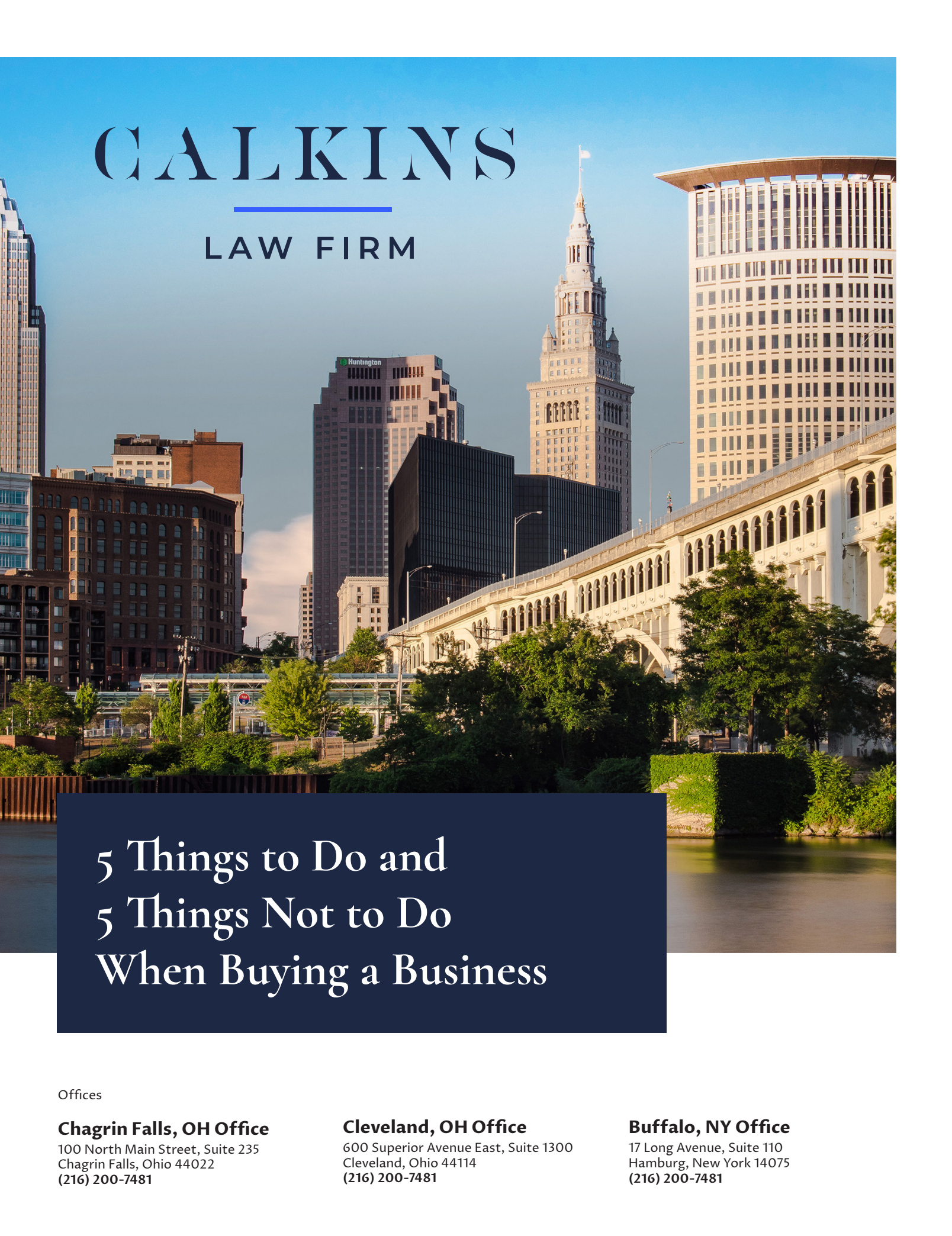




CALKINS

LAW FIRM

5 Things to Do and 5 Things Not to Do When Buying a Business

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To Do:

1. Buy a Business That You Are Familiar With and Know How to Manage

We recommend that you buy a business that you are familiar with and that you are therefore in a position to effectively manage. Owning and managing an operating business can be very challenging and business owners need to be able to adjust swiftly to changing circumstances. In buying a business, you can reduce your risks and maximize your chances for entrepreneurial success by buying a business in an industry that you are familiar with or, better yet, by buying a business that you are familiar with.

2. When You Find an Attractive Acquisition Prospect, Move On It By Making a Realistic Offer.

It isn't easy to identify an attractive acquisition opportunity, so when you do find one, it is important to make an offer. Typically the offer will be in the form of a non binding letter of intent. Best to make a realistic/ fair offer as few if any businesses are available to be stolen and a low ball offer can have the effect of alienating the business owner/ seller and possibly killing the deal.

3. Be Sure Your Letter of Intent Gives You a Reasonable Period of Exclusivity

While letters of intent are typically non binding, they will typically give the buyer a limited period of exclusivity. A prospective buyer will want this protection before investing time and treasure in pursuing the acquisition opportunity.

4. Be Thorough in Your Acquisition Due Diligence

In our experience, where business buyers struggle or fail it is often because they did not perform thorough acquisition due diligence. A prospective buyer should literally investigate anything and everything that matters about the target business. A buyer can perform much of this investigation him or her or itself and if there are areas where particular expertise is required, such as accounting, a prospective buyer is well advised to bring in an accountant to perform this aspect of the acquisition due diligence. Smart, too, to have a seasoned business attorney perform the legal due diligence. Thorough due diligence can enable a prospective buyer to avoid making an acquisition altogether if the problems with the target business are significant enough and if the seller won't cover them. Often issues that are unearthed in acquisition due diligence can be addressed and/or covered by the seller and the transaction can proceed.

5. Be Realistic and Practical When Negotiating and Documenting the Acquisition

A purchase agreement can run 30 to 40 pages, and will typically cover a range of issues that vary widely in their importance. It is important for the buyer, along with seasoned mergers and acquisitions counsel, to carefully review and understand each and every provision in this lengthy document and in all of the other ancillary closing documents, and, yes, to engage in the inevitable give and take, but within reason and with limits, retaining the basic protections that a buyer is entitled to in the form of representations and warranties and indemnities and the like.

Not to Do:

1. Don't Buy a Business That Represents Unfamiliar Territory

A buyer will limit his risks and his downside if he buys businesses with which he is familiar. Over the years we have had clients buy businesses that they were relatively unfamiliar with and succeed with those acquired businesses. As a general matter, however, we recommend that buyers buy businesses that relate to and leverage the buyer's existing skill set in order to both limit down side risk and maximize the prospects for entrepreneurial success.

2. Don't Be Unrealistic and Expect Either a Perfect Target Business or to Steal It

"Perfect" businesses probably exist, and businesses which match absolutely "perfectly" with a buyer's skill set may also exist, but we don't recommend that buyers wait for such "perfect" opportunities, as the likelihood of finding one and being able to close on it is so very remote. Instead, we recommend that a buyer look for a reasonably attractive business that is a reasonably good fit with his or her or its skill set and then move ahead with it, proceed with confidence. We also recommend that a prospective buyer make a fair offer for the business, so as to not alienate the owner/ seller and in that way kill the deal.

3. Don't Buy a Business Without Making Provision For Adequate Capital

A prospective buyer needs capital both to buy the business and thereafter to operate the business. And operating a business that is strapped for working capital is both stressful and risky. So a prospective buyer should realistically plan/ arrange for the capital needed to both buy and then operate the business and if the buyer cannot make arrangements for adequate capital he or she or it should consider holding off on buying the business.

4. Don't Assume Anything and Don't Sweat the Small Stuff

On the one hand, assume nothing, doubt everything and carefully investigate absolutely everything. Information is power. In the give and take of the negotiating process, focus on and make your stand with respect to the relatively few provisions that really matter, i.e., that give you the protections you need relative to the major risks you are taking in acquiring an operating business.

5. Don't Forget the Non Compete and to Plan For The Transition

In the process of making the acquisition, of negotiating and then closing the deal, always look forward and plan for the transition. If you need for the seller to assist with the transition, be sure to so provide. And above all else, be sure that the seller enters into a non competition agreement so that post closing he cannot go right back into the same business that he just sold and divert all of the customers from your business.