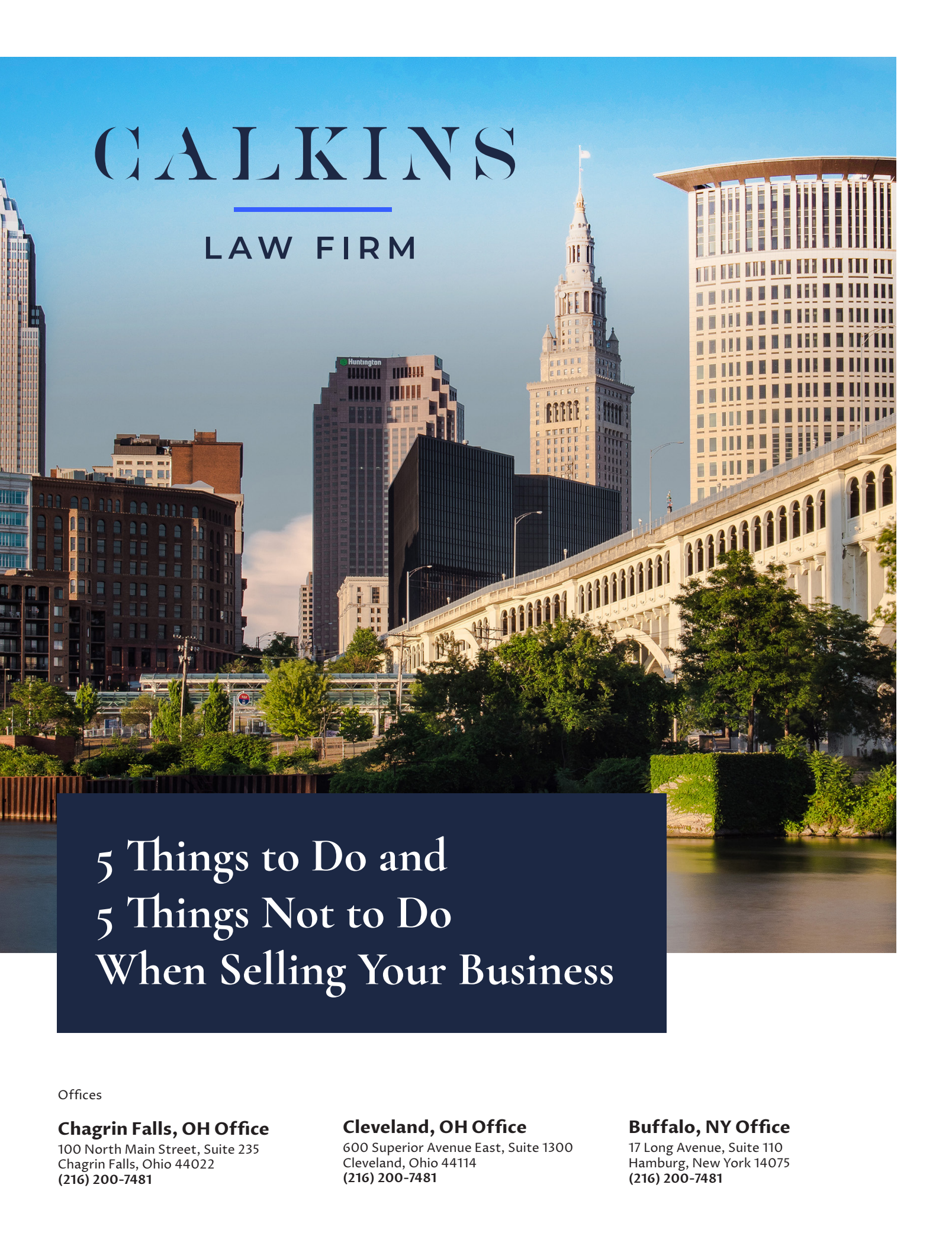


A photograph of a city skyline, likely Cleveland, Ohio, featuring several prominent skyscrapers. The Cuyahoga County Courthouse is visible on the right, and the Huntington Center is in the center. The scene is set against a clear blue sky with some light clouds. In the foreground, there are green trees and a body of water, possibly Lake Erie.

CALKINS

LAW FIRM

5 Things to Do and 5 Things Not to Do When Selling Your Business

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To Do:

1. Always Be Proactive Relative to the Future of Your Business

We recommend that all business owners be proactive relative to their businesses and their future. Ideally, every business owner has a business plan for his or her or its business and the business plan speaks not just to the present but to the future of the business. Every business owner should have a succession plan, and every business owner should periodically carefully consider whether to continue to operate the business or to perhaps sell it. Frankly any business owner who has run out of ideas for how to improve and grow his or her or its business and who does not have a succession plan should consider selling the business. Why wait?

2. Get Your Business Ready to Sell

Ideally, a business owner will start to get his or her or its business ready to sell at least a year before the business is going to be put on the market. The business owner should essentially perform due diligence on the business, attempting to anticipate any and all concerns that an eventual prospective buyer will have relative to the business. Whether it is accounting issues that need to be addressed, or relationships that need to be documented, or other open issues that need to be addressed/ resolved, or repairs that need to be made, the business owner who addresses all of these items proactively and well ahead of time will be rewarded by a higher selling price for the business and a process that will proceed from letter of intent through closing far more quickly and smoothly.

3. Hire a Professional to Market the Business and Have Confidence in the Marketing and Sale Process

The best way to sell a business is to hire/ retain an experienced business intermediary to market the business. A business owner looking to possibly sell needs to find a business intermediary who is well educated, top rated, and highly experienced, and is versed in the industry in which the business operates, and is fully committed to finding the best buyer for the business and to then closing a deal with that buyer. Yes, retaining a business intermediary costs money, but a business intermediary who does his or her or its job effectively will obtain for the business owner/ seller a higher price, net of the intermediary's fees and costs, and likely better terms for the sale of the business and therefore be well worth whatever he or she or it is paid.

4. Maintain the Business While It is Being Shopped, With Confidentiality Agreements and Stay Bonuses, Etc.

The sale process for an operating business can reasonably be expected to take some time, and the business owner needs to continue to effectively manage the business while it is on the market and to maintain its performance. A business owner will typically want to keep the fact that the business is for sale secret and therefore will want prospective buyers to sign confidentiality agreements and will limit contacts by prospective buyers or the business intermediary, attorneys, etc. with the business so as to not concern the business's employees, etc. Some business owners will feel they need to inform certain of their employees that the business is being put up for sale and will possibly want to enter into agreements with these few employees giving them incentives to cooperate and facilitate the sale process and to stay on with the business at least through the eventual closing.

5. When It Comes to Negotiating and Documenting the Transaction, Focus on What Really Matters

A seller is going to primarily be interested in getting paid for the business and being free of any liabilities related to the business or to the sale as soon as possible. In the process of negotiating and documenting the sale of the business, seller and his or her or its attorney need to stay focused not on all of the fine points/ details contained in the purchase agreement and all of the ancillary closing documents but on the provisions related to payment of the purchase price, either at closing or possibly thereafter, and on the residual liability relative to the business that remains with seller post closing. Sellers are going to want to limit their exposure under representations and warranties contained in the agreement by making sure the representations and warranties are reasonable and contain exceptions as noted, they are also going to want to be sure that disclosure schedules are complete and comprehensive, and they are going to want to limit the seller's liability for indemnification with baskets, caps, and by providing for the indemnification to end at the earliest opportunity.

Not to Do:

1. Don't Wait to Sell Until You Are Forced to Sell

We have observed that many private business owners wait to sell their business until external circumstances force the sale. Disagreements/deadlocks with partners in the business. Health issues. Family issues. Etc. Business owners that are selling their businesses because external circumstances have forced the sale are business owners who have failed to plan proactively for their businesses. Perhaps the biggest problem with waiting until external circumstances force the sale of the business is that it is entirely possible that the climate for business acquisitions might not be ideal when the business is brought to market. Today, the market for businesses to acquire is hot, but the market wasn't so hot, for example, during and after the great recession of just over ten years ago.

2. Don't Just Sell the Business As It Is

A business owner who doesn't prepare his or her or its business for sale, and just brings it to market as is, is likely both to get less for the business than if it had been well prepared for the eventual sale, and to experience delays in the sale process as the prospective buyer stumbles onto issues and concerns that might have been addressed by the seller earlier and weren't and is forced to address those issues.

3. Don't Try to Handle the Sale Yourself and Expect That Informal Process to Bring You the Best Deal

Inevitably, some business owners are going to want to save fees and to engineer a sale of the business themselves. This can work out to a seller's benefit, just as a for sale by owner house sale can, but in general a well seasoned and highly motivated business intermediary is going to put the business in front of more prospective buyers than a business owner could and to present the business more effectively and to engineer a sale at a higher price, and or on better terms, and / or more smoothly than a business owner can.

4. Don't Drag Out the Process

Once the buyer makes an offer to the seller/ owner, it is best that both parties work together to maintain some momentum for the transaction. Yes it takes time to do due diligence, to negotiate and document and finance and close the sale, but, all of that said, both parties are going to want to stay engaged and involved and to maintain some momentum for the transaction. Some delays are unavoidable, but in general the sooner the better and by all means let's keep the balls rolling towards the eventual closing.