

Selling your business - What the heck is due diligence (S3E58)

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00:06 Autumn Witt Boyd: Welcome to The Legal Roadmap podcast, for online and e-commerce entrepreneurs. I'm your host, lawyer Autumn Witt Boyd. I'm an experienced copyright and trademark lawyer. With my team at the AWB Firm, I leverage, grow and protect multimillion dollar online businesses. My goal in every episode is to teach you about the sophisticated legal and business strategies to build your own seven or eight figure business. If you're a new business owner, go back and listen to episodes one through 12, you'll learn the basics to set up a strong legal foundation. The Legal Roadmap podcast is sponsored by the AWB Firm. You can find show notes for every episode, and learn more about how we help our clients achieve their next level goals at AWBFirm.com.

00:52 AB: Hi Facebook friends and Legal Roadmap podcast listeners. This is attorney Autumn Witt Boyd, delighted to be with you here today. This is part two of our month long series during the month of October about how you can prepare your business now for a potential sale or investment or other exit. If you are thinking about maybe taking a step back in your business at some point, this episode is for you. We are going to talk about all of the things that someone who is interested in either investing or maybe purchasing your business is going to want to know about your business so that you can prepare, you can get your ducks in a row, so that there are no uncomfortable surprises later.

01:34 AB: This process is called due diligence in the legal world. Due diligence might be the most boring legal term I have ever heard. So we are going to go through all the different parts of due diligence. What kinds of things the other person might be asking for, what you should be looking for in your own business and how you can do your own due diligence before you are in front of an investor or a potential purchaser or someone else who might be looking at getting involved in your business, so that, again, we don't want any uncomfortable surprises, we want you to know what they are gonna be looking for and so that you can provide them the right things, and the transaction can go smoothly.

02:13 AB: So I will give my standard disclaimer. I am a lawyer, I am not your lawyer, unless you hire our firm and decide to work with us one on one. I'm licensed in Tennessee. Everything I'm going to be talking today about is mostly going to be state law issues. If you hear me talking about intellectual property issues, those are all gonna be based on United States law. I am licensed in Tennessee as I mentioned, but these principles that I'm talking about today are going to be pretty standard across the United States. Now, if you are looking at doing a transaction like this you will definitely want to be working with an attorney who is able to either research or help you figure out what is the law and the rules in your own state to make sure that you are doing things correctly. But we are going to dive in. So what the heck is due diligence?

02:57 AB: It is basically an investigation and it can be done by someone else looking into your business. I'll talk about at the end that this is not only something that someone else might wanna do if they're thinking of investing in your business, but if you have a potential investor or potential

purchaser you may wanna do some of your own due diligence into their business because there could be issues that come up during the transaction that you will wanna do a little investigation of your own. So it's never just a one sided process, there can be some back and forth. But that is what due diligence is, it's basically an investigation where maybe one side or both sides is trying to get their arms around either the value of a company or the value of the potential assets and liabilities that they are going to be taking on if they purchase or invest in that business. This can also happen if you were maybe thinking taking on a partner, even if they're not contributing money into your business, maybe they're just gonna invest their time and energy, sweat equity or they're bringing something else to the table, but they still may wanna do some investigation into your business before they buy in, even if that buy in is not with money.

04:02 AB: So we can see this crop up in a lot of different scenarios. When does this happen? So it can happen, really, at any stage of the game. You will often see some initial due diligence early on, you may even do this, or if someone may come to your business and want to do some initial due diligence before they even make you an offer. Maybe if you're a privately held company, which most of my clients are, then you're not a big publicly traded company on the New York Stock Exchange. Your financials and information about how your company runs is not public, and so if someone is considering making an offer to you, there's really no way that they can know what the health of your business is, what your revenues are, what your profit is, what your assets are, if you have real estate or equipment, there's no way to find that out really other than to ask you and for you, the selling business, to provide it to them. So you do sometimes see a limited amount of due diligence before an offer is even on the table.

05:00 AB: And that is a scenario where you've got to decide how much time, energy and money because due diligence is expensive for everyone. You've got to decide how much of this do you wanna do before there's even an offer on the table. You might even wanna think about whether you want to ask for some earnest money or some sort of deposit, maybe it's held in escrow by a third party, so that if they do actually make an offer, you do come to an agreement about some terms moving forward, that maybe they'll get that back or maybe you'll split it, or there can be lots of different arrangements, just to make sure that you're not kind of spinning your wheels and wasting your time. Often lawyers and accountants are involved in due diligence from the very beginning. So, like I said, it's not free for anyone to do. So you wanna make sure that if you are going through this process, gathering information and answering questions, that it is worth your while, and that it's a good investment. Something that I want to point out at the beginning, before we dive into the different things that might be requested as part of due diligence is the issue of a nondisclosure agreement.

06:03 AB: So you've probably heard the term NDA thrown around or maybe confidentiality agreements thrown around. These are simple legal documents, they are often used in these kinds of transactions, where if Joe Schmo comes to you off the street and says, "Hey I wanna buy your company and give me all your financials," that's your personal, really private information. You don't wanna just be throwing it around, you don't want it to end up in the wrong hands. And certainly if you're giving information about things that are really important to your business that you hold confidential like the way that you do things or maybe your list of assets or some potential liabilities, maybe you've gotten some threats of lawsuits or some claims against you that you don't necessarily want to appear on the front page of the newspaper. It is very common in these kinds of

due diligence situations for there to be nondisclosure agreements or confidentiality agreements. So this is just where everybody says, "Look, we're going to be exchanging information for the purposes of looking into this transaction, whether it's feasible," you'll put all kinds of caveats in there that makes sure nobody has to go through with a transaction because you never know what you're gonna find, but it makes clear that you can only use the information that you get for the purpose of evaluating the transaction. You can't use it for any other purpose.

07:16 AB: This would be especially important if you were potentially looking at maybe a competitor absorbing you, you're gonna be dealing with really sensitive information. Now in that situation, I would also want you to think about whether there are... Sometimes you can't un-ring the bell. So there are things that, once a competitor knows about them, they can't forget them, even if they have given back all the documents or they've not kept the information, some things it's impossible to get back. So that is definitely something to consider, but a confidentiality agreement or nondisclosure agreement will go a long way towards protecting you in the event that the party that you're negotiating with does take that information and do something wrong with it. You can put provisions in those agreements that will give you the right to either go to court and get what we call an injunction where the the court orders them to stop. You're not asking them to pay you anything, you're just saying stop using it or stop saying anything about it, stop telling people my secrets.

08:10 AB: Or you can also put provisions in those agreements for monetary damages. You may have heard about confidentiality agreements and people have breached them. So they've said, "I have this confidentiality agreement, but I've decided what I know is so important, I think it's more important that I tell the public or that I tell all these secrets that I know and I'm willing to risk being sued even if it's a million dollar penalty." And of course, that million dollar penalty will only come into play if the other party sues you for it. It's not like it automatically goes into play, it has to be actually enforced by filing a lawsuit. As any agreement, it is only as good as the person's ability and willingness to take you to court if you breach it. So I just wanted to touch on nondisclosure agreements, 'cause that's a question I get a lot in these kinds of transactions, when we're starting due diligence, "how can I make sure that this information doesn't get into the wrong hands?" And that's how you handle that, with a nondisclosure agreement. So, I wanna go through and let me say at the outset, this list that I'm going to go through here is definitely not all inclusive. Depending on the type of transaction that you're looking at, whether it's an investment, whether it's a potential partner, even if you're doing a collaboration like maybe you're gonna do a product under someone else's brand, they'll wanna do some limited due diligence, but especially if it's a purchase.

09:26 AB: The list of things that the other side is going to wanna look at is going to differ in every transaction, because it's going to be specific to what kind of business you're in, what are you selling, what kind of services are you providing, what kind of assets do you have and what kind of liabilities could the person who's buying into you be taking on? Because that's always the risk. People want to know both what they're getting and what could be the potential downside, what could they be opening themselves up to being sued for. If you've done something terrible and they're taking over your company, they wanna know what is the universe of risk so that they can make a good decision about that in addition to figuring out what's the value of your company. I think that is kind of the universe that we're looking at when we're doing due diligence is what is the value of the company and what are the assets and potential risks or liabilities. So as I said, every deal is different, but I'm just gonna give you some kind of high level categories that are almost always going to be requested

in due diligence, so that you can start thinking about this and I want you as you're listening to think about if an opportunity came to me, if I had an amazing offer for investment or someone wanted to buy my business, how easily could I lay my hands on some of this kind of information?

10:36 AB: Now, some of this hopefully you should have fairly easily, some of it you might have to create, but some of it you may not even be tracking and that's what I really want to tune you in to is if this is on the horizon for you, what should you be tracking now because it's information that someone is going to want down the road and they may want the prior three years of X, Y, Z and if you can't provide that, it's gonna be very difficult to go through the process of getting the investment, or finding the buyer for your business.

11:04 AB: So, first and most basic, they're always going to want your corporate documents. So this is if you have formed an LLC or a corporation, if you're selling or taking investment, you probably have done that, they are just gonna wanna see your formation documents. This is the documents you filled with the state. This is always gonna be a state document, so wherever your LLC or corporation lives, you will need to provide either your Certificate of Incorporation with an LLC, it's called different things in different states, and probably your most essential corporate documents which are going to be either your bylaws for a corporation or your operating agreement for an LLC, that's just kind of the rules of how you run your company. Those are gonna be really important documents.

11:44 AB: They are also probably going to ask for your state, federal and local licenses. So, this is, every state is different and I should say that, but in most states, and most, sometimes in cities and counties even, you are required to get a business license. If you're in certain kinds of industries or you're selling certain types of goods or you're making certain kinds of things, you may also have to get a special kind of license. Some let's say, for instance, if you're making beer, there's all kinds of alcohol regulations. If you are selling certain services, maybe you don't have to have a license, so if you don't have to have a license, you may wanna provide evidence that you did that research and here's the rule that says I don't need a license. I was about to say, lawyers aren't required to have a business license. We are required to have a professional license.

12:25 AB: So that is another thing that might be asked for if you're required to have a professional license, for example, cosmetologists are required to be licensed, they may wanna see that you're up to date. And this is all, again, just trying to make sure that your business is on the up and up, and that there are no big risks that they are not aware of. So corporate documents and licenses, that's gonna be very basic information, hopefully though should be fairly easy for you to locate. And it would be a good time if you have not looked into whether you were required to have a license... I know with online businesses, a lot of us think we don't have to have licenses, but that may not be true. So it might be a good time if this is on the horizon for you to look into your licensing requirements. The second thing, and this is gonna be a big part of due diligence, is gonna be financial information. And remember, as I said, this may come even before you get a firm offer on the table, so the ability for you to at least pull some really quick reports, basically a profit and loss statement, which shows the detail of where the money is coming from and where your money is going out.

13:27 AB: Those are really essential. You should be using some sort of accounting software,

whether that's QuickBooks. There's lots of other kind of providers, QuickBooks is kind of a standard in the small business world, but certainly not the only one, but you should not be tracking your expenses and revenues in a spreadsheet by the time that you get to this stage of your business. If you're not working with a bookkeeper, this is something you can do on your own. Go back and listen to some of my interviews with Heather Pernitis, she is my bookkeeper, she's awesome. But we talked about how when you're taking your business to the next level, bookkeeping and systems is really important. So she will give you some tips. I'll drop that episode number in the show notes and in the comments to our Facebook Live.

14:08 AB: But you're gonna need to run some quick reports. So, P and L is what we call Profit and Loss for short, is pretty standard. You may also wanna run a list of assets and liabilities. You may wanna run some sales reports, they may ask for that. They are also probably going to ask for tax returns, and I know that feels kind of very personal and private and as small business owners, a lot of us are filing for our business on our personal tax return but that is a very standard request and again, this is just kind of verifying, unless you're a pretty large company, and you're having your financials audited by an outside CPA firm, which in my world of online businesses is fairly rare, any financials that you are providing to someone are just from your own internal bookkeeping and you could really be entering any number that you wanted into those systems. You could be totally making it up. So by asking for your tax of returns, that is just a way of verifying that you have actually filed those with a federal and state authority, and they're gonna want your federal, state and local tax returns.

15:06 AB: It's just kind of a check to see if the numbers that you're giving them are real, and again you could file fake numbers with the IRS, not a good idea, that is tax fraud, tax evasion. But I think there is a certain idea that if you have filed it with the IRS or with your local taxing authority that those are real numbers. It's very common to ask for bank statements also. Again that is where the rubber meets the road because those... Again, I think probably in this day and age, almost anything could be faked, but those are going to be reliable. And so you could check your profit and loss statement that shows income from January, you check it against the bank statement and make sure do the deposits actually match what your revenues are showing. If those numbers are way off, then there's some sort of problem. For online businesses it may be common to ask for your PayPal statements, or if you're using another online payment processor.

15:55 AB: And again, it's just a lot of people treat PayPal like a bank account, not a good idea, but it's just another way to check money coming in, money going out. Are the numbers that you're giving us the real numbers so that we can assess the health of the business. Once you get further into due diligence, this probably would not be something that you'd ask for initially, but if you're trying to take a long view of a business and we'll talk about valuation in two weeks with my friend, Shannon Farr, she's a business valuation expert. But when you're trying to put a number on a business for what it's worth, you're looking, it's a combination of track record and projections. So where is the business then, where is it now and where do we think it's going to go? And then your valuation is going to be some combination of all of those factors, so it will be very common to be asked for what are your financial projections or your forecasts? Where do you think this business is going, in addition to looking at historic growth patterns. Are you on a down turn? Hopefully not. Are you an up swing? What's been your growth every year?

16:57 AB: If you've typically been growing at five to 10 percent a year, and you're forecasting 50 percent growth for the next five years to try and get to your valuation number, that may be looked at with some skepticism. So, projections and forecasts are going to be a very common request and if this is not something you're already doing in your business, it might be something you wanna start looking at and maybe working with a CFO and those can be hired as outside CFOs. You don't have to hire someone on your team full time but someone who can help you with that high level financial, when you get to this stage of your business and you're looking at taking on an investor or maybe selling your business, those can be really helpful analysis to run.

17:33 AB: So that's certainly not all of the financial information that you might be asked for but just kind of an overview of some things to think about. And again, if these are not things that you're tracking and keeping good records of especially... [chuckle] You should be able to run a profit and loss pretty quickly, either month by month, year by year, from your accounting software. So if that's not something you're able to do, that something basic that you should really be starting to work on and keeping your tax returns in good order so that you can pull those up. The next thing I wanna talk about is looking into your key business relationships. So this is going to be who are your clients or customers? It is very common to wanna know, do you have one really big client or customer that's accounting for most of your revenues, or are you really spread out or is it kind of a variety where you've got a couple big ones, a couple small ones.

18:20 AB: That is gonna be a big part of the valuation question, especially if you're in a service business. It's actually, this sounds counterintuitive but because I think most of us, as service businesses would like to have one or two big clients that we just spend all our time working for, and isn't that so much easier to manage and work with, but it's actually much higher risk. So if you're coming in from the outside, if you lose one client, and that's half your revenue, that's a huge potential downside for them.

18:48 AB: So it can affect your evaluation if your client load is really focused on just a few clients. Again, it's not good or bad, but it's just something to be aware of if you're thinking about selling or taking investment down the road. So they're gonna want probably a client list, and maybe to know client volume, you're over here, client lifetime value, or customers, what kind of demand have they had? Historically, is it fluctuating seasonally? Again, the ability to forecast and know, okay, this is a business that's really busy at the holiday season, but the rest of the year is more quiet. You have the ability to plan for that and to know that that's what your cash flow is going to look like, both incoming and outgoing.

19:29 AB: Those are important analysis to be able to do, so gonna wanna look at your clients and customers, volume. What are your relationships with them? Do you have longterm contracts, or is it just, they come to you when they need you and you do the work and then they go? Or are you on retainer, or do you have maybe a five year, especially in the... If you're producing actual goods, if you've got a longer term, guaranteed contract to supply X volume at Y price. They'll wanna look at all of those things.

20:00 AB: And with all of these, they're probably going to wanna see your contracts, so it's not enough to just know who your key customers or clients are, they're going to look at the contract. And as I mentioned in last week's podcast, they may want to be sure that they can actually take over

that contract, if you're looking at selling to a third party and not just somebody coming to step into your shoes. Not all contracts can be handed over to another person. We talked about that last week with assignability. So if you don't already have your contracts in good order, where if somebody says, "Hey, here's your contract with X, Y, Z customer?" Now is a good time to start getting organized if this is on the horizon for you.

20:36 AB: You're also gonna wanna look at your vendor or supplier relationships, because these are just as important, if not more important, as your customer or client relationships, especially if you're producing goods and you have key elements of your product that you have to get from other people, making sure that you have a steady supply, that you have a high quality supplier or vendor who is supplying those to you. It can really throw things off, especially if you are growing and you have a big increase in demand and your suppliers or your vendors can't keep up with that, or they have a six month backlog, or a long delay for you to be able to order more product to make your product, that can be a big problem. So knowing what those contracts look like, again, knowing that those vendors can keep up with whatever the demand or your expected growth, is really important. And again, if any of those are guaranteed contracts, like where you've agreed to buy a certain amount every month at a certain price, or however it's set up, anyone who's wanting to step into your business is going to want to know about that as they're doing projections and trying to look at your financials. And again, as I mentioned, they're gonna wanna see the actual contracts with all these people.

21:41 AB: In the relationships category, I would also put if you have licensors or licensees. So these are people that either you're using their intellectual property in your business, or you've allowed them to use your intellectual property in their business. So a couple of scenarios where this could come up, let's say you are a T-shirt business, and you print NFL logos on T-shirts, and you have huge revenues from particular teams, and you've gotten licenses from those teams so that you're allowed to print their logos on your shirts. The person coming into your business is gonna wanna see those licenses. Most of those licenses are gonna have a term, they may have an annual renewal requirement, they may... The price may change depending on the year or depending on your volume of sales, so they're gonna wanna look at those, again, as they're just looking at the health of your business and what's on the horizon.

22:29 AB: If you are selling a lot of... I am a terrible sports person, I'm trying to think of a sports term. Let's say Tennessee Titans, 'cause I'm here in Chattanooga, Tennessee. If you are selling a ton of Tennessee Titans merchandise, and they have a really phenomenal year and your demand goes way, way up, does your license allow for that? Does your pricing makes sense with that? And also, is there a renegotiation period? So let's say the Tennessee Titans have a fabulous year, and they want to renegotiate all of their contracts, and now they're gonna be charging you a lot more, and now either you've got to adjust the price of your T-shirts or your profit margin is gonna go down. All of these things are gonna be things that they're gonna wanna look at, so we can have licensed apparel and things like that.

23:09 AB: If you're in a service business, especially I see this with business coaches and things, you may have licensed, from someone else, the right to use their program. We talked about this with, for example, Danielle LaPorte. Brene Brown also has a licensing program. So if you're selling a business strategy-type business and you are using someone else's tools in your business, and you've

got a license for those, can those transfer? I have not looked at those contracts, those are not my clients, but my guess is those probably don't transfer, that those are individual licenses because you, the coach, went through their training program, you got certified and you can't just hand that off to another person.

23:45 AB: So again, they're gonna wanna see those licenses, see how they're set up, especially if you are manufacturing something that's under a patent, those licenses are gonna be critical if you're selling things involved with... I had a client who makes merchandise associated with a very popular film series, and so the license that he has from that film series is a critical part of his business, because he's able to advertise that he's an official licensee and his products are aligned with that film series. And so, again, can that be handed off to someone else? Does the business work, if that license can't be assigned to the new buyer, or taken over by the investor? So your licensees and licensors, same thing, if you've given other people the right, anyone coming into your business will just wanna know, what is the landscape? How many people are allowed to use your stuff? What are the rules that you've set up? How is that all managed? What's the income, the revenue stream? Is it a royalty or a flat fee? Again, this is a big investigation, so they are definitely gonna wanna know about your licenses.

24:44 AB: Alright, the next thing... This is super boring, but important, is insurance. They are gonna wanna know, are you insured, and what kind of insurance do you have? What kind of risks are you taking that maybe you're not insured against? There's gonna be a lot of questions around insurance, so hopefully you have worked with a good insurance agent. I'm gonna give another shoutout to my friend Emily, who is here local, she works with J. Smith Lanier here locally in Chattanooga. She is my go-to girl when my clients have insurance needs, so you're gonna wanna work with someone like her who is actually going to be able... And I'll drop her... I'll drop her contact in the show notes and in the Facebook comments, Emily Ramsey. You're gonna wanna work with someone like that to make sure that you are properly insured before you look at a transition like this.

25:29 AB: So insurance, another thing to think about. They're gonna want a kind of an inventory of all of your assets, so if you are in a manufacturing arena, or if you are... Let's say you have a rental house empire, just a list of what are all of your assets, what are the real property, what are the equipment, what are the intellectual property, what are the intangible assets? So what things do you have that fall under copyright law? What brands do you have that might be protected by trademark? Again, and if you don't have it already, go to our website, awbfirm.com, on the front page right now, we're about to switch it out, but right now, we have a 5-Minute IP Audit right there on the front page. Oh! And, this will not change, on our podcast page, awbfirm.com/podcast. You can get my 5-Minute IP Audit worksheet that will walk you through this, of figuring out what kind of IP do you have in your business?

26:21 AB: So that is a really critical idea to look at, if you are looking at selling or taking an investor. This is especially critical if maybe you have done some projects that you are wanting to carve out from the business and keep, especially if you're gonna walk away or move your own personal time in a different direction, maybe you've got kind of a passion project or a side hustle. If there is intellectual property that lives in the business right now, but maybe you don't wanna sell with the business, or you don't want an investor or partner to have access to, it is critical that you

identify that and go ahead and segregate it before you get into the process of taking an investor or selling your business. That's all something that's very easy to do when you have that list of, what are my IP assets and how do I need to be making sure that I'm selling the right ones, that I'm keeping the right ones and that they are registered or protected adequately? That's another thing that you're gonna wanna look at during this process is, could you potentially be building more value in your business? Could you get a higher selling price by spending a little bit of money now registering your trademarks? Or registering your copyrights, because that is gonna dramatically increase their value to a third party. So you're gonna wanna do an IP audit and you're gonna wanna do an inventory of all of your physical real estate and intellectual property assets.

27:39 AB: Alright, we are getting towards the end. I knew this was gonna be a long one. In the risk category, so now we're looking at liabilities. So current or anticipated litigation. This is, has anybody threatened to sue you? Has anybody sent you a nasty letter asking you to cease and desist doing something? Has someone filed a claim against you with maybe a government authority, or made an employment claim against you? Maybe said you were discriminating against them, or said you breached a contract? This is where we gotta think about all the bad things you might have done, or contracts that went wrong, relationships that soured. You're gonna wanna do a really honest evaluation and, again, you may not have to disclose all of this. This is all stuff you're doing. Remember, this is kind of your initial due diligence that we're talking about now, but these are questions you're gonna be asked, so this may be a good time to kind of clean up some of that stuff.

28:29 AB: Can you resolve a claim? Can you reach a compromise? If you know that a sale, or investment, or a partner coming on is on the horizon, there may be some steps you can take now so that you don't even have to tell a partner or an investor about that because it's been resolved, it's not an issue anymore. That is something you definitely are going to want a competent lawyer to be involved in, because you wanna make sure that if you are paying someone a settlement to resolve a claim, that you get really good releases in a written document that is signed by everybody, so it's very clear they're not gonna pop up later and cause you problems. So current or anticipated litigation, claims, problems in the business. And again, we wanna think about, what can we clean up now so that it's not a problem later.

29:14 AB: Alright. The last thing to think about, I already mentioned real estate assets. If you have a lease, either on your business, maybe for your office, or for a warehouse, or another facility that you use, that is gonna be a key part of any transaction, especially if the buyer or the partner or investor is gonna wanna use that space, making sure that either that lease is transferable, or maybe you keep the lease and you have some sort of arrangement. But leases generally cannot be gotten out of. If you don't work in the real estate world, you may not know that, but many contracts can be walked away from and have a termination clause, where everybody agrees we can go and maybe there's a small monetary penalty, but leases are really hard to get out of without paying a lot of money usually, a year or the rest of the term of the lease. And commercial leases tend to be longer term, so it's not uncommon to see a three, five, 10 year lease for a business, so it's really important.

30:10 AB: That can be a really big issue in negotiation. So you're definitely gonna... If you have a lease, take a look at it, see if it can be assigned. I wouldn't necessarily recommend talking to your landlord early, before you've got things nailed down, 'cause again, it can be a tricky issue. You don't wanna open a can of worms if you don't have to during the negotiation stage, but you definitely

want to be aware of what are the terms of your lease. Is there a termination clause? Can you just pay a little money and get out of it, or are they gonna hold you to all of the lease term, or do you have to find a substitute tenant if maybe... Maybe you're being purchased by a company that already has facilities so they don't need your space that you're in now. Leases are expensive, real estate is expensive, so that can be a big negotiating point in these kinds of deals.

30:54 AB: So before we close out, I wanted to mention that, and I kind of alluded to this earlier, it is really common not only for the purchaser or the investor to do some due diligence, but for you, the seller, to do due diligence on other parties, and so I wanted to just briefly touch on how that might come up. So in a purchase, or in an investment scenario, unless you're just getting cash on the barrelhead, a check at closing, or a wire transfer, even better, and even if you are getting cash at closing, you may want to do a little bit of investigation into the person who's wanting to buy your business. First of all, to make sure that you want to hand over your business to them. That they're a good upstanding citizen and will take good care of your business.

31:39 AB: If you're like me, you feel like your business is kind of your baby, so you don't wanna just hand it off to any Joe Schmo off the street, you wanna make sure it's somebody who will do a good job, take care of your people, take care of your customers. So you may wanna do just some basic research that way, but especially if you are taking on... If you're financing part of the purchase, or if you are... So basically, you are the bank. You are giving them a loan and they're paying you back over time. If they are giving you maybe some shares in their company as part of the payment. There can be all kinds of scenarios where it's not just cash on the barrelhead, and even if, as I said, even if it is cash on the barrelhead, if somebody says they're gonna buy your company for \$5 million and you're gonna go through this huge negotiation, due diligence process, it's gonna cost you money, and time, and distract you from running your business. Because this is, this is a huge undertaking, any time you're looking at a transaction like this. You're gonna have legal fees, CPA fees, and your own time and energy, your own staff pulling together all these documents. You wanna make sure they can actually pay you that amount of money.

32:41 AB: What you don't want is, you get close to closing and then, all of a sudden, the numbers start moving and they said it was gonna be \$5 million, but now it's \$3 million, or they said they were gonna pay all cash, but now they've got to finance part of it, or they can only do it over monthly installments, or they start saying, "Well, we'll do some other kinds of scenarios where I'll pay you for manufacturing and you pay me for a lease," and we've got all these different moving parts. You wanna make sure that you have a good feeling for their financial health and that they can actually do the things that they're promising that they will be able to do for you. So due diligence into your purchaser is often a really good idea.

33:18 AB: Another thing that you will sometimes see is due diligence in a partner, if you are looking at them coming on to help you with pieces of your business, you may want to just investigate their ability to do the things you need to do. So that is almost like vetting a job candidate. You just wanna maybe check some references, literally, to make sure that whatever... If it's WET equity that you need, if it's manpower, that they are actually able to do, again, all of the things they have promised you, so we do sometimes see due diligence in those scenarios. And I'll just point out, if you are using a bank to finance part of the purchase... Or not you, the seller, but if the purchaser is using a bank, the bank who also wanna do due diligence, so you'll kind of have

three sides of due diligence, you'll have you, the purchaser and their lender. Because the bank, of course, is not gonna lend money if the business is not in good shape, so they're gonna wanna do all of their own checks. It's just like getting an appraisal on your house before you can get a mortgage.

34:14 AB: They're gonna wanna make sure that they're making a good investment, so you will have... The bank will probably have its own different list of requirements. Some of it will overlap, there'll be some basic things that everybody wants to see. But I always... We think we've given literally everything that anyone could want to see, and then the bank comes back and they have five more requirements, so you just never know. And I printed... Since this is a Facebook Live and we do have the ability to be visual. I don't know if you can see this, I'm a little close. So this is, in these big transaction, especially with a complicated transaction, you are going to have a key document during this due diligence process which is called the closing checklist, and it is really meant for closing, to make sure that we have all the documents that we need in line for closing, but it's used during due diligence also, to make sure... You may get a request for 50 different things, and the checklist just helps everybody keep track of, okay, we got this, but we didn't get that, or we got this but it was the wrong thing, so we needed to get it again.

35:11 AB: And usually, the attorneys are the ones tracking this. And again, I'm just gonna hold this up. And this, for the record, is a form, so don't try and read it and try and look at client information. I'll post this as a link in the show notes as well, this is just an example, one of the forms that I have used, and I just printed the first page just to kind of show you. But these can be 20, or 50, or 100 pages in a complex transaction, and deal attorneys love their checklists, and keeping them all organized and making sure that we have everything that we need. It really becomes just an exchange of information and, as I said, it's an investigation process, trying to figure out what everybody is getting and what are the risks so that we know.

35:49 AB: And I know we have gone long, so I want to close out by just saying thank you for watching this video, or listening to this podcast, I hope this has probably opened your eyes more than you wanted about due diligence. But I'm hoping it's gotten your wheels turning about what it looks like to sell a business, or to take on an investor, or a partner, so that you can start preparing for that, down the road. I want to give you a preview. So next week... If you see me looking over here, I'm looking at my content calendar. So next week, we're going to dive really deeply into the specific topic of figuring out what it is that you're selling, if you are selling your business. Getting a handle on what are the assets and liabilities that you are going to be offering to someone else, so we'll dig a lot deeper into, as I mentioned, your intellectual property and other assets, and just helping you figure out what is the value that you're providing and how... I'm not a marketing expert, but we'll talk a little bit about some of the negotiation that goes on in figuring out what's going to be included or excluded in a sale, or taking on a partner, or an investor.

36:54 AB: And that will lead nicely into my interview with Shannon Farr. That interview is actually going to be on October 17, that will be the Facebook Live and then the podcast episode will air that following Monday. So Monday, October 22nd will be that interview with her about figuring out how on earth do you figure out what your business is worth, or, if you're looking to buy a business, what that business is worth. So I'm excited about both of those episodes, I hope you will tune in. As always, check out our Facebook group if you have questions about selling a business or any other small business questions, especially if you're in the online world, that's where most of our

Facebook group members live and breathe. Definitely check that out. It's The Legal Roadmap group. And if you haven't recently, definitely check out our website, we do have a template for that nondisclosure agreement that I mentioned. If you go to awbfirm.com/contract-templates, we'll put that link in the show notes too, don't you worry. They're available for immediate download, they're customizable by you, contract templates for a nondisclosure or confidentiality agreement. You can just fill it in and you are off to the races. So thank you for joining me today, I will talk to you next week.

[music]

38:02 AB: Did you know that you could be making more money from your copyrights and trademarks? Intellectual property is probably the most valuable asset in your creative business, but most entrepreneurs don't know how to identify it, and you can't monetize what you can't find. Download my free 5-Minute IP Audit worksheet at awbfirm.com/podcast. You'll find out what parts of your brand, logo, images, website, courses, digital downloads, or other content could be protected by intellectual property laws, and you'll create an inventory of your most valuable trademarks, copyrights, patents, or trade secrets, so you'll know what's worth protecting as you build a more profitable and sustainable business. Get your 5-Minute IP Audit worksheet now at awbfirm.com/podcast.

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