SMALL BUSINESS RESOURCE NETWORK®

CONNECTIONS

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What Exactly is a Business Broker?

By Daniel Younkins • Broker

Everyone's heard of brokers: stock brokers, mortgage brokers and even marriage brokers. But what is a business broker? It's a little known and less understood segment of the real estate industry. Simply put, a business broker assists individuals (or companies) buying or selling a business, a concept similar to a residential real estate agent in the housing market. However, that's about the end of the similarity.

A Few Statistics

There are approximately 25 million businesses in the United States. The vast majority of these businesses have no employees–real estate salespeople, consultants, nannies, etc. Discounting these, there are about 5.6 million businesses with employees, of which 20 percent are for sale at any one time. Ninety percent of the businesses for sale are offered "for sale by owner" – FSBO's. However, according to the U. S. Department of Labor and the SBA, more than 50 percent of the businesses that sell are sold through business brokers.

Build vs. Buy

Every year, thousands of people consider entrepreneurship via one of two routes; either buy an existing business or start one from scratch. Each course has advantages and disadvantages to consider.

Starting your own business can be very rewarding. But you need to have a unique product, technology or service. Let's face it: there are very few "new ideas" out there. Individuals should complete a thorough evaluation of the marketplace, competition and need (a business plan). Perhaps you can start from home with no employees and greatly reduce the initial capital investment.

However, you may need to support yourself (and family) with personal savings. It may be months or years before profits are sufficient to provide the level of income needed.

(Continued on page 7)

Con-nec-tions

1. The act of connecting, or the state of being connected.
2. That which joins or relates, a bond or link.
3. Group of associates, often considered influential in some way.
4. **Small Business Resource Network.**

SMALL BUSINESS RESOURCE NETWORK®

Dear Readers,

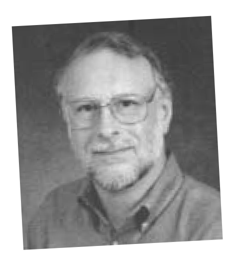
During the past two years, my columns have typically begun with a current event, ending with how this might lead to using SBRN members' services. If you haven't availed you or your business of SBRN members' services, seriously consider doing so.

Begin with the UNF Small Business Development Center (SBDC). One of the most important agencies SBRN offers is the SBDC, led by Janice Donaldson. The SBDC is comprised of a most valuable resource–business counselors who assist small businesses throughout the greater northeast Florida area.

Referrals between SBRN members benefit both SBRN members (by offering new business), and the client, by providing experienced professionals to meet his or her needs. Over the past year, SBRN members referred more than 3000 clients, who grew their businesses with business loan borrowing in excess of $33,000,000.00, and created 530 jobs. The SBRN website, SBRN.org, was also enhanced in 2004, proving to be a wonderful business resource.

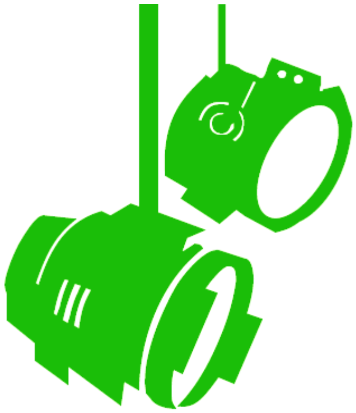
2005 looks to be a challenging year for our local, national and global economy. If China were as productive and consumptive as America, global oil and steel usage would both need to double! Natural disasters present a mixture of problems and opportunities, and the loss of aircraft carrier USS John F. Kennedy will negatively impact the local economy unless replaced by a nuclear carrier. The Super Bowl was a boon to the local economy and a bane to downtown and nearby traffic, but likely ushered in the beginning of another good year for business in Northeast Florida.

I now say farewell after two terms as president of the SBRN Steering Committee. First, thank you, Steering Committee members of the last two years. You've helped me greatly and under our leadership, SBRN truly grew. Also, thank you, Nancy Boyle, our executive director and able assistant. Lastly, I want to congratulate **Beth Barron of CIT Small Business Lending Corporation**, for assuming the presidency of the SBRN Steering Committee. I wish Beth and her Steering Committee the best in making SBRN an even better service to businesses in Northeast Florida.



Howard Caplan, Esq.
2004 SBRN President

SBRN is a joint project of: UNF Small Business Development Center and the City of Jacksonville.



Spotlight on…

Why Small Group HSAs Aren't Succeeding in Florida

By Ken Smith, CLU, FLMI • Insurance Consultant

While individual HSA Plan sales were strong in 2004, the same cannot be said about Florida's Small Group HSA's. Signed into law in December 2003, HSA plans put individual taxpayers back in the driver's seat when it comes to controlling health care costs. So, what's going on here–what's the problem?

HSA plans come in two pieces: a health insurance policy, in which the owner self-insures for a portion of his or her medical expenses, plus a tax-favored cash account, from which the owner pays a vast array of medical and dental expenses with income tax-free dollars. A ground swell of healthy individuals abandoned their restrictive old-fashioned health insurance and flocked to HSA plans last year.

However, ground rules for Florida's small group (employer-sponsored) health insurance differ from individual health insurance plans, stifling the advance of employer sponsored HSA plans in 2004. Insurance companies issuing health insurance to individuals require that the proposed insured be in good health, working in a safe occupation, have a clean driving record, and meet other underwriting standards to qualify for his or her insurance.

As a consequence, claim frequency is less and premium requirements are lower. However, Florida's small employer-sponsored group health insurance plans can only require that an employee work at least 25 hours per week, and show up on the sponsoring employer's state and federal payroll records to participate in the group health plan.

To further complicate matters, the state requires a laundry list of benefits be included in each small group health plan, and then dictates the method and manner to arrive at the plan's monthly premiums. If you're a small business owner, take a look at your latest group health insurance premium notice to witness the results of our state's largess.

Setting up an HSA plan for an individual is easy. Just apply for the insurance policy, and set up the HSA cash account with your broker, banker, or credit union. Typically, the result will be lower premiums to pay, freeing up excess dollars to deposit into the tax-favored cash account.

However, small business owners wishing to do the same for their employees, have discovered, (1) that group HSA health insurance premiums are not significantly less than non-HSA plans (see above for reasons), (2) in exchange for slightly lower premiums, rank and file employees must assume a self insurance role in the plan (often a tough sell) and (3) the employer must establish a relationship with a bank or other qualified trustee to administer the HSA cash account for each covered employee, creating more fees for the employer to pay.

A better alternative for group insurance purposes may be a Health Reimbursement Arrangement, a near relative of HSA's. HRA's employ high deductible health insurance coverages, coupled with an employer "pay all" cash account.

First, medical expenses are paid from the employer's dedicated cash account until the covered employee's annual deductible has been met. After that, the insurance pays for the rest of the year. Meanwhile, the employer controls the cash account, which never vests with the employee.

Currently, insurance companies offering small group health plans in Florida are trying to use off-the-shelf plans pounded into the shape required by HSA regulations. Some are using traditional HMO's and PPO plans with "high" annual deductibles on all benefits, including prescription drugs.

Such plans would be better suited to HRA plans. As HSA rules require that annual deductibles be cumulative family deductibles rather than "per person" deductibles, and deductibles be indexed to annual cost of living, some other design changes have been necessary. However, as long as Florida citizens are saddled with our current small group health insurance rules and regulations, there may be no bright future for small group HSA plans here.

If you want to make a difference, contact your State Representatives and tell them to scrap the small group health insurance guarantee mandated in 1993. Instead, allow the insurance carriers to resume underwriting their small group health insurance risks. At the same time, create a safety net program for the uninsurable employee groups similar to what was in place prior to 1993.

Kenneth L. Smith. CLU, FLMI, owns Insurance Planning Services and is a charter member of SBRN. He can be contacted at (904) 285-5255 or at kensmith@kensmithhsa.com.

What is a Contingency?

By Nancy L. Cofield, CBI • Broker

A contingency in the sale of a business is a condition in the offer that must be resolved by either a buyer or seller. If it isn't satisfied, then the sale generally doesn't move forward.

Most offers to buy or sell a business contain one or more contingencies. For example, the sale may be subject to the buyer obtaining financing or the seller repaving the parking lot.

Experienced business brokers deal with a myriad of contingencies, most of which are placed in the offer by the potential buyer, and must be satisfied prior to closing the sale. Contingencies range from the very simple (i.e., the buyer receives a lease extension by a certain date), to very complex (i.e., the sale is contingent upon the buyer's approval of the seller's books and records).

The difference between these two examples? The first provides a specific event that must be satisfied within a specific time frame. If the seller satisfies the contingency, the buyer has to close the deal. The second example is open-ended, meaning a buyer could opt out of the proposed sale by disapproving the records and books for essentially any reason. Additionally, there is no time limit for the records-approval process, giving the proposed buyer as much time as he or she wants between making the offer and closing the sale.

The following are some tips on dealing with contingencies:

- Make sure each contingency refers to a specific time frame for resolution. Without a time limit, the deal could go on forever.

- Contingencies should be reasonable. There's simply no point in making the sale contingent on moving the building or business to another state. As they say, "It ain't gonna happen."

- Limit contingencies to only very important, critical issues that impact whether or not a buyer will actually purchase the business or not. Minor issues should be resolved prior to a written offer.

- Confidentiality or proprietary issues may influence whether a buyer will buy the business, but the seller should not proceed until an offer containing price and terms is agreed upon.

Contingencies come in all different shapes and sizes, and almost all offers have at least one. They're an inevitable part of selling and buying a business. As a buyer or seller, it's important to know what's reasonable and what's not.

Nancy Cofield, CBI, is president/broker of Corporate Investment International of North Florida, Inc. She can be contacted at (904) 996-1666 or via Email at ncofield@cii-ma.com.

Small Business Thriving in U.S.

By Nancy L. Cofield, CBI • Broker

Do you ever feel like a small fish in an oversized pond? Do you wonder just how big most businesses are in the United States and how your business compares?

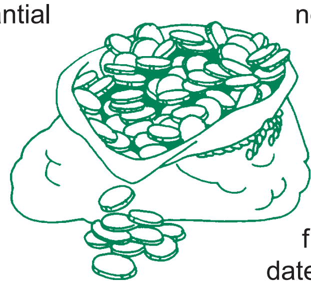
According to a recent breakdown of different types of U.S. businesses by American Business Information, a large percentage of "main street-type businesses" including advertising and marketing agencies, retail stores, auto repair shops, cafes and coffee shops, bookstores, hotels, coin operated laundries, convenience stores, salons, restaurants, etc... make up *almost 90 percent* of the total number of U.S. companies.

On average, more than 60 percent of these companies have annual sales of *less than $500,000.* That's what small business is all about–being your own boss, making your own decisions and earning a living. It would appear from this data, that small business is alive and well.

Franchising–The Good and The Bad

By Howard A. Caplan, Esq. • Attorney at Law

Franchising started in the early 1900's with franchised automobile dealerships and gasoline service stations. However, the major growth in franchising began in the 1950's as postwar America became more mobile and wealthier. Businesspeople quickly learned that franchising was a relatively inexpensive method of growing a business; relying on a product or service brand. Not surprisingly, substantial abuses occurred, leading to many states enacting franchise disclosure laws and/or relationship laws.



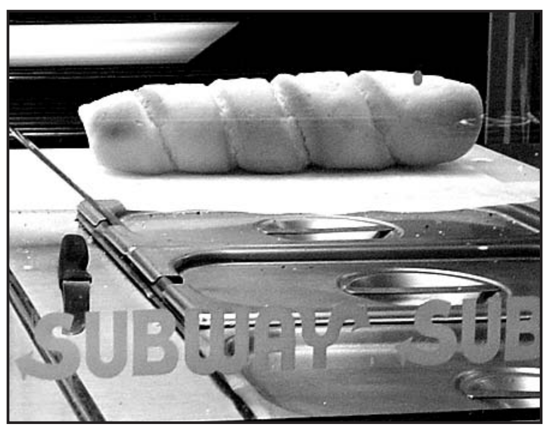
In 1979, the Federal Trade Commission (FTC) promulgated the so-called FTC Rule, a disclosure requirement applicable to the entire country. The FTC Rule does not pre-empt state franchise laws. Franchising is a heavily regulated method of doing business. In Florida, the general franchise law is actually in the criminal statutes, making misrepresentations in the sale of a franchise a criminal offense. However, Florida also has a business opportunity law that applies to many franchises.

Why would a company want to franchise its business? To achieve maximal brand exposure at relatively low cost. Indeed, unless the franchiser owns the real estate from which a business operates, virtually the entire cost of opening and operating a business location is borne by the franchisee. Inexpensive, right? The franchiser simply uses other people's money to grow the business.

The franchiser though, has a great deal of interest in protecting the quality and cachet of its brand, the loss of which could prove costly. After all, McDonald's would not have been nearly as successful if its franchisees could make, package, and market their products in any manner they desire. It's crucial for a franchisor to exercise a great deal of control over its franchisees. For example, "franchising success" means a hamburger in Atlantic Beach should appear and taste the same as one from Zephyrhills.

How does the franchisor maintain the necessary degree of control? By legalizing the relationship between the franchisor and franchisee via a franchise agreement.

The franchise agreement covers the entire panoply of the franchise relationship, from the date the agreement is signed through opening and operating the business, and the termination and expiration of the business relationship.



The franchise agreement also addresses suppliers, which may be restricted to certain companies, construction methods, design, duties of franchisor and franchisee, confidentiality, modification of the franchise system, insurance requirements, restrictive covenants as to competition and confidentiality, enforcement and dispute resolution. Not surprisingly, franchise agreements typically run in excess of thirty-five pages.

In addition to the franchise agreement, the disclosure document, usually known as a Uniform Franchise Offering Circular (UFOC), must be drafted (required by the FTC Rule). The UFOC contains much of the information in the franchise agreement as well as information on the franchisor company, principal parties of the franchisor and their backgrounds, lists of all franchisees and limited information on recent past franchisees, copies of all contracts franchisees must sign, and audited financial statements. The UFOC must be written in plain English and follow a precise format. UFOCs, excluding the franchise agreement, financial statements, and required contracts, also tend to run in excess of thirty-five pages. In addition, a franchisor must develop a training program and operations manual.

A substantial amount of time, effort and money are required to prepare to sell a franchise. The company must develop a competent training program, support program, marketing program, and an operations manual, which together provide that a person with moderate training can operate the business. A substantial amount of time will also be spent establishing all the necessary business and legal matters to be included in the franchise agreement and UFOC.

A business's brand is one or more of a company's trademarks or service marks. It's important for a company to have its mark protected from infringement; otherwise, not only may growth into a region be stifled, the brand name may have to change. Thus, federal registration of marks is required. However, development of the franchise sales documents and sales of franchises may proceed while registration is pending.

(Continued on page 6)

Factoring: Financing for Non-Bankable Companies

By Jerry Mayes • Lender

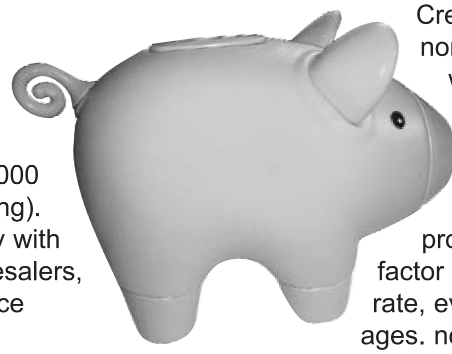
Many companies are unable to obtain bank financing against their assets, making numerous companies in Northeast Florida non-bankable for a myriad of reasons:

- The company is too new.
- The company is under new ownership and/or is a new venture.
- The company is too small.
- The company is at its maximum capacity with the bank.
- The company is in the “wrong” industry, making it undesirable for the bank.
- The company is having financial problems.
- The company's growing too rapidly for the bank.

Whatever the reason, it often means the company’s application will be declined.

Many of these companies will continue to endure–but *without* reaching full capacity and hiring strength. Others will not be able to survive a financial crisis–resulting in closed businesses and lost jobs. To stay afloat, many companies must either take in an equity partner, diluting the ownership of the business, or look for venture capital, a time-consuming and often long and fruitless search.

But enough "gloom and doom." *Factoring* can be a means of cash management for non-bankable companies. Factoring is a form of accounts receivable (A/R) management where the factor purchases the accounts receivable. A factor can deal with companies that don’t meet bank requirements; structuring programs with annual utilized funds as low as $15,000 monthly (and no ceiling). Factors deal primarily with manufacturers, wholesalers, distributors and service companies.



Factoring greatly shortens the company's "cash cycle”–the time a product or service is out and waiting for the payment (cash) to come back in. By making better use of cash capabilities through factoring, companies grow and profit, leading to the emergence of a bankable company; a goal for non-bankable businesses. The local community also wins with more bankable businesses, growing with the increased revenues, higher employment and prospering companies.

Sophisticated, tier-two factoring offers additional features including *credit protection, non-escalation of rates and non-advancement of fees.* Credit protection is non-recourse factoring, which protects both the client and the factor from non-payment. The non-escalation of rates program permits the factor to keep the original rate, even as the invoice ages. non-advancement of fees means the factor doesn't increase the factoring fee as the invoice ages.

Many factors "share the wealth" with companies for referrals and factors don't normally compete with bankers. In fact, it’s estimated more than 80 percent of all factoring referrals come from bankers.

Bottom Line: Factoring is a proven solution to a non-bankable company's cash flow problems.

Jerry Mayes is vice president of business deveopment at ICC Business Credit, Inc. and can be reached at (386) 575-1403 or via Email at jmayes@iccfinancialgroup.com.

New SBA Regulations Benefit First Coast Companies

By Kristen Tackett • Lender

Money just got a little bit cheaper for manufacturing businesses in Florida. Under a new budget resolution signed by President Bush, manufacturing businesses can now borrow larger amounts at low, fixed rates through a government loan program.

Manufacturing companies can now borrow up to $4 million under the U.S. Small Business Administration's 504 loan program, up from the prior limit of $1 million. The loan program offers small business owners access to low interest, long-term, fixed-rate financing for the purchase, construction or renovation of real estate or the purchase of industrial equipment.

Using the 504 program, lenders provide financing for 40 percent of a project. A local bank finances 50 percent of the project and the borrower is responsible for a 10 percent down payment.

"The change means that any manufacturing business purchasing or building a facility under $10 million can get maximum benefits from the 504 program," says Todd G. Kocourek, president of Florida First Capital, a statewide certified development company (CDC).

Provisions in the Omnibus Appropriations Act, a wide-ranging $388 billion bill that funds thousands of government projects nationwide, increase other 504 loan limits as well. The general purpose 504 loan maximum rises from $1 million to $1.5 million. The public purpose 504 loan maximum rises to $2 million (public purpose loans include those for women-, veteran- and minority-owned businesses as well as for businesses located in rural areas).

To qualify, a company must be a for-profit small business in Florida. Most Florida companies are eligible, and most projects qualify for 10 percent down payment terms. The program supports purchase of real estate which will be primarily occupied by the purchaser, and used in its business.

Statewide CDCs such as Florida First Capital, promote job creation throughout Florida by working with the SBA and private-sector lenders to provide financing to small businesses. They lend under the SBA 504 loan program and the State of Florida Recycling Loan Program as well as other small business assistance programs.

Kristen Tackett is the Northeast Florida loan officer with Florida First Capital Finance Corp. and can be reached at (904) 334-0651 or (904) 861-2270. Kristen can also be Emailed at kristen@ffcfc.com.

Franchising... Marketing the Brand Image

(Continued from page 4)

If it strikes you that establishing a franchise may be expensive, you're right. How much would it cost your company to open additional locations?

Often, business owners try to avoid the expense of franchising by entering into a license agreement. License agreements grant the licensee the right to do something using the brand, method, etc. (advertising, using, and/or selling products or services belonging to the licensor).

To the chagrin of some licensors, being able to enforce more than minimal control over a licensee may result in the relationship being deemed an inadvertent franchise. In this case, all protections provided by law are available to a franchisee, including rescission and return of all monies paid by the inadvertent franchisee.

What type of business can or should be franchised? Any kind of business (selling goods or services) may be successfully franchised if the business can be duplicated, but proper business systems are critical.
Not only are business systems important to a small business, they are crucial to multi-unit operations, whether franchised or not. Developing these systems and the supporting documentation previously referred to, takes a considerable amount of a business owner's time.

If your business can run smoothly in your (limited) absence, you want to grow your business by adding locations, and you're willing to invest the time and money, franchising can be an excellent way to grow your brand and your business.

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Business Broker Defined

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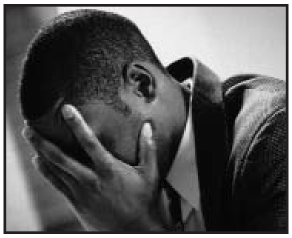
Obtaining financing can be very difficult with no track record and no customers. According to the Bureau of Labor Statistics, the chances of survival for a start-up business is only 25 percent.



Buying an existing business may be a more efficient, but often more costly, way to business ownership. Existing business owners expect a premium for providing an existing customer base and location.

Existing businesses normally can obtain financing from financial institutions–they have established history, assets and a proven idea. The seller often provides a portion of the financing in the form of a loan.

Established businesses are also less risky because they have relationships with suppliers, an operating process, and employees that are already hired and trained. In addition, there's an existing cash flow to provide immediate income to the buyer. Experts generally agree, in most cases, that paying the extra cost for an existing business outweighs the risks of starting one from scratch.

Selling Your Business

In residential real estate, sellers want everyone to know their home is for sale to accomplish the greatest exposure. Rarely is this the case for businesses. An owner typically doesn't want anyone to know his business is for sale. While Realtors deal in the number of bedrooms and baths, square footage and nearby schools, business brokers deal in revenue, cost of goods sold, expenses, inventory and overall business valuations, recasting, income tax returns, profit and loss statements, leases, etc.

Business sales must be conducted in the strictest confidence to protect the ongoing viability of the business. If word gets out that a business is for sale, employees flee, competitors pounce, suppliers fret and the entire future of the business is in jeopardy. How many "Business For Sale" signs have you ever seen? Additionally, businesses are valued on the basis of their cash flow and thus the value of the business may decline as the attention of the owner is focused on the sale.

The Solution

In many cases, the seller pursues a "for sale by owner" route towards the sale of his or her business in an effort to avoid paying a commission to a business broker.

However, the short-term reality of paying a commission is overshadowed by the benefits of having a seasoned veteran. In residential sales, the home and land serve as collateral allowing the buyer to obtain traditional financing. In a business sale, much of the value is in the intangible goodwill. Banks are left with very little to foreclose on should the business fail under the new owner.

For that reason, owner financing is a major issue in business sale transactions. In these cases, the seller has a tremendous stake in knowing the buyer, not just the buyer's ability to operate the business, but his reputation and personal financial condition as well. Too often, a seller will find that he or she has been misled by a buyer who subsequently ruins the business and jeopardizes the ultimate repayment of the loan.

Using a business broker can actually increase the cash that remains in a seller's pocket after the sale. A good broker works in the best interest of both buyer and seller throughout the transaction. A broker understands the many pitfalls inherent in business transactions, maintaining confidentiality throughout the process and qualifying the buyers' reputation and financial capability. Brokers also assist in structuring the various financial options available, enabling the owner to do what he does best—run his or her business.

Considering the pros and cons, the stakes in buying or selling a business are simply too high to proceed without competent representation. While a FSBO can make sense in a residential transaction, it seldom pays dividends in a business sale.

Daniel Younkins is a Licensed Business Broker with Sunbelt Business Brokers of Jacksonville and St. Augustine. He can be reached at (904) 992-2223 or via Email at younkinsd@aol.com.

IRS Simplifies FUTA Deposit Rules

By Sam Froio • IRS

The Internal Revenue Service announced an increase in the minimum threshold for Federal Unemployment Tax Act (FUTA) deposits, reducing the tax burden for more than four million small businesses.

As of Jan. 1, employers are required to make a quarterly deposit for unemployment taxes *only* if the accumulated tax for *all* employees exceeds $500.

The previous threshold, established in 1970, was $100, meaning if an employer had two or more employees with an annual salary of $7000 or more, the maximum amount the employer collected would total $112 (.8% of $7000), forcing the employer to make quarterly FUTA deposits.

"The IRS is committed to reducing burden on taxpayers whenever we can," said IRS Commissioner Mark W. Everson. "The new rules will help cut paperwork for millions of small businesses."

Raising the requirement lessens the burden for employers with eight employees or less by eliminating the requirement to make up to four FUTA tax deposits yearly.

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