

Getting it done

Compressed timelines have deals closing faster than ever

INTERVIEWED BY SUE OSTROWSKI

As the deal market has heated up, the timeline for transactions has contracted, with deals being negotiated and closed in as few as 30 days.

“Transaction timelines are being compressed, and that has an impact on both buyers and sellers when completing a transaction,” says Kevin T. Wills, a shareholder in the Corporate and Commercial and Emerging Technologies groups at Babst Calland. “Compressed deal timelines are likely here to stay, at least for the foreseeable future, and buyers and sellers must be prepared to hit the ground running when considering a transaction.”

Smart Business spoke with Wills about how deal timelines have shrunk and the impact that is having in the deal-making space.

HOW HAVE COMPRESSED DEAL TIMELINES IMPACTED BUYERS?

Buyers have less time to review a deal and conduct due diligence before making a determination with respect to closing, potentially forcing them to take on more risk than they previously would.

It is very much a seller’s market, both in the business and real estate deal space, and sellers are regularly in a position to move on to the next potential bidder if they don’t like the proposed deal terms. Buyers are offering compressed timelines and other concessions to be more attractive to sellers to give themselves a leg up on competitors and secure deals.

In order to mitigate the risk associated with compressed deal timelines, some buyers are starting due diligence while negotiating the purchase agreement, spending money on third-party reports to help manage the timeframe, but those

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WEBSITE: For more information on working within compressed deal timelines, contact Kevin or visit www.babstcalland.com.



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are dollars lost if you can’t come to an agreement.

A risk associated more with real estate transactions specifically is that there are regularly deposits that become nonrefundable at the end of the due diligence period and, if a buyer’s third-party reports will not be completed timely, buyers run the risk of having their deposit become nonrefundable before their diligence is complete, forcing them to decide whether to put their deposit at risk or terminate the purchase agreement.

Buyers can ask for extensions, but that can be difficult if you made your pitch based on an expedited closing. However, sellers may agree to an extension, as opposed to forcing the buyer to terminate the purchase agreement and starting over with a new potential buyer.

Additionally, buyers are offering purchase agreements that are much more middle of the road and taking advantage of the increased availability of representations and warranties insurance in order to streamline negotiations and help shorten deal timelines.

WHAT IS THE IMPACT OF COMPRESSED TIMELINES ON SELLERS?

Sellers need to be able to meet the timeline themselves. Sellers must be prepared and have their house in order.

The more information a seller can gather in advance, the smoother the transaction will flow.

Compressed deal timelines add additional stress to sellers as well, as they have to wear two hats throughout the process. Sellers have to run the day-to-day operations of the business while also trying to facilitate a sale. The compressed timeline can lead to the seller being inundated with due diligence inquiries and follow-up questions that might have been more spread out with a longer due diligence period — which can lead to deal fatigue setting in faster than it might otherwise.

WHAT ROLE DO OUTSIDE ADVISERS PLAY?

Outside advisers are extremely helpful to both buyers and sellers. Experienced attorneys, accountants and investment bankers/brokers can help a seller determine what it needs to do to prepare the business for sale, determine the transaction structure, clean up its books and records and gather competitive bids. Additionally, an experienced attorney who is familiar with the business and the market is critical for both buyers and sellers in facilitating the transaction process more efficiently.

It can be a risky time to be a buyer, but if you hesitate, the deal may be gone. ●