the IPBBA, and looking back to when I began helping buyers purchase the right business the right way, it's been quite an adventure. Human nature isn't always pretty to behold. Yet most people try to do the right thing.

I hope you accept this Bill of Rights as another indication of people wanting to do the right thing. It is in our mutual self-interest to broadcast far and wide this Bill of Rights. It can be an antidote to or repel unwelcome behavior.

Preface

Thank you, everyone, who has and will help us
make this Bill of Rights
representative of the reasonable expectations
of legitimate business buyers.

Legitimacy is a governing principle for a credible Bill of Rights. Legitimacy refers to well-reasoned and sincere people complying with recognized rules, standards and traditions.

While preparing this Bill of Rights we heard war stories from companies and trade associations about their Code of Ethics, Standards of Professional Practice or Client Bill of Rights. They told us about controversy, which immediately arose, as one person expressed it, from “wolves in sheepskin” who vociferously objected to the documents.

And then we were told about an interesting thing that occurred. Documents encouraging ethical behavior helped people and organizations avoid risk, and thankfully some potential abusers scurried away when confronted by ethics.

While preparing this Bill of Rights we don't always know from whence ideas came or the degree to which ideas submitted to us derive from similar concepts elsewhere expressed. We did not publish “rights” the aim of which is to denigrate an entire profession or any industry of service providers. We are trying to exclude unrealistic rights or expectations. Common sense will enable you to determine the worthiness of each right or expectation.

The rights do not appear in any particular order other than to some extent they are presented in the phases of the typical business acquisition sequence: (1) search, (2) due diligence, (3) financing, (4) valuing/pricing a business, (5) dealmaking and (6) post-acquisition due diligence. We include rights pertaining to the interpersonal relationships between buyers and the people and firms with which they interact.

Preamble

We buyers want the truth, the whole truth and nothing but the truth
before
less than full disclosure has the opportunity to adversely affect us.

Fundamental Rights

Protection

from dishonest people.

Access

**to *all* the businesses for sale,
and to useful service providers.**

Service

**from competent, legitimate business brokers,
M&A intermediaries, business acquisition advisory specialists,
and other professional service providers.**

Information

**that is timely and that accurately discloses details
about businesses for sale, and about everyone
with whom buyers interact during their
process to evaluate and purchase a business.**

Bill of Rights

for

Buyers of Small and Midsize Businesses

1st. The right to expect a worthwhile, accurate, credible explanation about the content of the business acquisition process from service providers.

2nd. The right to an oral or written agreement with business acquisition advisors and/or business brokers and intermediaries to represent the buyer's self-interest; not favor the seller during the buyer's process to purchase a business.

3rd. The right to be treated by business acquisition advisors in a way that demonstrates their attempt to protect the buyer from unfair or unintended consequences.

4th. The right to be exposed to all relevant acquisition targets regardless of said target's representation or lack thereof by another service provider or the sellers and/or sellers' service provider's willingness to split fees or provide other financial consideration to buyers' service provider.

5th. The right to know the rules governing "Transaction Brokers," which permit such brokers to list for sale a business and work with a buyer interested in it if the agent complies with the law of agency (i.e., authorized to act on behalf of a principal to create a legal relationship with a third party, the effect of which may include limited confidentiality for the buyer and seller and more focus on facilitating a done deal).

6th. The right to be informed about the seller's reason(s) for sale.

7th. The right to be informed about the seller's perception of the business' competitive advantage(s), which position it to sustain or improve its competitive position.

8th. The right to be informed of the seller's opinion about the condition of the economy in each geographic region in which the business serves a material quantity of customers, and about the effect of the economy on the company.

9th. The right to be informed of the seller's candid opinion about the business' weaknesses, including factors that currently or probably will inhibit it from achieving its potential.

10th. The right to be informed about the seller's estimate for the annual capital expenditures necessary to operate the business at its present amount of gross revenue.

11th. The right to be informed about the degree to which the business relies upon owner or one or more key employees, the loss or replacement of which is likely to adversely affect the business' profitability or viability.

12th. The right to be informed of "sweetheart" transactions or relationships existing or existed between the business and any party, especially transactions that under- or over-state the business' revenue or expense or gives it any advantage.

13th. The right to be informed about business revenue (i.e., skimming, barter, etc.) and expense (i.e., barter or not paid with the business' money) of the business not reported on the company's financial statements and tax returns.

14th. The right to be informed about the business' off the books revenues or expenses (i.e., cash sales, employee accrued but unpaid time off, pension contribution, etc.)

15th. The right to be informed if the business uses vehicles, equipment or other assets that it does not own, lease or rent.

16th. The right to be informed about the degree to which the business' revenue is sensitive to seasonal or cyclical factors.

17th. The right to obtain from sellers and/or their representatives accurate, timely information if the business is in default on financial, non-financial, warranty, taxation, contractual or other obligations, and pending or unpaid claims (not disclosed on the business' financial statements) for back wages, rent, supplies or anything else, and about easements, zoning and surrounding property uses, availability of utilities and who provides them, certificates of completion re: construction and buildouts, environmental, natural or geological hazards affecting the real property or the business.

18th. The right to be informed of the business' contingent liabilities, including but not limited to pending or actual disputes with employees, customers, etc.

19th. The right to investigate whether the business or any of its owners are the subject of a bankruptcy filing, assignment for benefit of creditors or insolvency proceeding of any kind.

20th. The right to be informed about customers that account for more than 5% of annual gross revenue or if the loss of any customer is likely to materially adversely affect the viability of the business for sale.

21st. The right to be informed of commitments to employees, independent contractors, service providers, suppliers or sources of financing regarding an increase of their compensation.

22nd. The right to be informed of the identity and job description employees or independent contractors related to the owner of the business or one another.

23rd. The right to be informed about actual or probable disputes with the landlord or problems with the business' premises.

24th. The right to be informed about substances, materials or products on or near the premises which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, paint, solvents, fuel, medical waste, surface or underground storage tanks, contaminated soil or water.

25th. The right to be informed about the remaining useful life of the business' fixtures, equipment, vehicles, intangible assets, etc.

26th. The right to be informed if the business is subject to a franchise, distributor or licensing or other restrictive agreement.

27th. The right to be informed whether the business or any of its owners or employees is required to have any license or permit, and to confirm compliance thereof.

28th. The right to obtain from sellers and/or their representatives accurate, timely information about pending zoning changes, redevelopment or nearby construction that may affect the business and about covenants, conditions and restrictions in connection to contractual or governmental issues that the business is or will be subject to.

29th. The right to be informed of alleged violations filed or under investigation by authorities issuing licenses or permits or with respect to the violation of laws or regulations.

30th. The right to be informed of unresolved insurance claims.

31st. The right to an honest and prompt response to this question: Is there any information known to you that has not been disclosed to me in writing which might have a bearing on the viability or the value of the business for sale, or adversely affect the operation of the business, or a buyer's decision to purchase it, or the price a buyer might pay for it?

32nd. The right to expect business brokers and M&A intermediaries hired and paid by sellers to inform buyers upon request about the pros and cons of businesses for sale presented by the agent, unless the agent or the agent's firm is the listing agent, in which case the agent will disclose information in accordance with legal requirements.

33rd. The right to have access to professional assistance for the purpose of inspecting or evaluating businesses for sale with respect to operational issues and compliance with governmental rules or regulations, the intent being to know the degree to which the characteristics of the business might affect the life or the value of the business.

34th. The right to share confidential information with professional advisors, service providers and sources of financing that routinely advise or serve business buyers during their process to purchase a business.

35th. The right to request and obtain credible and reasonably up-to-date information about businesses for sale and businesses that have sold, which are materially similar to the businesses for sale the buyer targets as a potential acquisition.

36th. The right to reasonable and timely access to and adequate response from the people and organizations with whom buyers interact during the course of purchasing a business.

37th. The right to request and obtain professional guidance or assistance to determine the need for and availability of insurance (or other means of mitigation) to protect the potential business acquisition against various usual and customary risks that may arise after closing..

38th. The right to request and obtain from service providers referrals to professionals and resources that the buyer deems necessary to evaluate businesses for sale or purchase them.

39th. The right to expect honest, full disclosure (within the constraints imposed on agents by their fiduciary agreement with sellers) from sellers and their business brokers and intermediaries.

40th. The right to personally inspect the assets of the business prior to purchase, including during due diligence and to verify no change in the condition of assets prior to closing.

41st. The right to require buyer's agents or business acquisition advisors not to divulge sensitive and confidential information about the buyer to business sellers, their agents and representatives nor anyone else, without the buyer's prior written consent, and not to use or disclose buyer's sensitive and confidential information before it is time to do so.

42nd. The right to expect service providers that serve buyers to be informed about the trends and marketplace affecting business opportunities.

43rd. The right to receive upfront, from pending sources of financing, written full disclosure of all the conditions, fees and costs associated with the financing.

44th. The right to competent professional assistance in the preparation of and submission of funding applications to sources of financing, the intent of which is to obtain the best terms reasonably available given the condition of the potential business acquisition and the marketplace in which the business and the sources of financing operate.

45th. The right and opportunity to choose sources of financing for the buyer's purchase, which may differ from the businesses existing economic relationships.

46th. The right to commit sources of financing to the terms of their financing proposal between the time of the commitment and the closing of the buy/sell transaction (i.e., last minute change of financing terms can upset the pending deal)

47th. The right to a valuation (at buyer's expense) of businesses for sale that reflects and explains in layman's terms the most probable pricing range within which the business will sell, taking into account facts known by the appraiser about the seller's and the buyer's reasons or motivations to consummate a buy/sell transaction; and to facilitate the valuation process, to obtain from sellers and/or their representatives accurate, timely information to properly establish a market value or purchase price.

48th. The right to expect business valuers to perform with non-advocacy, and to be assured by valuers to whom the buyer is referred that the valuator's opinion of value will not be influenced by the potential of more referrals from the source of referral whether or not the valuation opinion is consistent with the wishes of the source of referral.

49th. The right to precede a contractual offer to purchase with a nonbinding letter of intent, which specifies major topics, which could be "deal breakers."

50th. The right to expect business brokers and intermediaries who represent the seller not to disclose the buyer's purchase offer to another potential buyer of the target business for sale.

51st. The right to expect service providers to avoid conflict-of-interest by not engaging in dual agency without disclosure to the parties of a transaction.

52nd. The right not to be forced to use any particular kind of legal document except (and subject to review by the buyer's legal counsel) non-competition, non-disclosure / confidentiality and seller's agent disclosure forms prepared by the seller or seller's agent.

53rd. The right to expect agents, service providers and salespeople not do anything that causes the buyer to become obligated to any ancillary service provider, including sources of financing, before having a fully executed contract to purchase, without the buyer's advance written permission.

54th. The right to have competent professional legal assistance whose aim is to facilitate a done deal when reviewing contracts, and timely guidance and presentation of materials before the closing of the transaction.

55th. The right to be the control party of the letter of intent and/or the definitive purchase agreement, with the buyer having the responsibility to pay for the production of these documents.

56th. The right to request and obtain professional guidance or assistance during negotiations that occurs between the buyer and the various people and organizations that interact with the buyer during the course of purchasing a business.

57th. The right not to be required to submit an offer (binding or non-binding) until adequate opportunity to review personally and with advisors relevant financial and other data regarding the company and its operations.

58th. The right not to be required to submit a deposit, earnest money or other consideration until adequate opportunity to review personally and with advisors relevant financial and other data regarding the company and its operations.

59th. The right to propose a stock purchase transaction in lieu of an asset purchase transaction. This can cause a change or disengagement of intermediaries and advisors due to state and federal laws pertaining to the sale of securities versus business opportunities.

60th. The right to negotiate the structure of the transaction as buyers see fit, including the purchase price, terms of down payment, buyer promissory note to seller, transition assistance, date of closing and notification of stakeholders, such as customers, employees, landlord, sources of financing and suppliers.

61st. The right to disengage from dealmaking with sellers when sufficient reasons arise to abort the potential acquisition.

62nd. The right to expect legal counsel to explain how the buyer can get out of a business before getting into it (i.e., tactics and contractual escape clauses).

63rd. The rights for buyers (and others) to unilaterally cancel agreements on the basis of mutually agreeable escape clauses, with (if any) cancellation penalties or liquidated damages clearly spelled out in the agreement.

64th. The right to purchase contract contingencies on the buyer's deferred payments to the seller, including the parameters of earnout provision.

65th. The right of offset in the purchase contract, which means the seller is obligated to refund some or all of the purchase price to the buyer or reduce or eliminate deferred payments due from the buyer if the seller's warranties, representations or other contractual commitments turn out not to be true.

66th. The right to purchase contract provisions pertaining to seller warranties and representations, including the consequences (such as a right of offset) if the seller misrepresents or violates warranties and representations.

67th. The right to request that the seller cease marketing the business for sale ("no shop" provision) in return for buyer depositing earnest money into escrow, which may or may not be refundable depending upon the terms of their agreement.

68th. The right to negotiate purchase contract restrictions on the seller's conduct before the closing of the buy/sell transaction.

69th. The right to obtain reasonably early in dealmaking the necessary third party actions or consents, so assure a done deal and avoid delays during the closing of the transaction.

70th. The right to renegotiate or terminate the proposed transaction without penalty if the buyer detects (and can show evidence of) the seller's material misrepresentation or insufficient disclosure about the business.

71st. The right to abort the pending transaction without penalty, or to obligate the seller to modify the purchase price or terms of sale or make repairs at seller's expense if damages arise or deterioration (beyond normal wear and tear) occurs to the business between the time the definitive purchase and sale agreement is executed and before closing of the buy/sell transaction.

72nd. The right to commit the business' landlord to the terms of the lease assignment proposed by the landlord between the time of the commitment and the closing of the buy/sell transaction (during which the assignment becomes binding upon the agreed terms).

73rd. The right to collaborate with the seller during dealmaking to negotiate retention terms with the business' key employees so they remain with the business for a reasonable amount of time after closing of the buy/sell transaction.

74th. The right to prompt and accurate notifications from or concerning sources of financing, landlords, key employees, key customers or suppliers that differ from what was promised or represented at the time the buyer and seller mutually reached their agreement.

75th. The right to expect business acquisition advisors in the employ of the buyer, and within the scope of the assignment, to reasonably educate the buyer and provide knowledge useful to the buyer's evaluation and purchase of a business for sale.

76th. The right to be informed before the event occurs about the conditions, relationships or communications that commit the buyer to work exclusively with an agent, business broker or intermediary that represents businesses for sale or provides business acquisition advisory services.

77th. The right to expect business acquisition advisors to suggest alternative negotiating strategies and tactics with sellers and others with which the buyer interacts during the course of purchasing a business.

78th. The right upon request from the buyer for the buyer's service provider(s) to accompany the buyer during one or more of the buyer's visit to businesses for sale and meetings with the seller or the seller's representatives, or attending and providing assistance to the buyer during closing of the buy/sell transaction.

79th. The right to expect service providers such as attorneys, business brokers and intermediaries who represent the buyer or seller to promptly present all legal written offers buyers want conveyed to sellers.

80th. The right to expect service providers not to unnecessarily or unfairly disrupt dealmaking and deals.

81st. The right to expect business acquisition advisors to think and act independently, which best serves the buyer's self-interest.

82nd. The right to a reasonably long survival period after closing of the seller's warranties and representations (i.e., there should be recourse against sellers if written warranties and representations, memorialized in the purchase contract, turn out not to be true).

83rd. The right to expect service providers to honor their fiduciary relationships whether pledged or established by behavior.

84th. The right to contractual (in addition to legal) recourse against sellers that misrepresent information about themselves and their businesses for sale.

85th. The right to reasonably request and obtain a continuing relationship between the selling owner and the business after the sale of the business, which when properly presented by buyers can be acceptable to sellers especially if the seller provides financing for the buyer's purchase.

86th. The right to advice or assistance after closing by professional service providers with expertise in post-sale management transition and due diligence.

87th. The right to expect service providers, with or without the buyer's request, to refer buyers to other knowledgeable service providers whose reputation is a dealmaker instead of an unnecessary deal killer.

88th. The right to request that business acquisition advisors, business brokers and intermediaries not have a pending or potential investment in the business for sale and simultaneously be a consultant or business valuator to the business buyer or seller.

89th. The right to request from people purporting expertise in business valuation or pricing businesses for sale to show supporting evidence of adequate qualifications.

90th. The right to expect service providers to refrain from providing service on the basis of race, religion, gender or national origin.

91st. The right to expect sources of referral not to recommend or employ unqualified business appraisers or where conflict-of-interest may exist.

92nd. The right to expect service providers to suggest specialty talent which can benefit the particular buyer's situation.

93rd. The right to expect service providers not to accept remuneration from other than the buyer with respect to the buyer's intended acquisition without the buyer's written permission to do so.

94th. The right to expect service providers not to seek or take benefit from inside information that may become known to them during the course of serving buyers without the buyer's advance written permission.

95th. The right to expect service providers to promptly inform buyers of special relationships, circumstances or interests that might influence or appear to influence the service provider's counsel, objectivity, judgment or recommendation concerning the buyer's intent to purchase a particular business.

96th. The right to expect service providers to comply with and encourage buyers, sellers and others with which buyers and sellers interact to comply with laws, regulations and sound business practices in the conduct of the business.

97th. The right to be advised of any related party transactions affecting the business.

98th. The right to be informed if any employees are on work release or of any other status that may affect workplace safety.

Appendix to Bill of Rights

**We encourage readers of this Bill of Rights
to obtain the most recent version of it.**

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Creation and Development of this Bill of Rights

The Institute of Professional Business Buyer Advisors, assisted by other organizations and people, began the creation of this Bill of Rights using online forums, teleconferences, email and other means. They requested ideas from individual and corporate business buyers, and from every kind of service provider with which buyers and sellers interact.

Individual rights may not be positioned contiguously to similar rights. This may change as more people help us edit this Bill of Rights.

This appendix contains information about the history and development of this Bill of Rights. It also, at the end, shows comments and opinions about the Bill of Rights, which are known to the publisher at the time of this revision to the Bill of Rights.

Historical perspective:

Every Bill of Rights (be it consumer, medical, governmental, whatever) is criticized before and after publication. Despite laws and other so-called "protections" with respect to the focus of various Bills of Rights, some nogoodniks blatantly violate the laws, not to mention civilized morality and ethics. There will always be dishonest and/or incompetent people preying on gullible or uninformed people who are seeking facts, guidance or advice from experts and organizations they think they can trust.

Aristotle (writing "Ethics") and the framers of the USA Bill of Rights did not acquiesce to accept what is. Instead they and people like them took a stand for something better, with the willingness to suffer criticism and enjoy praise.

Hence, the majority of consumers, citizens, business buyers and other people appreciating their Bill of Rights.

The reality:

Buyers seek a level playing field upon which buyers and sellers, during their process to achieve a done deal, can have the opportunity to legally and morally gain advantages. The best informed and most decisive players *should* prevail.

- Savvy buyers acknowledge the maxim: “Buyer Beware.”
- This Bill of Rights suggests: “Buyer Be Aware.”

We hope you agree with us:

Our Bill of Rights can help people know more about the rules of play and the boundaries of the playing field, and to select their business acquisition team, and then compete in the game to achieve their goal of buying the right business the right way.

Public Commentary

The comments for and against the Bill of Rights show you our intent to publish a fair document, which is balanced by the opinion of people experienced in the buying and selling of small and midsize businesses.

People in favor of this Bill of Rights outnumber people critical of it by more than 10 to 1.

- We think you need to see the other side of the story, too.

The publisher is doing what it reasonably can to shield the privacy of the writers. We do not (without their advance written permission) identify people who contributed ideas for inclusion in this Bill of Rights, or their opinions about this Bill of Rights.

Links to Online Discussions

[LinkedIn](#) shows some of the ideas and controversy about this Bill of Rights.

Sign into your LinkedIn account, and then put this text into the data entry field (upper right of your homepage): Help us create “Bill of Rights for Business Buyers”
(Use the drop down arrow to select “Updates” from the search menu.)

[Google](#) can provide more access.

Using the quotation marks, search with this text:
“Bill of Rights for Business Buyers”

People Have Written . . .

It's about time !

Seriously Ted, buyers "Worldwide" are declaring rights and demanding fairness. Why is this news? Every country in the world has legislation and regulations its market participants must adhere to and operate within. Some are better and more comprehensive than others but two things which are common across all jurisdictions provide buyers with the protection they need:-

1. Caveat Emptor.

2. Professional advice.

I've done business in the USA, Brazil, Japan, Thailand, Laos, Australia, the UK, France, Finland, Germany, Austria etc etc and in all markets it was possible to access good professional advice to ensure the position of all parties to a deal were being protected and all parties were fully aware of the risks associated with a transaction.

If a buyer is inexperienced and fails to recognize that their inexperience needs to be supported by a good professional advisor then no amount of charters or bills of rights are going to protect them.

You can't legislate away bad decision making or protect people from their own stupidity.

Your idea is well intentioned but would only work in a Nirvana like world. Unfortunately the actual world we live in is very different.

This idea of buyer rights, to me, centers around main street business, not M&A. The IBBA [International Business Brokers Association] and CBI [Certified Business Intermediary] designation, along with local professional business broker organizations more than adequately provide buyers with all the tools they need to get educated about buying a business. I fail to see the value of a "bill of rights" for buyers.

I like what you're trying to do with the IPBBA . . . just sent in my membership application. Let me know how I can help.

Because brokers owe fiduciary loyalty to keep their seller clients' best interests above all others, your proposal grabbed my attention. While it is frequently in the seller's best interest to offer terms and follow a process that works for the buyer, I wonder if most business brokers are motivated to embrace a set of buyer's "rights" extending beyond Caveat Emptor.

And yet many business brokers would agree with your underlying premise. Namely, if more prospective buyers had less fear, distrust and skepticism as to the process of buying a business, more deals would get done that would work well for buyers and sellers.

It seems to me, buyer's "rights" is not the best approach. Buyers, especially first-time buyers, have traditionally relied upon qualified professional advisors to: (i) guide them through the unfamiliar process of buying a business (due diligence, negotiation, etc.); and (ii) shield them against abuse.

Part of representing a buyer is helping to set realistic expectations both as to the process and as to what might be fair substantive terms, judged against market dynamics, best practices, and other objective criteria.

This begs the question of whether prospective, and especially inexperienced, business buyers have adequate ways to educate themselves on: (i) how to buy a business; and (ii) how to choose qualified professional advisors.

Now, more than ever, the marketplace is filled with educational resources (books, podcasts, webinars, online classes, etc.) and with professional advisors dedicated to representing buyers. Of course, the quality of these products varies considerably. And the best way for a buyer to choose a professional advisor continues to be receiving a referral from a qualified person they know and trust.

The best way to build buyer confidence in the buying process is to look toward the marketplace for protections and helpful services. Internal codes of ethics and standards of practices are important and helpful – but they are only as good as the individual professionals (and their reputations) standing behind them.

Sorry if it sounds like I'm throwing cold water on your interesting proposal. I'd like to read others' views; perhaps I'm missing something.

There can't be a Bill of Rights -- if there was, just about every person I know would go into business protected by a bill of rights--it ain't gonna happen--we have as a country a Bill of Rights, a Constitution and a Declaration of Independence--and as much as I respect each and every document and what they stand for--just look around and see how they are abused--starting with those that have an oath to represent WE the People--"BUYER BEWARE" needs proper advice and knowing the risks--I can build businesses and have a track record to show that as far as reputation--but if I sell one to a Joe Schmoie that has no idea what customer satisfaction means or compromises quality, or has an ego up the ass that has key employees quit--and destroys the business...whose fault ???? if he claims he has a business of rights and then we have to prove it--if he stiffs me as to mortgage payments--tough to collect as a seller in the real world if he is broke--where is my bill when he leaves my former business in shambles or a landlord demands back payment of rent, of electric and gas, of insurance-repairs are needed, supplies are needed, equipment is missing etc--"BUYER BEWARE"--with a seller that should say no to his gut feeling if the wrong person has money and wants to buy--real world--most sellers will not say no.

We have in mind something similar over here in the UK, albeit starting on a smaller scale with a guide to buying a business.

This can only help brokers dealing with buyers who do not understand why profits are restated, what level of cash contribution is required or even the basic rules around the legal entities involved (in our case Limited companies, Partnerships, LLP and Sole traders). Even a section on business valuation methods would not go amiss.

In times of economic recovery we must accept that there will be more novice buyers in the market and an education process can only assist is getting more deals across the line.

I would therefore be interested in being involved, whilst understanding that the legal framework in our territories will be different.

The [Bill of Rights] is a great idea, and a useful complement to our code of ethics.

Any bill of rights as you call it should include probably a "bill of responsibilities." Buyers need to be educated in advance and have a reasonably clear idea of what they want and require in a business, as well as terms, etc. BEFORE they go out to look for a business to buy. As a generalist adviser, an exit planner and business acquisition adviser, my experience has too often been (as many I expect) getting people looking to buy "a business" with not much more definition than that. You have to guide them to decisions about what they want, need, expect, require. Even "pull teeth" to get answers. Having to operate blind is a dangerous thing and I have seen many circumstances where potential buyers readily blame professionals they work with for poor outcomes, when the buyers themselves have taken little or no responsibility to learn what they need to know before they go to the market and/or before they consider a purchase.

Ted's idea gives us honest folk a chance to stand out from the crowd. If Buyers don't know who to trust, then let the honest ones stand up and shout about it and give them a choice about who to buy from.

I have been a practicing business broker and experienced business appraiser for 24 years--without any complaints ever filed against my license. Let me say first, that I agree with the need for buyer representation. I have represented buyers and sellers individually and as a dual agent. I see the limitations and risks associated with dual agency. With that said, I must add that the problems faced by buyers and sellers will not be solved until certain realities of the marketplace are recognized.

First of all, the great majority of buyers do not have a clue about the value of the business interests they intend to buy. At the same time, sellers are unaware of the real market value of the interests they intend to sell. At this point, both buyer and seller have no choice but to try to reach a common agreement with insufficient information. So, it should come as no surprise that the expected result will be conflict, mistrust, lost opportunity, and the possible risk of future litigation.

Therefore, the first step in a successful transfer has to include a thorough evaluation done by an experienced business appraiser or by a business broker with real valuation training and experience--particularly in the same industry as the subject business.

The transfer process must begin with a reasonable and defensible estimate of worth. With that, the parties will have a fair chance of reaching a level of worth both can accept and an

enhanced level of mutual trust. My experience has been that the majority of conflicts I have seen in business brokerage and in business community in general have been the result of the differences of opinion between parties as to the value of something.

Secondly, the business brokerage community must accept that the all-to-common use of rules-of-thumb methods are too limited and too uncertain to satisfy the views and concerns of today's public. More and more, disputes between clients and their brokers are the result of improper methods of estimating the worth of a business interest. Many times, the unaware or lazy broker assumes the role of valuator and, because of his or her perceived professional role, is most often relied upon by their clients to provide realistic and defensible estimates of the market value of a particular business interest.

Today, the role of the business valuator has changed and is being scrutinized more by the legal system and public and private entities. My position is, in part, that the place the business broker must begin the process of representing buyers or sellers is to either learn the essentials of economic theory and industry-accepted valuation methods, or not represent himself or herself as qualified to provide a value opinion. If a particular broker chooses to not want to step out of their traditional comfort zone, then they need to be prepared to introduce a qualified valuation professional to the buyer or seller. Once that first step is concluded, the broker can then do the job he or she knows how to do. With this initial step, the broker will gain the respect and gratitude of his or her client, will have an easier time reaching a workable deal, and will further enhance his or her professional posture in the community.

I see this as a win-win situation for buyer, seller, and broker. I see this as one important way to gain the respect of those we represent and to enhance our role as business brokers in our respective communities.

Ted, I admire your altruistic ambition but you're trying to solve a problem that simply doesn't exist.

You state that

"Buyers seek a level playing field upon which buyers and sellers, during their process to achieve a done deal, can have the opportunity to gain legal and moral advantages."

That exact playing field already exists. Each party to a deal has the freedom to choose their own advisory team (just to keep the sports field theme going here :-) , no one is forced into agreeing anything they don't want to agree to and the rules of the game are called "Due Diligence", "Representations and Warranties" and "Legally Binding Contracts". In some cases there is an additional set of rules to protect the buyer called "Getting Bank Finance."

If a buyer chooses to not invest in experienced professional advisors, ignores the warning signs in due diligence (or doesn't conduct due diligence at all) and signs whatever contract is put in front of them then quite frankly no piece of paper, regardless of the fact it's called a "Buyers Bill of Rights" is ever going to protect them from making a bad decision and quite frankly they deserve what they get in my opinion.

You might as well be writing a "Drunk Jay Walkers Charter" for all the difference it's going to make. If you're drunk and run out across a busy road without paying any care or attention you're going to get hit. Simple as. Same with buyers deciding not to retain and listen to professional advisors.

Sorry to rain on your parade like this, nothing personal.

This is the extent of my contribution to this lofty debate. I need to get back to the big bad real world!!

Inappropriate or Duplicative “Rights”

This section of the Appendix of the Bill of Rights for Buyers of Small and Midsize Businesses shows “rights” that were suggested, but as of this writing are not included among the Bill of Rights.

According to our editors, all of which are highly experienced and credible dealmakers:

- Some of the ideas were combined into a single way of saying the same thing. And you may get more value from this document if you read the individual suggestions in the phrasing originally submitted to us. Combining or condensing text can diminish some of its subtlety.
- Some of these ideas are sensible; business buyers will agree with them; but they are not suitable for inclusion in the Bill of Rights.
- Some of them pertain more to the duties and responsibilities of buyers of small and midsize businesses than to a Bill of Rights. (We’re creating another document, and you will see some of these ideas in it: “Duties and Responsibilities of Buyers of Small and Midsize Businesses.”)
- A few suggestions are nonsense; they do not pass the reality test of what can reasonably happen on the playing field of legitimate, sincere buyers and sellers of small and midsize businesses and their advisors and representatives.
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Discards

You may get value reading these discards. You can adapt some of these for your use if in your circumstances it is sensible to do so, but be aware that these became discards because of the strong disagreement with them expressed by business sellers or their service providers.

The right to be informed of the seller's forecast for the business' pretax adjusted net profit for the first year after the business changes hands, on the basis of what the seller's believes will occur if the seller remains in control of the business.

The right to be informed by seller about the seller's rationale for the asking price for business for sale.

The right not to be abused or cheated by worthless, disreputable or malicious people and organizations.

The right not to be presented contracts intentionally containing provisions that can be materially harmful to the buyer.

The right to obtain the best possible price and other terms of purchase.

The right to back out of or amend a contract pertaining to the pending purchase of a business, on the basis of contingencies in the contract that permit

the buyer to abort the deal without (much) penalty.

The right to no surprises at closing that defers or materially and adversely affects the timing or the terms of the closing of the buy/sell transaction.

Combined or Edited

You may perceive subtleties with these rights, which were edited and then combined into one representative version, and then inserted into the Bill of Rights.

The right to professional assistance in locating all businesses for sale regardless of whether the businesses are for sale by-owner or the businesses are represented by business brokers and/or intermediaries.

The right to access all the businesses for sale or that could be for sale if the owner is aware of the buyer's interest in the business' industry, including but not limited to businesses for sale that are not represented by agents or that do not publicize the owner's desire to sell.

The right not to be diverted from all the businesses for sale, regardless of whether for sale by-owner or represented by a business broker and intermediary.

The right to be informed about the degree to which the owner is (or may be) essential to the performance of the business.

The right to full disclosure from the seller about the history, condition and viability of the business for sale.

The right to obtain information from the seller and the seller's agents and representatives that does not intentionally overstate or understate material conditions that pertain to the history, operation or viability of a potential acquisition of a business.

The right to be informed by seller about the sellers' willingness to partially finance the buyer's purchase, including the terms of financing.

The right to have competently and properly drafted contractual offers to purchase prepared by service providers that satisfy the buyers' self-interest and then promptly presented to businesses for sale by-owner or the seller's business broker or intermediary.

The right to renegotiate with the seller (or abort the pending transaction without penalty) if during the process to purchase a business information becomes known to the buyer that materially and adversely

affects the viability of a fair transaction, such as may occur when the buyer discovers the seller did not adequately or accurately disclose important information about the business or when sources of financing, landlords, key employees, key customers or suppliers change their position from that which was present at the time the buyer and seller mutually reached their agreement.

The right to be informed about every business for sale represented (listed) by their business broker or intermediary, which matches the buyer's acquisition criteria expressly defined and conveyed to their business broker or intermediary, before the buyer agrees to a legally binding offer to purchase any business represented by their business broker or intermediary.

The right to disputes to be settled in the buyer's locale with arbitration, mediation or litigation governed by the laws of the legal jurisdiction of the buyer.

The right to obtain assistance or guidance that enables the buyer to transition into (and the seller to transition out of) the business to minimize disruption of the going concern.

The right to representation by professional service providers and/or business brokers and intermediaries

equivalent to that of the seller in a business buy/sell transaction, i.e., a level playing field of service providers, so neither party has a material advantage simply because of the quality or timeliness of business acquisition advisory.

The right to contractual relationships with business acquisition advisors and/or business brokers and intermediaries wherein their primary loyalty is to the buyer and they are legally accountable to the buyer.

The right to be represented by service providers without conflict-of-interest unless fully disclosed to the parties to a transaction (i.e., serving any party whose interest may be opposed to that of a client, such as helping a business buyer and seller at the same time, which results in one party gaining unfair advantage over another.)

The right to expect and obtain agreement from service providers that they will not, without the buyer's explicit advance consent, divulge sensitive and confidential information about the buyer to anyone with which the buyer interacts during the process to acquire businesses for sale.

The right to enter into contractual agreements with business acquisition advisors, business brokers or intermediaries, who define their duties

and obligations concerning but not limited to obedience to the buyer's instruction, diligence, fiduciary, loyalty, confidentiality, disclosure and accounting.

The right to enter into contractual agreements with business acquisition advisors, business brokers or intermediaries who definitively characterize their relationship with the buyer (i.e., advisor, agent, educator, facilitator, guide, etc.).

The right to request and obtain credible information on the basis of the service provider's superior knowledge about the pros and cons or the arguments for and against a particular business acquisition the buyer is considering.

The right to interact with service providers who are properly licensed for the activity in which they are engaged, such as sales of securities, real estate, businesses and loan brokerage, etc.

The right to obtain information and services from service providers that represents the state-of-the art of their specialization.

The right to expect tolerance and empathy from service providers if the buyer is a first-time buyer or is motivated to buy but unfamiliar with the process or afraid of unintended consequences.

The right to expect service providers to demonstrate sufficient knowledge (or the ability and intent to get it) about the kinds of businesses for sale and the businesses' industry.

The right to expect service providers to, as necessary, look after the buyer's self-interest more than does the buyer who is unrealistically infected with "buyer fever."

The right to expect service providers to communicate candidly and accept candid communication from the buyer.

The right to expect equal treatment, or as much fair treatment as is reasonably feasible, in the context of dual agency and transaction brokerage by business brokers and intermediaries, who by necessity serve two masters.

The responsibility to definitively agree on the scope of work or representation to be provided by service providers in the employ of the buyer the purpose of which is to facilitate consummation of the purchase of a business.

The right for the buyer to be represented by a competent professional service provider whose duty and loyalty is to the buyer and to assertively serve the self-interest of the buyer.

The right, upfront and as it may occur, to full disclosure from their business acquisition advisors, business brokers or intermediaries about the amounts and sources of compensation received or to be received from service or product providers, sources of financing or anyone else with whom the buyer interacts during the buyer's course of attempting to purchase or purchasing a business.

The right to obtain service from service providers who abide by a reasonable Code of Ethics.

The right to be informed by everyone with whom the buyer interacts about their financial or other interest in the business the buyer seeks to purchase.

The right to choose the business acquisition advisory service for which the buyer pays.

The right to expect service providers, with or without the buyer's request, to refer buyers to other knowledgeable service providers whose reputation is a dealmaker instead of an unnecessary deal killer.

The right to expect attorneys, escrow agents, business brokers and intermediaries to maintain a bank account separate from their operating

account into which they deposit earnest money and other funds conveyed to them with respect to a pending or closed (with contingencies) buy/sell transaction.

The right to expect attorneys, escrow agents, business brokers and intermediaries to advise the parties to a pending buy/sell transaction to document in writing their agreement(s), warranties and representations.

The right to request that business acquisition advisors, business brokers and intermediaries not have a pending or potential investment in the business for sale and simultaneously be a consultant or business valuator to the business buyer or seller.

The right to request from people purporting expertise in business valuation or pricing businesses for sale to show supporting evidence of adequate qualifications.

The right to expect business acquisition advisors, business brokers, intermediaries, sources of financing and others to conduct themselves at all times in a manner that reflects creditably on their profession or line of business.

The right to expect sources of referral not to recommend or employ unqualified

business appraisers or where conflict-of-interest may exist.

The right to expect service providers to promptly inform buyers of special relationships, circumstances or interests that might influence or appear to influence the service provider's counsel, objectivity, judgment or recommendation concerning the buyer's intent to purchase a particular business.

The right to retain a business broker or intermediary paid by the buyer for advice on the transaction. This advisor may or may not (also) be compensated by the seller or seller's agent at the discretion of the seller and/or seller's agent.

Disclaimer & Notice of Copyright

It is not reasonable for anyone to expect this or any document to include everything that could or should be communicated on any topic.

This Bill of Rights shall not be construed to deny fair opportunity to anyone or to disparage the business behavior or the professional practices common in the industries with which buyers interact during their course of purchasing a small or midsize business. These rights shall not be construed to deny that other rights are retained by buyers of small and midsize businesses.

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