Have You Fired Yourself?

The Ultimate Guide to SELLING A BUSINESS

James Montgomery

The Ultimate Guide To Selling A Business

What Is Your Exit Strategy?

Have You Fired Yourself Yet?

2702 Treble Creek
San Antonio, TX 78258
210-690-3700
[WWW.JAMESMONTGOMERYLAW.COM](http://www.JamesMontgomeryLaw.com)
jemlaw@mac.com

James Montgomery
A Professional Corporation
LAW

Printed in the United States of America

ISBN: 978-1-59571-390-2

MYTHS

- *If you list your business for sale with a broker, it will sell just like a real estate property.*

- *All businesses eventually sell for some market price.*

- *Businesses where the owner is the principal technician can easily be sold.*

- *Businesses that are the owner's "baby" can easily be sold.*

- *All lawyers charge the same fees to business owners who are buying and selling businesses.*

- *There is a standard valuation system to determine the value of a business.*

- *The value of a business and its assets and liabilities are easily determined.*

- *It is easy to finance the sale of a business through a bank.*

- *You make more money if you owner finance the sale of your business.*

Who I Am and Why I Wrote This Book

I want to first thank you for requesting this book. I realize that selling a business may be the most important event in your life. I think that the information I give you here will help you in your quest to obtain the best price in selling your business when that time comes.

Seventy percent (yes, that is ***70%***) of all businesses that are listed for sale **do not sell**. I have written this book so that business owners could have good, solid information before hiring an attorney or dealing with a business broker. You should have the best information and the best guidance in preparing your business for sale.

Our law firm represents business owners throughout Texas in business matters, company formation, asset structuring, buy-sell agreements, and wealth planning such as wills and powers of attorney. Our home office is in San Antonio, Texas, but we represent clients from Amarillo to McAllen.

James Montgomery is an attorney who has been representing business owners in and out of the courtroom since 1978. His qualifications include:

- *Listed in Best Lawyers in America*
- *Highest Peer Rating of "AV" by Martindale Hubbell*
- *Recognized Lecturer on "Legal Education" for Lawyers*
- *Author of Numerous Consumer Books and Reports*
- *Texas Super Lawyer in Texas Monthly*

Learn more about Jim on his website www.JamesMontgomeryLaw.com.

I Am Not Allowed to Give Legal Advice In this Book!

I know the ins and outs of selling businesses — and so should you — even before you start to sell your business. **Do you realize that when you bought your business, you also started to *sell* your business?**

Surprised? Don't be. All businesses are sold eventually, one way or another, to family, employees, third parties, or through liquidation. So the structure of your business and how it is organized and systematized NOW is crucial to maximizing your potential sales price when your business does sell.

I am not allowed, however, to give legal advice in this book. I can offer suggestions and identify traps, but please do not construe anything in this book to be legal advice until you have agreed to hire me AND I have agreed, in writing, to accept your transaction.

SECTION 1:
PLANNNING YOUR EXIT

What is an Exit Strategy?

An exit strategy is more than a way to unload your business. That would just be an exit. An exit ***strategy*** is just that: a well-designed plan that considers and incorporates both the condition of your company now and where you expect it to be in the future, as well as your personal goals now and in the future. It is your insurance policy that when the time comes, you are in control of when, where, to whom and for how much you can sell your business.

Every single business existing today will be sold or liquidated at some point in the future. Businesses pass to the next generation (succession), which involves a sale. Businesses are sold to employees (another form of succession). Businesses are sold to third parties. Businesses are even sold to their present owners when they decide to hold on to them for cash flow as investments rather than selling to free up the capital gain in the business. Businesses that do not fall into one of these categories are liquidated. They either go bankrupt, go out of business, or the assets are all sold off in liquidation.

Thus you, as a business owner or business manager, must plan for the inevitable sale of your business. If you plan effectively, it won't be just any sale, but a sale that will maximize your sales price and your return. To do that successfully, you must have an exit strategy.

Who Needs An Exit Strategy

Anyone who owns a business or who contemplates owning a business needs an exit strategy. It is more important to know how you are going to get out then it is to know how to get into the business.

Frankly, it is easy to get in—most often someone just writes a check. It is usually not so easy to get out. Hopefully, someone just writes another check to buy the ownership interest from the owner. If he has decided to sell, then that solution is available.

But what if the exit is unplanned? Death, disability, divorce, and involuntary separation all create unexpected and usually unplanned exits.

What if the person who is exiting is not the only owner? Who buys the ownership interest and on what terms?

What happens to the business itself? Can the business afford to buy out the owner? Who will run the business? What course will the business take?

What will happen to the funding of the business? Will the unexpected exit cause a default in funding and requirement that any loans must be paid off?

Is there a business continuity plan that will guide those now in charge on where the business was intended to go?

If you don't have a well-designed plan that addresses each and every one of these issues, **YOU need an exit strategy**.

How Will You Exit?

As we discussed, all businesses are ultimately sold, one way or another. No business owner will live forever so every business gets sold.

There are a number of options for transfer. One is through family succession such as transition to the next generation or other family members. A second method is a sale to a key employee or a group of employees. Included in this method would be a sale to an employee stock ownership plan or ESOP. This situation would include a sale to a co-owner even if the owner is not really an employee, because the business is being transferred to an entity that already knows the business and what its attributes might be.

The third and most typical is a sale to a third person or party. This type of sale requires the most preparation because, before the sale, that third party will examine the business with a due diligence that will be much more rigorous than someone already familiar with the business or who is acquiring the business through family succession. The business will need to be especially prepared and positioned for this type of sale. This preparation takes time, even a couple of years, to maximize the price for the business. (See Appendix A for a Sale or Acquisition checklist.)

The final method of sale is the nastiest because the owners get little or no compensation for the business. If no buyer is located, a business is forced to either liquidate or, at worst, file bankruptcy. The issue here is whether the business owners will get anything for the stock and whether the assets that are liquidated cover the liabilities that are owed.

Scenario 1:
When An Exit Strategy Makes Sense

Ralph and William got out of technical school together almost 25 years ago. They decided to go into business together because they both loved the San Antonio Spurs. They went to their accountant who helped them form a corporation and elected to be taxed as a

Subchapter S corporation. They finished the paperwork for the organizational meeting on the forms the accountant gave them, put the new notebook up on the shelf, and checked off "organize the business" on their checklist. The notebook has only been taken off the shelf maybe four or five times in the last twenty years.

Both Ralph and William are great mechanics who work with their hands. They refurbish old cars, including street rods. They have developed quite a clientele of repeat customers. They each handle two or three cars each at a time and have a small team of helpers to assist them. The products they turn out are award-winning examples of their fine craftsmanship.

Over the years, both of them have attempted at times to delegate their work to apprentices but have never been satisfied with the quality of the work. William in particular tried to delegate and spend most of his time doing quality control. He gave up after three frustrating months because he felt he was spending way too much effort in redoing the work. He was never satisfied that the work was completely up to his standards. His wife joked with him that he had just forgotten how long it took for him to perfect his craft and he needed to be more patient.

Ralph is now in his fifties and wakes up each morning with stiff, sore hands. The years of using tools have take a toll on his fingers and joints and he has developed arthritis. To improve his situation, his doctor advised him to cut back on his work.

Both Ralph and William work fifty to sixty hours per week. They love their work so they don't really notice the time, but their wives are urging them to think about retirement. While the two are able to charge premium prices for their handiwork, they have not built up much equity in their business.

They lease the five acres and workshop where the business is located. They have paid almost $5,000 per month in rent for years and years. Over twenty years ago the landlord offered to sell them the property, but despite the advice given by their accountant, they were concerned that they could not afford to purchase it.

Finally, in anticipation of retirement, Ralph has begun to cut back on his work hours and is only coming in three days a week. Production from his team has dropped significantly. Of course, with the drop in production comes a drop in income. Fewer cars completed means fewer cars delivered and sold. William is becoming concerned that the burden of the business is falling on his shoulders, but cannot afford to buy out Ralph. William is already doing the maximum number of cars that he can produce. He cannot take his income to buy out Ralph as he would not have enough income for his own needs.

A well-planned exit strategy is the answer to this dilemma. Exit strategies deal with "what happens next" with a business. The strategy could be a sale. The strategy could be to close the business. The strategy could be to implement systems to make the business better to give other options. Most often, an exit strategy is a combination of various strategies, crafted by a team of professionals—including the business owners--to fit a particular fact situation.

Why Do You Need An Exit Strategy?

. . . she was a little startled by seeing the Cheshire Cat sitting on a bough of a tree a few yards off.

The Cat only grinned when it saw Alice. It looked good- natured, she thought: still it had very long claws and a great many teeth, so she felt that it ought to be treated with respect.

'Cheshire Puss,' she began, rather timidly, as she did not at all know whether it would like the name: however, it only grinned a little wider. 'Come, it's pleased so far,' thought Alice, and she went on. 'Would you tell me, please, which way I ought to go from here?'

'That depends a good deal on where you want to get to,' said the Cat.

'I don't much care where—' said Alice.

'Then it doesn't matter which way you go,' said the Cat.

- ***Alice's Adventures in Wonderland***
- ***by Lewis Carroll***

The childhood story quoted above discusses the point that "If you don't now where you want to go, then it does not much matter which way you go to get there."

In at least fifty meetings with new business owners to plan how to start and design their new business, I have made this statement: It is more important to know how you are going to get out of this business than it is to decide how to get into the business.

The new business owner always looks at me like I am crazy but as we talk, they begin to understand and eventually agree with me.

You know why you want to get into business (or you should). Maybe you have a passion for a particular thing and you want to develop a business around it. Maybe you want to develop a cash machine to provide income instead of having a job. Maybe you see a need in the marketplace and you want to service that need. You may want to build equity in a business or invest in real estate.

To start the business, you design a business plan of some fashion that includes a beginning, the operation during the life of the business, and an ending. The beginning is usually pretty easy: you form an entity, open a bank account, get a tax identification number, put in some money, and away you go! Obviously without a plan, you will not get far and may not be very successful. If that happens, you sure better have an exit strategy or you may be dealing with problems for years to come.

But it's at this time, when you are starting, that you should be thinking about ending. Usually, the number one reason for exiting is retirement, whatever that means to you.

A New Definition of Retirement

The discussion about retirement is at times a very fascinating topic. For some, retirement may mean continuing to work doing exactly the same thing as long as one is physically able. For others, retirement may mean playing golf every morning and doing absolutely nothing else. This issue is important to your exit strategy because what you plan to do determines your process to get there.

I have a friend who has done something that I consider to be rather unique. He was in sales for many years and decided to approach retirement the same way that he would approach any business deal, with a written business plan, complete with the exit strategy. His plan outlined what he wanted to do with his time to meet his goals of giving back to society, exercising his mind, and staying busy. He proceeded to lay out a plan to obtain an advanced degree from the local university in a field that intrigued him. He then decided to join Rotary International with its motto of "Service Above Self". By actively working on service projects, he was able to focus on paying his success back by serving others. Lastly, he decided to serve on the Board of Directors of a non-profit organization to stay busy while also accomplishing his goal of paying back to society.

Some people that I have visited with about retirement plan to do absolutely nothing other than play golf four or five times a week. While a very enjoyable pastime, many of these individuals find that, as a steady diet, this plan is very difficult to adjust to after the rigors of running a business for a lifetime.

So why bring this subject up? When designing an exit strategy, you must give thought to what you are exiting *to* as a goal. Too many people work all their lives with "retirement" as their goal, only to find that retirement does not suit them or, worse for many, literally die within two or three years after retiring. Some serious thought on the potential for how you will spend your retirement is critical to future happiness. Selling a business that has been your life's dream without giving any thought to the next stage could be a monumental mistake.

As we will discuss more thoroughly in Section 2 sometimes the best exit strategy is not to actually exit at all but rather to "fire" yourself. In other words, the business continues operating without your day-to-day input while generating a cash flow that you to enjoy as the owner-investor.

Scenario 2: Systems in Place

There is an article on Entrepreneur.com that tells the story of a business owner who was invited to relate his success story to a class of MBA students at the Harvard Business School. He gave his talk to a very appreciative audience about how he had built his business with efficient systems that enabled the business to operate very smoothly without his day-to-day involvement. He was able to travel the world yet keep tabs on his business through the internet with daily flash reports and briefings.

After his talk, the speaker was followed out into the hall by a small group of students. One of them asked him why he did not look into using the capital markets to grow his business significantly. Another, without waiting for the first answer, asked why he did not simply take his business public. The speaker looked at the group of students for a few seconds, almost to the point of making the silence uncomfortable. He then said, "What part of five million dollars a year in income and working less than twenty hours a week don't you get?"

The speaker was "retired." He was the *investor* in his business and enjoyed the cash flow it generated without having to spend 60 to 70 hours a week working in his business. In contrast, he worked 15 to 20 hours per week "on" his business to bring in new customers and orders. The systems that he had put into service in his business provided the means by which the clients were engaged, served and retained for repeat business.

The students at Harvard were not being taught these systems any more than the students at most universities are taught the true secrets of building successful businesses. For the most part, students are still being taught to learn a certain skill set then find a job that uses those skills without learning *how to be in business*.

What do you want from your exit strategy? Do you want to sell your business? Do you want to put your business on auto-pilot? Do you want to cash out and put your money to work for you in another venture? Any of these end results are possible. One simply needs to plan for the result and then implement the plan that has been designed. It will not be easy but the result will definitely be worth the effort.

But I'm Not Planning to Retire: Other Reasons to Have an Exit Strategy

Sometimes exit strategies are forced upon a business by outside events: the death of an owner or employee, the bankruptcy of a large supplier or customer, changes in business cycles, etc. Consider the following:

Scenario 3: When Your Exit is Unplanned

John and Pat own an underground utility business. They formed a limited liability company some years ago and each owns a fifty percent membership (ownership) interest. Together they have built the business into a very successful operation that has laid miles and miles of pipelines for water and gas distribution in subdivisions around their city. Like many owners, they have been consumed with building their business and have not really thought about exit strategies.

Pat is in charge of the day-to-day operations of the company. He travels out to job sites every day and deals with the construction superintendents for each job site. His management skills have been essential in the smooth operation of the business. He schedules the workflow and coordinates the various subcontractors.

John handles the business side of the company. He gets new business and maintains the relationships with developers and design professionals in order to know what new projects are being conceived. John handles the negotiations for all of the contracts and puts together the financing needed to keep the company operating smoothly. He has a very close business and personal relationship with the banker that the company has dealt with for the last ten years. The accounting and billing systems are all designed specifically for their business and John prepared the outline of what those systems should entail.

Pat has a meeting with four subcontractors on a jobsite on the other side of the city at 10:00 am. He is late leaving, having been on a telephone call with the superintendent on a different job. He runs out to his pickup and starts the thirty-minute drive across the city. Just as he is getting on the freeway, just blocks from the office, his cell phone rings and he reaches over to the passenger seat to pick up the phone. In that split second that his attention is diverted, he does not realize that the car in front of him has stopped accelerating onto the freeway. Without time to stop when he sees the brake lights, he instinctively attempts to swerve but cannot avoid rear-ending the car. The impact pushes his truck into the freeway directly into the path of an eighteen-wheeler pulling a fully loaded trailer. The tractor-trailer combination hits Pat's pickup truck directly on the driver side door, instantly killing Pat.

The police determine Pat's identity from papers in the pickup and the name of the company is on the side of the doors. One set of officers is dispatched to his home to notify Pat's wife, Susan. Pat and Susan have four children, ranging from six to fifteen in age.

A company employee, surfing the internet on company time, sees a newsflash on the screen of a fatal accident on the freeway near the office. A photo posted with the story clearly shows a company truck and within minutes, the office is abuzz. John comes out of his office and after looking at the picture, realizes that the pickup was Pat's.

In the coming days and months, John will be faced with dealing with all of the issues surrounding Pat's premature death. How will he run the company without Pat? Will Susan keep Pat's ownership interest or will John have to buy her out? Will the company be able to survive without the services of his close friend?

All of these questions could be addressed by a well-planned exit strategy. **In times of crisis**, an exit strategy is essential as an insurance policy against life's unexpected events.

Sometimes exit strategies are needed to **realize dreams**. Revisit John and Pat's company and let's change the story so that Pat does not have the accident. After fifteen years of being in business, John and Pat are in their late fifties. Over lunch they have occasionally discussed that if they were ever to retire, they would want to convert the equity built up in their business into cash to pay for that retirement. In order to maximize the value of their company, and maximize the cash received in a sale, John and Pat will need to design and execute an effective exit strategy.

To know where you want to end up on a trip, a good map is an indispensable tool. In business, your exit strategy is like the map. You plan out where you want to be and what your goals are, and then you execute the plan.

I also call the exit strategy a friendship tool. When starting a business, co-owners are happy and friendly. If something goes wrong, the friendship can dissipate very quickly. Having an exit strategy in place at the beginning of the partnership through a Buy/Sell Agreement (see Appendix B) gives the means to follow a defined path to the exit, even when the co-owners are not speaking and cannot agree. More to the point, the exit strategy gives them the tool to just exit without having to decide, saving the need to fight about how to exit.

Your exit strategy is also an escape hatch so that you can limit your liability upon and after exit. The protection of your employees may also be a concern in exiting from a business. The exit strategies of a family-owned business take succession into consideration. However, the most important consideration is that if you do not plan your exit strategy properly, you will guarantee that you WILL NOT MAXIMIZE your sales price.

Using an Exit Strategy to Create Wealth

In most of this book, we have been talking about exit strategies as they relate to exiting a business or career, which to most people, means selling out or retiring.

This idea comes from what we have all been taught by our parents and in our schools: that respectable people get a job to save their money until they had enough that they could live without the job. In essence, we work only so that we can pay our bills and eventually have enough money to pay our bills without working. *Voilá!* Retirement!

In order to place our other discussions in context, I want to address a concept that was never taught in school. In fact, we would have been chastised for being lazy or not ambitious had the subject come up. In reality though, it would have been quite beneficial for us to understand the concept and will be quite beneficial for you to share with others.

Have you, in all of your schooling ever had a class that covered wealth development? After all, we all go to school for about twelve years, kindergarten through high school. Some of us go to college and then graduate school. Personally, I went to school for three years beyond college with law school then took financial courses after that. Through all the "business" courses--economics, accounting, even tax--no program or school ever covered *creating personal wealth through business ownership*.

Before we begin though, may I ask you something? Why are you interested in creating wealth? (I am assuming you are). What are your intentions? I've asked that question to lots of people, and here is what they tell me:

- Retire early or create a secure retirement fund
- Allow Mom and/or Dad to stay at home with the family
- Give you time freedom and escape the paycheck to paycheck rat race
- Give you time and money to pursue charitable goals
- Get out of debt
- Create cash for investment purposes

If we were having a discussion about what type of business you should have, we would discuss the tax benefits of incorporating and how you can pay all of your expenses before paying income tax. In other words, you pay yourself (your expenses) and then pay Uncle Sam his share. However, when it comes to personal finanes, we go to work to get a paycheck, come home and pay the bills (usually with little to nothing left over), and then go back to work and repeat the cycle.

Notice that when we talked about the job above, we were paying our expenses first before having anything left for our personal wealth building. We also paid Uncle Sam his share first because we paid expenses out of net income. Without a business, we can't change that the taxation part, but what if we could "pay ourselves first"?

Making your business an investment instead of a job, as discussed in Section 2, is the key to creating wealth through business ownership.

SECTION 2

BEFORE YOU SELL:
HOW TO CREATE A PRODUCT BUYERS CAN'T RESIST:
BY GETTING RID OF *YOU*

Where Are You Starting From?

Before designing an exit strategy, it is very important to define the starting point. What kind of a business do you have now? There are basically four types of businesses.

The Job - what appears to be a business but is really just a job working for yourself.

Are you the producer and technician in your business? Many of the businesses that I review or advise on the purchase are in reality just a job. The owner is trading his or her hours for dollars. The only buyer for a business like a job, is another person who wants that job. Unfortunately, far too many professional practices are just that.

The Baby – your business as your passion. You have been there through the birthing pains and the ecstasy. But it is your baby and you just cannot let it go . . .

An owner conceives, nurtures and develops a business. It is the baby that has been birthed. The owner is in love with that baby. The first thing that happens is that the owner waits way too long to think about selling. It doesn't matter whether it is a good baby or a bad baby. It is still the owner's baby. The next thing that happens is that the owner cannot let go of the baby. The owner usually has too high an opinion of the business so the price is too high. The turnover of the business to another owner is also an obstacle. Even subconsciously, the owner is usually unable to make progress in consummating a sale.

The Trap – what started out as a business is now your nightmare. It wakes you up at night and keeps you constantly worrying about making ends meet.

A money pit. A business that has no real customer base. A business that has lost its major mechanic or technician. This category does not require much discussion. Such a business is probably not salaeble.

The Investment – you have adopted systems that allow the business to operate without you, or perhaps we should say, in spite of you?

The owner has installed systems and a team to manage those systems. Or the business is such that it can be automated. The owner can take off a week without affecting new business. The owner can take off a month without affecting the income of the business. The owner is like an investor in the stock market. His investment has a cash-on-cash return. His money is at work, not the owner.

Examine your business. If you fit into the first three categories, don't delay or procrastinate. Take action now to plan your exit strategy so that your business *operates without you*.

When will you be looking at selling your business? This year, . . . next year, . . .two years from now? If you are expecting the best price possible, the process of selling a business, or more importantly the process of preparing the business for sale, can take five years or more, so be sure to be in the right position when the time comes.

Pop Quiz:
Your Business - Investment or Job?

If you were called to jury duty tomorrow and selected to serve on a jury for several weeks, what would happen to your business?

What if you were injured in a car accident on the way home next week and you could not go in to work in your business for the next month, what would happen to your business?

Can you take a day off, two days off, a week off, or a month off and have your business generate the same income?

What if you were to take off for a few days, can you leave the office behind? Phone calls, email, faxes, calling in to the office.

None of the above? Then I have to break it to you, you do not have a business investment, you have a job! It may be a great job. It may be a well paid job, even a fantastic paying job, but still a job.

Business investors don't buy jobs, they buy cash flow. The secret for them to pay top dollar is for the business to produce cash flow apart from its owners. Business investors look for businesses that in fact operate smoothly without active involvement from the investor.

Think about it, that kind of business operates automatically, sort of like a McDonalds, where every part of the business has been analyzed to the last French fry so that each procedure is scripted to maximize efficiency and uniformity. Each employee has a specific job and is taught how to perform that specific job according to the SOPs. The business operates without oversight—an investor's dream.

I was listening to a famous marketing coach talk about McDonald's the other day. If you were going to buy a franchise (and had a lot of money!), the obvious choice would be a McDonalds. Probably not because of the fine cuisine they serve, though. Burger King has better food for the most part, particularly burgers. But watch both restaurants in a heavy lunch hour and you understand why BK is not #1. It won't matter how many times they change their ad agency. At BK, the staff is stumbling over themselves trying to get the meals served; McDonald's usually looks more like a well-oiled machine. Where else can you trust a 15-year old teenager to make almost the exact same hamburger in Boise, Idaho as in San Antonio, Texas? Systems . . .the McDonald cookbook, so to speak.

Look at your business. How does it get customers? How does it get the customers to buy? How does it serve the customers? How does it retain the customers? Is there a way to hold the employees accountable? How do you measure your business' financial performance?

These questions involve the secret to automating your business.

Making it an Investment: Handing Yourself a Pink Slip

Your decisions regarding what you do next with your business are crucial in determining whether you will have a business that will sell for the best price possible or will render the business practically unsalable. It is a fairly well known statistic that of all the businesses that are listed to be sold, 70% never sell.

On the other hand if you pay attention to certain things, you will be able to have the peace of mind and security that a planned effective exit strategy can give.

Without a realistic idea of the value of the business, it is extremely hard to plan an exit strategy. A business involves hard work and sacrifice. That experience can jade the perception of the range of value that can apply. By implementing the systems that are discussed in the next section, that value can dramatically increase. Procrastinating in implementing these strategies will also hurt the potential value.

Failing to draft a written plan for the exit, by whatever route, means that planning the exit will be very difficult. As the Cheshire cat said, if you don't know where you want to go, it does not matter what route you take. Without implementing systems, is your business, a job, your baby, a trap, or an investment? An investment is obviously more valuable.

Your plan must take into consideration what is in the transaction for the prospective buyer. What will they be looking for in the business? Is real estate in the business their focus? By affecting the measurements like occupancy, will the value be increased?

The motto, "Be Prepared", applies in this situation. One needs to prepare to take yourself out of the production line. If you are not working next week, will there be income from your business? Timing is all important also, the business cycle goes up and goes down. The cycle in your business goes up and down, you must be prepared for the sale to take place in the right part of the cycle, if at all possible.

Have you a real buyer attraction system? Will you be just waiting to see if someone walks up or will you be relying on someone, like a broker, to use their contacts to find a buyer? If you have a system, then you have prepared a target list for your buyers. You have designed a negotiation strategy. You have formed a team of advisors to give you the best strategy, not only for negotiation, but also for the overall plan. You have packaged the business for the best sale possible.

But My Business Is Different!

In designing exit strategies and corporate planning for many years, the discussion always gets to the point where those immortal words are said, "But My Business Is Different."

I was working with an attorney once who used those words to describe his estate planning business. His goal was to increase his business to the point where his income matched his expenses, a common goal with business people. When I suggested that we should look at other businesses, rather than other law practices, to find a structure that would work for him, he protested that the law practice was different and was not like other businesses.

To determine if your business is in fact different from all the rest, answer the following. Note there is only one right answer for each question.

1. Do you have to get new customers? YES
2. Do you need to close the deal when a prospective customer is sitting across the table? YES
3. Do you have to service the customer after you have closed the deal? YES
4. Do you think it would be a good idea to retain that customer to provide additional work or have them buy more frequently? YES
5. Do you utilize other people to provide those services and need to know whether they are actually doing what you want? YES
6. Do you need to have information that tells you whether your business is actually successful and making money? YES

To drive the point home, let's examine a few "different" businesses. Accountants need those same things. Doctors need those same things. Chiropractors need those same things. These are all service businesses where they are basically selling their time for a fee.

Let's switch gears. The auto repair shop down the road needs those things. The electrician needs those same steps. A realtor needs those same systems. A dental laboratory needs those same things. A carpet cleaning business does that, too.

How about in retail? The store that sells telephones and cellular service uses the same steps.

We could go on and on but the bottom line is that when you strip away the specifics of a single business, the basic systems of any business are exactly the same: customer attraction, customer engagement, customer service or fulfillment, customer retention, team accountability and financial measurement. Sometimes you can learn more about what you could do to improve your business by studying how another industry is successful than by studying the competitors in your own business.

Now that we've established that ALL businesses need the same underlying basics, let's look at the fundamental structure for any business. Any business can be transformed into one that buyers drool over because every business is alike: the same systems work for every business and need to be implemented to make the business work as it truly can.

Remember, the most saleable businesses are those that are a true investment for the buyer instead of an employment opportunity. In order for a business to function as an investment, it is ***crucial*** that it be structured in such a way as to incorporate these six systems.

System One
Client Attraction System

How do you get clients? In one of his books, author and marketing guru Jay Abraham talks about the ways you can increase the income from your business. As he puts it, there are only three ways to increase business income:

1. Get new customers
2. Get your existing customers to buy more frequently
3. Increase the amount that customers are spending with you.

The consensus in most marketing and business literature is that getting *new* customers is the most expensive way to increase business sales. It's cheaper to increase the amount your existing customers buy, because once someone has bought from you, then you have a higher chance of selling them again and you don't have to pay to find that customer again.

That brings up an interesting question that will be the subject of another system that will be discussed: Do you have a system to capture the information on customers to retain them and do more business?

But back to our topic. Although it might be cheaper to resell existing customers, getting new customers is the lifeblood of any business. Your New Client Attraction System is like creating a funnel that inputs a constant stream of new customers. You put leads for potential customers into the top of the funnel and those customers pre-sell themselves, eventually popping out of the end of the funnel ready to become a new customer.

System Two
The Client Engagement System

No matter how many prospective customers flow past your business, the thing that really matters is how many of them actually ***buy***. The secret is entering into an concrete engagement or sale.

Just like at your favorite fishing hole, there can be hundreds of fish swimming by your lure at any given time. If the fish don't like the bait you are using, they are not going to bite ("engage") and you have peanut butter for dinner instead.

Since what you offer to clients or customers is of benefit to them (or you should not be trying to sell to them in the first place), you have a moral obligation to help them say yes.

So are they saying *yes*, or are you merely having meetings with them without closing the deal? Do they become confused by the presentation or uncertain by the way it is presented? Have you tested your presentation to find what is the most effective with potential customers?

Most marketing gurus recommend that the Client Engagement System be standardized as much as possible. Just as Tiger Woods follows the same routine before he hits every shot, you should be trying to recreate the same basic experience every time.

How do you recreate the experience each time? Planning and scripting:

1. When someone calls for an appointment or information, there a designated person who follows a script.
2. You sending a pre-meeting package that pre-sells the client or customer.
3. You meet with the prospect in an environment that is organized and conducive to proceeding with business together.
4. When you meet with the prospect, you follow a script or checklist to make sure that you are covering all of the material in the same way each time.

By planning the process from first contact to signing, you will dramatically increase your closing or engaging percentage. It does not matter what business you are in, the same principle and system applies. This system has other benefits that we will discuss later.

System Three
The Client Service System

Okay, you got the client in the door, they said yes... now what? ***Service, service, service!*** Here's the deal. Everything before the engagement is fine and dandy, but unless you *get the work done well*, nothing else is important, agreed?

What is your system at this point? Is it literally planned out step by step or will you just wing it? Let's go back for a second to McDonald's, who has Ford beat to you know where when it comes to standardizing.

A customer places his order for a Big Mac, supersize fries and a diet drink. The order passes via high tech video to the high school trained employee in the kitchen who begins to prepare the burger. The parameters of cooking and assembling the bun and burger are exactly prescribed by corporate. While the bun is warmed and toasted, the burger is cooked precisely ___ seconds per side (*state secret prevented from being revealed by attorney client privilege, or was it the non-disclosure agreement I signed as a kid?)*. Then the bun receives a swipe of mayo, a squirt of a prescribed amount of ketchup and exactly two pickle slices. Thus, a burger and fries is exactly the same in Omaha as in San Antonio as in St. Petersburg as in Tokyo...you get the picture. Their customers receive the same level of service worldwide. That's reliability that builds customer loyalty.

Now, how about at your business? Once the order is placed, what happens? Do you reinvent the wheel every time? Or have you specified procedures? Every one of your customers deserves to receive the same excellent process for the buying experience. The experience should be choreographed from the moment of yes to the final delivery of the completed product or service.

This type of planning and consistency creates raving fans of your business. These customers then recommend your business to their friends and their friends and their friends. In the end, your Client Attraction System does not have to work nearly so hard to fill the funnel.

Also, when the experience is systematized, your presence becomes less essential because you have made it possible to have your trained assistants give the same experience that you would have given. When that happens, you are taking the steps to fire yourself and make your business more valuable!

System Four
The Client Retention System

Earlier in this section, I discussed the three ways that sales can be increased. Two of them dealt with additional sales to existing customers and I explained that it is far cheaper to add new sales from existing customers than it is to bring in new customers.

Every customer that you have has the potential of additional sales from your business. The total of all purchases would be the lifetime value of that customer. The goal is to keep those customers for life.

What do you do to stay in touch regularly with those customers? Newsletter, email, cards, phone calls? In "Referral of a Life Time," the author designs a 12-month contact system and describes how to automate that system so that it occurs without your complete involvement. It may be a card one month, a newsletter the next, followed by an educational piece the next. The cycle is then repeated with another sequence of similar items. You're probably very familiar with one type of these "stay in touch" methods: gifts at Thanksgiving or Christmas. At one of my client's office every year, the kitchen table gets piled with popcorn, candy, grapefruit, and other remembrances from their vendors.

Those thoughts are sincere and wonderful, but as a business owner, think about having a client relationship that runs deeper. Create a contact system where you not merely stay in touch, but potentially act as a counselor or authority in your field for your customers. For example, my firm has three levels of membership programs to provide for advice on a continuous basis. That advice ranges from legal advice to acting as, in essence, an outside director. The advice I give is not just legal—my clients rely on me for marketing advise, financial advise, even personal advise, with the simple goal of helping that client make their business more successful. What I offer clients is different from what other attorneys offer their clients. In other words, I have a Purple Cow.

Does Your Business Have A Purple Cow?

Seth Godin wrote a book called *The Purple Cow* about the things that set businesses apart and make them noticeable. Picture this:

You are driving down the road, and you look over at the cows in the fields. Brown cows, black cows, spotted cows, and a purple cow. Wait a minute! A purple cow! Are you kidding? Back up! I can't believe my eyes! Did you see that purple cow in that field over there? I've got to call my friends; they are never going to believe this!

Are you the purple cow in a field of brown cows? What about your business sets it apart from others? Why would customers go out of their way to drive to your office or location, pass up the five other businesses that offer the same service, just to do business with *you*? Here are some of Seth Godin's examples:

Poilane bread in France. Poilane refused to hire trained bakers. He only would hire people who could learn his ways without unlearning other ways. The overwhelming quality of his product and his desire to do it right won over the French establishment. He sold $10,000,000 worth of bread in a year.

Curad. For years, Bandaid dominated the bandage market, until Curad decided to put cartoon characters on their bandages. Kids loved them and parents bought them.

Here is another example related to me by a friend. While in the Seattle airport, he heard a pleasant humming sound and turned to look. There was a Bose audio kiosk. (You know Bose, right? Awesome speakers and headphones?) It just so happened he had a problem with his beloved Bose headphones he relied on during flights both to listen to music and to avoid aircraft engine noise.

Although the salesperson was busy closing a $300 sale with another customer, he greeted my friend with a big smile and an "I'll be right with you." The salesperson was obviously passionate about his product.

After my friend explained the problem, the salesperson asked to run a quick test. Three minutes later, the salesperson comes back with a brand new, fully-charged set of headphones already registered online. Before my friend left the Kiosk, the headphones were double-checked with an ipod to ensure they were problem-free. My friend is a raving fan of Bose! You think he told anyone of the experience?

Do you give your customers a unique experience? Do you have a Purple Cow?

System Five
Team Accountability System

Remember the team at McDonald's from our earlier discussions about the system for service? Hamburger is the same in Boise as in San Antonio?

How does that happen? Accountability.

Let's take an office for example. Part of your marketing is designed to get people to call your business. The phone rings. Who is going to talk to the customer? What are they going to say? How will you know what is said? Is there a script? Do you have someone who calls every now and then just to see what they say? Is there a supervisor who listens periodically to hold the employee accountable?

Are there production benchmarks that your team has to meet? Is the team financially compensated when they meet or exceed the benchmarks?

A strong team is in place when they are trained, accountable, responsible and responsive. Systems and benchmarks don't invent themselves. If you are waiting for your staff to develop the systems and benchmarks (while they are working their day jobs), don't hold your breath. It just will not happen. You, as owner, must take charge and deal with the situation.

In the 1980's, I worked with failed and failing savings and loan associations. In one, I employed a consultant to come in and tell me how paper flowed through the institution. She worked for an accounting firm. She came in for about a week and interviewed the employees and collected paper from around the bank.

About a week later, she scheduled a meeting in the conference room. Now banks, even savings and loans, have big conference rooms. When I came in the room, she asked me if her services would be paid for if she had found more than $15,000 in lost money. Well, of course.

As she unrolled the large brown paper roll on the floor (from literally one end of the room to the other on both sides of the table), she had diagrammed not only the flow of paper through the institution but also how checks for mortgage payments were being handled. Now, this particular S&L had been around since before the Depression. Checks from mortgage payments were received and logged in by one employee. The checks then went to another employee for crediting payment on the account. Another employee then was responsible for depositing the checks. Deposits were not being done periodically during the day but were only done on Tuesdays and Thursdays!

When I asked why, I was told by all of the employees, including the department head, that they had no idea but the procedures must have been set up by the lady who had retired ten years before. She had worked there for forty years before she retired. I suspect she had been one of the original employees. The upshot was that there were no systems, the process was just the way it had been done and just happened as they added new employees!

Oh, the $15,000? Would you believe my consultant found checks totaling over $15,000 that had been filed in mortgage files by mistake? So much for the system.

Your team needs to have written job descriptions, or rather performance contracts, not a long written thesis, but rather spreadsheets that detail the specific tasks and the performance benchmarks. For example, if accuracy is required, is a portion of the compensation based upon the number of errors found or rather lack of errors? Remember that the benchmarks must be specific, understandable, measurable, attainable over time, and consistent.

System Six
The Math of Management

In the newspaper this week there was a story about a granite company. The owners were very good at what they did. Their granite countertops and other products were made extremely well and people raved about the quality of their work. But they were going broke. . .

Just because someone is a good technician, does not mean that they are qualified to own their own business. (The skill sets are not the same, and, in fact, good business owner skills require that you not be the technician all the time. If you are working in your business, you do not have the time to work *on* your business.)

The owner admitted to the reporter that he did not understand the financial issues of billing and cash flow. He could not stand the pressure of having to meet the payrolls, arrange financing and get new business.

Luckily for him, an interior decorator who frequently used their company did understand those things. She agreed to invest some new capital and take over the management side to bring order to their chaos. She is now providing the bookkeeping and handling the marketing so that the technicians can do what they do best.

The result is a good team that focused on the strengths of the individuals. The article said that the company has doubled its billings in the past year. Unfortunately, the article did not address the bottom line of the business. Doubling sales does not always translate into increasing net profit.

How do you know when you are doing well? Some business owners are comfortable when they have money in their bank account. But sometimes money is in the bank because they are not paying their bills!

In sports, there are measurements to gauge your performance. In business, there are measurements to gauge your success as well.

Do not lose track of the goal of any business: to make money for the owner. The goal may secondarily be to pursue the owner's love or passion, but the business is there for one main reason: to make money for the owner.

However, your goal should be even higher: to make *a lot* of money. As business owner, you assume the risk of the liability of employees, rent, expenses, etc. You could have a regular job instead without as much risk. But your goal is create a business that generates a cash flow stream. A business that can be evaluated on a cash flow stream, that does not require the owner to participate, is worth many times more than a business where the cash flow stream is dependent on the owner selling her time or being the main producer. To put it in perspective, try 10 times cash flow rather than 2 to 3 times cash flow!

Recently on one of my monthly telephone conference interviews, I interviewed Linda Mariani, owner of www.TheCorporateTroubleShooter.com. The topic of the interview was the financial reporting of a business and the various types of reports (measurements) to determine how a business is performing. She suggested that Measurements must be regular: weekly, monthly, quarterly, and annually.

Weekly you should create (translated, have created) flash reports that tell you last week's sales, collections, bank deposits, checks written, cash on hand, cash requirements for next week, accounts receivable, accounts payable and weekly profit based on cash. You should also be looking at customer leads, presentations, and closes so that you can track your closing ratio.

Monthly you should do a bank reconciliation and an income statement so you can see how you did every month.

Quarterly you would meet with me, or a like advisor, to review the year to date financials, accounts receivable, accounts payable, lines of credit, and a balance sheet. In July and October, you should do a projection of your taxes and discuss potential changes with your tax planner. In March, you should do a complete review of your insurance package to make sure that you are adequately covered for property and casualty as well as life, disability, and health needs.

Annually you should hold your company meeting, and have a complete review of financials, budget, and five year plan.

If you don't know where you are going, and have no method to measure whether you got there, you are guaranteed to never arrive! It would be terrible if your ship came in but you could not find the dock.

SECTION 3
THE THREE DEADLY WEAPONS THAT WILL WRECK THE SALE OF YOUR BUSINESS

Here are what I consider to be the Three Deadly Weapons that can wreck the sale of your business. These weapons are based upon my experience, discussions with many business owners, and many years of representing businesses in and out of the courtroom.

There are 700,000 businesses that will come on the market and change hands every year. That number represents 30% of 2,500,000 businesses that owners will want to sell every year. 70% of the businesses do not sell. Many of those end up being liquidated for lack of a buyer.

You can learn how to avoid these three mistakes that will literally cut the sales price of your business in half. Think about having a business that should be worth $750,000 but only being able to sell it for $375,000. If you do not pay attention to three factors in selling your business, you literally may only receive half of what your business is worth.

1. Not Understanding the True Value of Your Business.

Albert wants to sell his retail business that has a ten-year track record. The business provides Albert an income of $150,000 per year. Albert has done his own valuation of what he thinks the business should sell for and wants a price of $1,500,000 for the business, a factor of 10 times his net income. Unfortunately, in the retail sector of Albert's business, the market rate is only a multiple of three times the net income, a price of $450,000.

Because of his unrealistic price, Albert will not be able to sell his business.

2. Not Understanding How The Sales Proceeds Will Be Taxed When Received.

Janet owns a business in a corporation. The sale is proposed to her as a sale of assets and no assumption of liabilities. Although the sale of assets will be treated as a long-term capital gain at the corporate level, she has not considered how she will get the money out of the corporation and into her hands personally.

Unfortunately, she has also signed the Purchase and Sale Agreement without consulting her attorney or her accountant. How much tax will she have to pay?

There are a number of options that could have been considered on how to structure the transaction. Unfortunately, she should have had a game plan and run the numbers on all of the options BEFORE she signed the purchase and sale agreement. By not planning in advance, some owners have actually unintentionally structured transactions that were taxed at ordinary income rates rather than long-term capital gains rates!

3. Business Owners Selling Must Follow The Boy Scout Motto "Be Prepared"

Just as in our scenario described earlier in the book, after working for twenty-five years, two owners decide that they want to sell their business and retire. They begin working less but have not trained anyone to do the technical things that they do so well. Of course by working less, less technical tasks get fulfilled and less income rolls in. The best preparation would have been to sell before income goes down and, better yet, have installed the six systems described in Section 2 that would have literally doubled the value of your business.

The lesson is that you need to begin preparing to sell a business probably years before the business is sold or even offered for sale. You must have the six systems in place, understand the value of your business and be prepared in advance for the eventual sale of your business. Your business is not an investment that buyers drool over.

Take this test to see if your business is ready to sell:

1. If you take off all of next week and do nothing in your business, what will happen to the income of the business?

Increase Decrease Unaffected (Circle one)

2. If you take off all of next week and do nothing in your business,

what will happen to the flow of new business?

Increase Decrease Unaffected (Circle one)

3. Do you have a written business continuity plan? Yes No

4. Do you have videos or audios of your plans for the business over the next three years? Yes No

5. When someone calls your office to schedule an appointment, does someone different answer the phone and/or do they have a set script to use to answer the call and close the appointment?
Yes No

6. Who is your favored buyer for your business?

____

Do you have a name ready or do you have no clue whom the buyer would be?

7. If you do not come back from your next appointment, ever, who will sign checks at your company?

____

8. Will your death cause your company's lines of credit to be called due?

Yes No

9. Do you have a checklist to be followed if you are suddenly disabled and unable to care for the business? Yes No

10. Are you ready to learn how to implement the necessary steps for an effective exit strategy? Yes No

Appendix A

Sale or Acquisition Checklist

- Purchase and Sale Agreement
  - Identification of Assets
  - No Assumption of Liabilities
  - Non-competition Agreement
  - Non-disclosure Agreement
  - Customer Lists
  - Trade Names
  - Trade Dress
  - Trademarks
  - Licenses
    - Trademarks
    - Patents
    - Source Code
  - Copyrights
  - Liens on assets sold
    - Deed of trust
    - UCC

- Form of Business
  - Proprietorship (not recommended)
  - General Partnership (not recommended)
  - Limited Partnership
    - Limited liability
    - No Franchise Tax
  - Corporation (S or C)
  - Limited Liability Company
  - Trusts

- Insurance
  - Liability
  - Umbrella
  - Life
  - Disability

- Employment Contracts
  - Non-competition Agreement
  - Non-disclosure Agreement
  - Customer Lists
  - Ownership of Ideas/ Work for hire

Employee Manual

Confidentiality of Trade Secrets

- Negotiations
- Proposals
- Plans/Designs
- Formulations
- Access Restrictions
- Customer Lists
- Methods of Operation
- Pricing/ Pricing calculations
- Material or supply sources

Buy/Sell Agreements

- Death
- Disability
- Divorce
- Termination (Voluntary and Involuntary)
- Valuation
- Right of First Refusal
- Non-disclosure
- Non-competition
- Life Insurance to fund

Will

- Disposition of assets
- Marital Credit Trust
- Gifts to Minors
- Gifts to children of business – tax effect

Appendix B

The Buy/Sell Agreement

A Buy/Sell Agreement is that “friendship tool” to allow people who are friends, remain friends when confronted by the necessity to change their relationship in owning the business. The Buy/Sell Agreement is the “road map” or implementation of the exit strategy that allows one to get out of business by selling a business on terms that are agreeable to all parties.

It is more important to know how you will get out of business than it was for you to know how to get into business. Many business owners tell me that they are friends and such plans are not necessary because they are friends. Friendships change. Businesses change. Unfortunately, when businesses make significant money, people can become greedy.

Unexpected things like death and disability happen in life. Sometimes people act in ways that can damage a business and there must be a way to protect the business.

The Buy/Sell Agreement should cover the events that can occur and provide the agreed escape route. These events include death, disability, divorce, voluntary termination, involuntary termination, and retirement. The Buy/Sell Agreement provides for what interest must be sold and how the sale shall occur. The Agreement should set the value of the ownership interest in a manner that avoids dispute as well as provide for the form and method of payment.

Primarily, a Buy/Sell Agreement is a security blanket for the owners of the business. The Agreement provides the peace of mind that families and the business are protected in the event of disaster and strife. The Agreement documents the escape route from the business and the provides the financial security of a defined escape path.

Section 4

Helping You Get In AND Out

What Our Law Firm Does

Buying and Selling Businesses

Sales arrangement — Structuring Transactions
Due Diligence — Buy Sell Agreements
Purchase and Sale Agreements

Corporate Planning

What type of business entity is best for you to use (Corp, LLC, partnership)
Confidentiality agreements — Non-compete agreements
Income Maximization Strategies — General Business Advice

Wealth Planning

Asset Protection Strategies
Wills
Powers of Attorney
Insurance Trusts

Arbitration - Litigation - Mediation

Business disputes only
Referrals on all other matters

How Our Law Firm Is Different

The "Traditional" Lawyer Experience

In order to show you how our law firm is different, it's necessary to describe the "traditional" lawyer experience. If you have ever worked with a lawyer, the following scenario will be all too familiar.

> You have an immediate crisis or change that needs legal attention, so you make an appointment with a lawyer, who, while discussing your problem, has a way of making things seem very complicated and confusing. You get the sense that this lawyer is smart and must know what he is doing, so you will nod your head and answer questions as if you understand everything. Because you want to do the right thing for your business, you have the lawyer prepare legal mumbo-jumbo documents that you then sign. You take the signed documents back to your office, stick them in a file (fireproof!), and happily mark the task off your checklist as "DONE," secure in the knowledge that you have taken good care of your business.
>
> During those discussions with your lawyer, he probably mentioned specific guidelines for your business dealings, but you really don't recall just what. For example, he might have told you what name, title, and format to use when you sign a document or a check on behalf of your business. To clarify, you call your lawyer's office, get a voicemail, then wait for a call back (which takes several hours at least and sometimes days). Of course, by this time it is too late and you're frustrated, so you resort to doing things the way you have always done them. A few weeks later, lo and behold!, you get a $75 bill in the mail for the 15 minutes you spoke to your lawyer when he finally did call you

back. You make a mental note – *unless in jail, do not call lawyer ever again!*

As your business grows, change happens: you add a new business partner or you refinance your building or sell it and buy a new one. You vaguely recall your lawyer saying those few years back to "keep assets separate," but you don't want to be charged for asking, so you don't call. Or you hear about a change in the tax law, but you figure that your lawyer surely would have contacted you if it affected you, so you do not worry about it. Come to think of it, you have not heard from him since you got his last bill and have little idea how to contact him anyway.

Then something bad happens that you cannot fix on your own and you must ask your lawyer for help. Unfortunately, this time you learn that it's almost always more expensive to get out of a sticky situation than to avoid the mess in the first place by simply being prepared with good planning and regular maintenance.

This firm is dedicated to AVOIDING THE OBSTACLES OF THE TRADITIONAL EXPERIENCE. We have based our philosophy on our founder's 30 years of litigating in the courtroom for and against business owners—just like you—who paid dearly for poor business planning and crisis-only management. The plans that they had were not designed to serve their growing company and the many changes that happen on their way to success. **Our plans are**.

What Do We Do for You in a Business Transaction?

Here is a more or less complete list of the tasks we may be called to do in your transaction. Remember that each sale is different, and that not all of these tasks will be required in every case. They are:

- *Initial interview with the client*
- *Educate client about the sale of a business*
- *Gather documentary information including minute books, inventories, liabilities, contracts, employee agreements and benefits, etc.*
- *Assist in negotiations with the prospective buyer and attorneys.*
- *Negotiate and prepare a letter of intent*
- *Negotiate and prepare a sale agreement*
- *Assist with due diligence process*
- *Analyze the legal issues of the transaction*
- *Coordinate with business valuation experts*
- *Analyze the employee benefit plans*
- *Conduct a search of any and all liabilities of the business and analyze the validity of any liens on the business assets.*
- *Evaluate insurance coverages.*
- *Handle the closing of the transaction.*
- *Follow checklists for transactions, of which the following are partial samples:*

OUR CASES AND VERDICTS

Here is a sampling of cases that we have handled. I rarely handle litigation matters personally anymore but do supervise the handling of litigation. This information is provided primarily to give you an idea of our experience that has uniquely qualified us to handle complex business transactions. Remember that each case is different. We've won cases we probably should have lost and we've lost cases that we expected to win. Once a case is in the hands of the jury, it is out of our control. We do believe, however, that significant trial experience in big cases is one factor that people may use to choose one attorney over another and is even more important in choosing a business lawyer. Many business lawyers have never even been in a courtroom and have no trial experience. With these disclaimers in mind, here are some of our results:

The Pipe that Cracked from the Inside Out

Representing literally thousands of homeowners from Texas to the Washington, D. C. area, Mr. Montgomery's litigation team reviewed tens of thousands of pages of documents to find the few documents that showed that a major chemical company knew that its plastic resin formed into water pipe would crack in the presence of oxygen and chlorine found in normal drinking water. Their efforts resulted in complete re-piping of the homes as well as the payment of the homeowner's attorneys fees and damages in Texas and the Washington, D.C. area. This same product was used in thousands of installations of cold water service pipe by municipalities around Austin, Texas. Mr. Montgomery recovered over $10,000,000 for the cities of Round Rock and Burnet in Texas and several cities in Alabama, along with municipal water districts, including Lakeway Municipal Utility District near Austin, Texas.

Watch that Refinance

Mr. Montgomery represented a small long haul trucker against a major truck manufacturer. After buying a number of new trucks and establishing a successful trucking business, the manufacturer talked the trucker into buying used trucks from the manufacturer's leasing fleet. One of the trucks did not even make it out of the city limits on its first run. Within ninety days, the trucker lost his lucrative contracts due to no-shows. The manufacturer induced the trucker to refinance the trucks and then sued him when he could not pay for the trucks. Mr. Montgomery analyzed the refinancing and counter-sued the manufacturer for usury. After a jury verdict, judgment was entered for almost $750,000. After appealing the decision, the manufacturer settled the case before a ruling was made by the Texas Supreme Court.

Take or Pay Royalties

With an imaginative suit alleging violation of the Texas Consumer Protection Act, Mr. Montgomery represented a large group of landowners in Federal Court in Corpus Christi, Texas against an oil and gas producer. The producer negotiated a multi-million dollar settlement with a major gas pipeline company for the breach of a gas purchase contract. After soliciting the landowners' assistance to obtain the settlement, the producer attempted to keep the settlement and only pay royalties on the much lower market gas price. After a lengthy mediation settlement on the eve of trial, Mr. Montgomery negotiated a large settlement for his clients in the face of a recent court of appeals decision that the landowners had no cause of action for such claims.

Theft of Trade Secrets

When a major retail company decided to use a formulation of a product without involving the inventing company, Mr. Montgomery developed economic data on the profits made by the retailer. With detailed data obtained in discovery, the economic experts were able to project that the potential profits ran to the billions of dollars. The legal theory advanced included the award of damages for the disgorgement of profits from the use of the formulation by the retailer. Faced with that testimony, the trial team was able to obtain a very favorable settlement of the case short of trial.

Even Bankrupt Paid

Representing a landlord, Mr. Montgomery obtained a judgment after trial in Federal Court in California for almost $2 million against a bankrupt company. He was able to obtain payment of the judgment in a Chapter 11 case and regain possession of the real estate properties for his client with approval in the US Bankruptcy Court for Delaware.

Page left blank intentionally.

Free Newsletters From JamesMontgomeryLaw.com

Want to know how to best deal with potential buyers? Want to find out specific steps you can take to find the best lawyer for your transaction? Want to read the "inside story" about frivolous lawsuits? Would you like some practical advice about buying insurance from someone who does not sell insurance?

These are some of the topics that are covered eight times a year in a free newsletter sent to your business by San Antonio attorney Jim Montgomery.

Mr. Montgomery strongly believes that most legal disputes could be avoided if business owners had a better general knowledge about the legal system, planned on a regular basis to avoid problems and involved their lawyer in their business as a regular advisor.

There is absolutely no cost or obligation and from time to time we run contests to give away free stuff!

If you subscribe and later feel like we are wasting your time, there is a telephone number in every issue that you can call to "unsubscribe." Don't worry, this is not the boring, "canned" newsletter that most firms buy and slap their name onto the form. We write it and we aim to provoke people to pay more attention to their legal affairs.

Just photocopy this form, fill it out and mail or fax it to us. Fax to 210.568.4550 or mail to James Montgomery, 2702 Treble Creek, San Antonio, Texas 78258
Please start my subscription to your free legal newsletter:

Name: ____

Address: ____

City:__________________________ State: __________ Zip: ________

If you would like to also receive our weekly email newsletter, published 52 times a year, just give us your email address. <u>We do not share out mail/email lists with anyone!</u>

____
(email)