



FINANCING THE TRANSACTION

By Business Brokers Press

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(Article Focuses on Buyer Financing & SBA Loans for Small Businesses Transactions)

With the current economic downturn, we should see buyers who have lost their jobs, for whatever reason, searching for a way to support themselves and their families. Many will hope to find new jobs; others will decide to look at going into business for themselves. From this second group, some will start from scratch, others will investigate franchising, and still others will look to buy an existing business.

The most recent survey conducted by Business Brokerage Press revealed that seller financing was involved in only 27 percent of the transactions. SBA financing was involved in 30 percent, bank financing in 20 percent and 23 percent by “other.” Interestingly, when asked what the main obstacle was that prevented sales from closing, financing topped the list at 30 percent. This was the biggest reason for deals not closing.

Many of the buyers considering buying a business to replace a lost job may not be candidates for outside financing. They may be scraping every dollar they can for a down payment and money to live on until they find a business and receive an income from it. Others may not have sufficient experience for SBA or other financing; the business itself may not qualify due to lack of assets – such as a service business. The reasons are endless.

As you will see from the statement below, SBA qualifications are tightening up. It never fails -- the economy is tanking and the first thing the government does is tighten up SBA lending, when what it should be doing is loosening requirements and increasing the annual amount that SBA will guarantee. The more small businesses there are, the greater the increase in jobs.

In order to maintain deal flow, seller financing is going to be absolutely necessary. Certainly, SBA and other financing will be available for those really good deals and the really qualified buyers. However, there will be many deals that may have qualified for outside financing some months ago that won't qualify today, unless requirements are lowered.

No sense in promising outside financing in today's market. Sellers must be told from the outset that they will have to provide the financing if they hope to sell their business.

The following statement was issued by Anthony Saya, (315-345-1238) a representative of the commercial lending department of Key Bank, a major bank.

Business Acquisition Financing & New SBA Policies

Buyer's Down Payment: If any of the buyer's down payment is coming from borrowed funds, such as home equity, the borrower and/or his family living in the same household must have outside income to meet the credit obligation for those funds.

Business Valuations: All business acquisitions require a business valuation. If the loan proceeds are less than \$350,000, the valuation report may be prepared by the lender. The lender may not use a report provided by the buyer and/or seller and the lender must order this valuation.

If the business contract gives specific value to assets (not real estate) and the business financial balance sheet indicates a value less than on the contract, an independent appraisal for those assets must be obtained to support the higher valuation. The lender may not use a report provided by the buyer and/or seller and the lender must order this valuation.

Seller Financing: SBA states that the lender should explore seller financing for the goodwill portion of a business acquisition. A seller's refusal to provide subordinate financing for the goodwill should be documented in writing by the seller and provided to the lender. SBA is expecting lenders to use prudent lending decisions when determining to provide financing without the seller's participation.

Loan Terms: Business acquisitions with no real estate remain at a 10-year term. Real estate acquisitions remain at a 25-year term. Historically, loans that included both business and real estate were blended. Lender's now have the option of providing a blended maturity or a maturity based on the maximum maturity allowed for the asset comprising the largest portion of the use of loan proceeds. For example, if the majority of loan proceeds are financing real estate, a maximum term of 25 years is allowed. Verify with the lender what method will be used to determine the maturity.

Life Insurance: If the business management is tied to an individual or a group of individuals, life insurance is required. The amount of life insurance is to be determined by the lender taking into consideration the type of collateral and the liquidation value of the collateral.

Gas stations: The property may not have any contamination above state and federal regulation. Any and all levels above the minimum allowed by state and federal regulations must be cleaned up and reported as such before loan can be approved. If the level is in the acceptable range, however some reasonable clean up or monitoring remains, the financial means to make that happen need to be addressed and be satisfactory going forward. Loan proceeds are not to be used for this ongoing clean up and/or monitoring.

The seller and the buyer must sign an SBA Environmental Indemnification Agreement without revisions. The seller's liability under the Indemnification Agreement is only up to the time period when the property is transferred. The fuel supply company does not sign this agreement unless it is the seller or the party responsible for on going clean up and/or monitoring.

Fuel Supply Agreement must not have any controls of the business management or an automatic purchase agreement at the end of agreement.



The real estate property title must not have any unreasonable covenants/deed restrictions that would prevent the lender from liquidating and selling the collateral, other than normal municipality zoning rules.

Lender must have the following in advance to make loan approval: Property Title Policy; Environmental Report; Tank & Line Pressure Testing; Real Estate Appraisal; Fuel Supply Agreement.

Lender Referral Fees: When a referral fee is paid by a lender or a borrower, this must be disclosed on a SBA 159 Compensation Form disclosing the actual fee, which the borrower, Lender, and referral agent must all sign. If the fee exceeds \$2500, an itemized invoice is required. A lender and borrower cannot both pay a referral fee for the same transaction. A borrower can pay a packaging fee and a lender can pay a referral fee on the same transaction.

Seller has existing SBA Loan: If a lender has an existing SBA loan to the seller and is financing the acquisition, the lender may not process the request through any expedited loan program. The request must be submitted to the SBA Loan Processing Center for final approval.

Collateral: SBA no longer allows lenders to provide a value to accounts receivable and inventory when determining collateral coverage, even if those assets are required as collateral on term loans.