

GABB TODAY

THE NEWSLETTER OF THE GEORGIA ASSOCIATION OF BUSINESS BROKERS

Why 2011 is a Great Year to Buy a Business

By Loren Schmerler

Sure, the country is in the middle of a recession, but do your potential customers know why 2011 is a great year to buy or sell a business?

The imminent retirement of baby boomers, a rich pool of labor, many financing options and the opportunity to increase investment income with a business are among the many reasons. Here's why.

Boomers Retiring. Many baby boomers are reaching the retirement age of late fifties or early sixties. From my experience, the most common age when business owners call me is 62. They are tired from working 40 or more years since high school, the last 15 to 20 years as owners of their own businesses. The available supply of good and well established businesses has never been greater.

Financing Options. When you find a business you want to buy, the owner will be more receptive to both traditional and creative financing. In traditional financing, an owner holds a note for part of the purchase price. Interest rates now are roughly 6% for

owner notes. Creative financing would be assumption of liabilities or earn outs. Earn outs are based on a percentage of sales above certain thresholds.

SBA-preferred lenders are more willing to make loans due to relaxed federal guidelines and the elimination of certain costs and fees. While buyers won't get an 80% loan like the good old days, you should be able to easily obtain a 65% loan with you making a 25% down payment and the owner holding a 10% note.

Buyers can now use 401k funds, IRA funds, SEP-IRA funds, etc., to purchase a business. There are many tax advantages to doing so, and you can control how much you make yourself for salary and how much you keep within the C Corporation tax free.

Motivated Vendors. Vendors are highly motivated to make sales. Their businesses have suffered financially during the past two years. As a result, you should be able to purchase inventory, supplies and other materials at substantial cost savings.

Deep Labor Pool. Due to the millions of unemployed workers, the labor pool is *(continued on next page)*

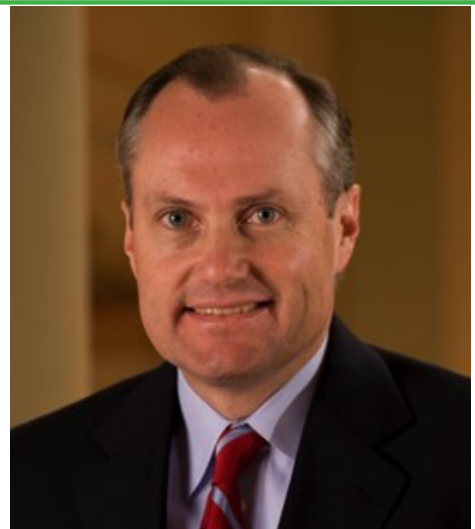
Lt. Gov. Casey Cagle to Speak Sept. 27 to GABB About Economic Development

NEW VENUE: Atlanta Board of Realtors

Georgia Lt. Gov. Casey Cagle will speak about the state's economic development efforts in Georgia, workforce development and fiscal policies to help businesses grow. The meeting starts at 10:30, preceded by our 9:45 a.m. networking breakfast.

MEETING LOCATION CHANGED! This month we will meet at the Atlanta Board of Realtors, 5784 Lake Forrest Dr., Atlanta, GA 30328. See GABB emails for directions.

Diane Loupe, the editor of GABB Today and a freelance writer and editor, is the presenting sponsor for September.



Why 2011 is the Year to Buy - *continued from front*

loaded with qualified and motivated prospective employees. Additionally, existing employees at the company you buy will likely stay with the company, since finding another job will be quite difficult.

Demand For Good Businesses. With millions of unemployed workers living on their savings and retirement plans, there is a high demand for good businesses. Due to the unprecedented demand, multiples of Owner's Discretionary Cash Flow are exceeding 3 where in the past the multiples ranged between 2 and 3. Thus, there will never be a better time to put your business up for sale.

Savings Investment Options. Because unemployed people have had their 401k plans and savings devastated, and they are tired of only earning .25%, they need an alternative plan. The tax code allows them to purchase a business using retirement funds and creating a C Corporation. Once the corporation is created, all profits can grow tax free, and the new owners are not obligated to disburse profits, dividends, or salaries.

Selling Removes Uncertain Future. Business owners who in their late 50's or early 60's have no way to know what the future may hold. One's

current health can change unexpectedly, or an owner may develop issues with aging parents. By selling now, an owner can remove some uncertainty.

Financing Options Attractive. Owners willing to provide owner financing for part of all of the purchase price can earn interest in the 6% range. That's more than 20 times what a bank now pays. SBA financing is loosening up, which will allow more prospective buyers to buy a business.

Some investment vehicles will allow a seller to defer most or all of the seller's proceeds. Thus there will be little or no tax liability due in the year of the sale.

Owners can work with a financial professional to set up a residual income stream that will meet their needs and spread the capital gain over many years.

Quality of Life? There comes a time when quality of life becomes more important than money. Only a business owner can decide if obtaining freedom trumps earning money and to what extent. But smart and shrewd businesspeople can view 2011 as a great year to buy or sell a business.

Loren Schmerler
Bottom Line Management, Inc.

Welcome New GABB Members

Following are the new members from June, July and August:

Broker/Associate/Active Members

David Negron Jr.
Russell Wilson
Sheila Reed

Agent, K W Commercial (Perimeter Center)
Agent, K W Commercial (Satellite Blvd)
Agent, Solid Source Realty

Affiliate Members

Samantha Workman
Michael Smith

Business Development Officer, SunTrust
Financial Advisor, Baker Schilling Smith

THE LENDER MINUTE

By Cheryl Beer, Senior Vice President
Cornerstone Bank
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Change of ownership rules are probably the most important facet of SBA financing for GABB brokers. Business brokers must have the correct information in order to properly structure a transaction for sellers and buyers. The key points to remember are as follows:

- The buyer must purchase 100% of the ownership interest in the business;
- The seller cannot remain an officer, director, stockholder, or key employee of the business. If a short transitional period is needed, the small business may contract with the seller as a consultant for a period not to exceed twelve months;
- If there is business real estate as part of the change of ownership, the real estate cannot be financed separately by a non-SBA guaranteed loan (unless it is an SBA 504 project);
- If the purchase price of a business includes intangible assets in excess of \$500,000, the borrower and/or seller must provide a combined equity injection of at least 25% of the purchase price of the business. In order for the seller financing to qualify as equity injection, the seller note must be on full standby of principal and interest payments for a minimum of two years. If the total "equity" is greater than 25%, there can be two seller notes. For example, if the buyer has 20% equity and the seller



provides 20% seller financing, there can be two seller notes, one for 5% on full standby for two years and one for 15% with immediate P+I payments; and

- The lender must obtain a current business valuation from an independent third party chosen by the bank to justify the purchase price.

I have been an active SBA lender for more than 20 years, a member of GABB for three years, and enjoy working with business brokers. I have recently joined Cornerstone Bank as an SBA lender. Cornerstone Bank is committed to the SBA program and is currently the #2 volume SBA lender in the state of Georgia!

CODE CORNER: Don't Advertise Without Permission

By Art Lennig, CBI, BCI / **Murphy Business & Financial Corporation - Georgia, Inc.**

Article Fourteen: The Business Broker should not submit or advertise businesses without written authority; in any offerings the price quoted should be agreed upon with the Seller.

The Business Broker should always have a written Brokerage Engagement, providing authorization to sell or purchase, as appropriate, from the prospective seller or purchaser. Said agreement should include all the material terms of the sale or purchase, including price, term of agreement, and compensation to be paid to the Business Broker. To advertise a listing that we do not have permission to advertise is not only a violation of the GABB Code of Ethics, but it is also against Georgia Real Estate Law. If your listing agreement has expired, your permission with the Seller to advertise has expired. Do not leave your listings posted on internet sites.

FORMS: Updated Buyer's Confidentiality Agreement

By Jim Waddell / Coldwell Banker Commercial Metro Brokers

The information here came from a recent M&A Source webinar on Confidentiality Agreements I attended and sparked an update of the GABB CA form. I thank Gary Whitaker for incorporating these changes.

A prospective Buyer will need information to make an informed decision about a possible purchase. Much of this information will be considered proprietary by the Seller. As such, confidentiality agreements are involved in almost every business sale.

The fact that a business is or may become for sale is considered confidential for several reasons. Customers fearing change may leave, suppliers may want to restrict or cancel orders and deliveries, employees may jump ship. The Seller wishes to prevent having key employees or customers solicited by a prospective buyer. Brokers know to execute the Confidentiality Agreement (CA) prior to providing confidential information including the company's identity. A stray comment can damage the Seller.

Ask your Seller what information should remain confidential. Many Sellers will not realize what they will need to keep confidential to protect their interests. Items they may not have considered include intellectual property, customer lists, their strategic pricing advantage (Anti-Trust Laws), their suppliers, business opportunities, and sensitive financial statements. Trade Secrets derive their economic value by remaining secret. A competitor posing as a prospective buyer may gain a competitive advantage just by a visual inspection of the premises. Potential buyers may try to exploit the Seller's business model and methods. Discuss the GABB Confidentiality Agreement. We have a very good CA, but the Seller's attorney may have to alter it so that it covers your client's particular situation. You never can tell what a Seller will actually consider confidential.

The GABB CA defines exactly what is meant by the term "information," to whom it may be disclosed, and whether a prospective buyer should be prohibited from contacting and/or hiring seller's employees or soliciting seller's accounts. When the deal goes sour and the lawsuits begin, the issues of attorney fees, costs and judgments being awarded, the survival period of the agreement and the venue for its enforcement become important and should have been addressed already.

Exceptions to the confidentiality covenants include information that 1) was publicly available through no fault of the recipient prior to the execution of the non-disclosure agreement, 2) could have been obtained legally from a third party source, or 3) was independently obtained or developed.

All information disseminated should be marked "Confidential," but what do you do about electronic data? How can it be returned? Be sure everything discussed is considered confidential whether marked confidential or not. The prospective buyer should return or destroy all information obtained during due diligence and certify in writing that this has been done. This includes anything derived from the information including memos. Remember, there was no obligation to enter into a Purchase and Sale Agreement and no Reps and Warranties. The GABB CA addresses the return of information.

Suppose the legal process requires the Buyer to disclose confidential information? The Buyer must give the Seller reasonable advance written notice of this requirement and cooperate with any Seller efforts to obtain an appropriate restraining/protective order to maintain the confidential nature of the information. The Seller may have to sue in another state for the injunction.

The Buyer must promise to use the same level of care as if the information were their own and limit sharing information to others on a need-to-know basis. Signature lines may need to be added for these employees and others like their lawyers, bankers, and other advisors.

Please contact any GABB Forms Committee member with issues you encounter.





Dominique Maddox
We Sell Restaurants
Restaurant Broker
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GABB Broker Member since 2011

What role do you play within your company? I'm a restaurant broker and specialize in selling restaurants and food-related businesses, franchise re-sales, and site location for the food service industry.

What led you to this line of work?

I was looking for an opportunity to further my professional career. I worked as a cook and a waiter in high school, and my father was a chef. If I had not gotten a football scholarship to Morehouse College, I would have gone to culinary arts school. I have always been fascinated with the restaurant industry. A job helping people buy and sell restaurants was an unbelievable opportunity.

What led you to business brokering?

I was thinking about getting the CCIM designation to start a career in Commercial Real Estate. Shortly after I got accepted into the CCIM Cultural Diversity Education Program, I received an email from *We Sell Restaurants* offering great training. Restaurant Brokerage was something I had never thought about trying. After doing my research and due diligence, I thought it was an opportunity to get into Commercial Real Estate with a great firm.

What experience did you have in doing transactions before you became a broker?

My first job out of college was as a sales consultant with New York Life. After selling life insurance for a year and a half, I went to Ameriquest Mortgage Company to help people refinance their homes and consolidate credit debt. After the market began to decline, I went to B2B sales selling payroll services. Next, I started with Keller Williams. I learned after two years I did not like being a residential agent. My family and I moved to Nigeria in 2009 to help my wife's family open an Asian restaurant and bar. I learned the obstacles of building and opening a restaurant in another country.

Where else have you lived? I was born and raised in Anchorage, Alaska. I lived in Alaska for 18 years. I attended Morehouse College on a football scholarship.

The most important thing I've learned in business is productive activity leads to results.

My most unexpected sources of business referrals are residential agents.

The biggest mistake I've made that I'll never make again: Telling my wife about a million-dollar transaction I was working on. The deal never closed, and I was speechless.

Every day, I read or watch the Atlanta Journal Constitution, Anchorage Daily News, ESPN and CNN.

Professional & Personal Affiliations: Omega Psi Phi Fraternity Inc.; Hands on Atlanta volunteer.

All about Nique: I met my wife, Veronica, my senior year in college. Ever since the day we met we have been inseparable. My wife and I have a daughter, Amaya Maddox. We live a very active lifestyle by working out three or four times a week. We love to travel internationally and to take weekend trips. My favorite sports are football, basketball, and golf. My favorite book is *Think & Grow Rich* by Napoleon Hill.

Affiliate Spotlight

James W. Hamilton III

Nickname: Jimmy

Financial Advisor, Morgan Keegan & Co. Inc.

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GABB Affiliate since 2011

How long have you been with the company, and what role do you play within your company?

I have been with Morgan Keegan since 2008. As a Morgan Keegan financial advisor, I serve the diverse needs of my clients. In this capacity I work with my clients on wealth management, retirement planning, succession strategies, estate planning, insurance planning as well as other areas of particular interest.

What is the focus of your company, and how does it differentiate itself?

Morgan Keegan & Company is one of the largest regional investment firms offering full-service investment banking, securities brokerage, and wealth and asset management. Morgan Keegan serves the diverse needs of individual investors, corporate and institutional clients throughout the U.S. and abroad.

One way we differentiate ourselves is by underwriting more municipal bond offerings in the southeastern United States than any other firm.

What are your company's target markets?

My practice at Morgan Keegan focuses on business owners, attorneys, and retirees. That is a broad group, but ultimately are people in need of sound financial advice who understand the importance of working with a professional that they trust who is backed by the full resources of an investment firm.

What led you to this line of work?

I started working for Morgan Keegan as an intern in college. I enjoyed the culture of the firm and working with families, businesses, and organizations in a way that I could have a real impact on helping them achieve their goals. Morgan Keegan hired me right out of college and I haven't looked back.

Where else have you lived?

I grew up in Atlanta, and went to high school in Austin, Texas. I initially attended Appalachian State University in Boone, N.C., on a baseball scholarship. After some injuries I left and lived in Fort Collins,



Colo., for about a year, and worked in Ponca, Neb., for a summer. I finally wound up in Athens at UGA to finish college.

Most people would be surprised to find out that I started and ran a subscription-based farming operation in which I grew food for families and delivered it to them every week for four months.

Professional/Personal Affiliations: I serve on the board of WonderRoot, is a community arts organization located in Atlanta's Reynoldstown neighborhood. I belong to the UGA Alumni Association, am a volunteer youth baseball coach at the Northside Youth Organization (NYO), and have volunteered with Hands on Atlanta and Trees Atlanta.

All about Jimmy: I live in the Brookhaven neighborhood in Atlanta and enjoy being outdoors. My favorite sport is baseball; I coach a 10-12 year old team at NYO and attend as many Braves games as I can. I enjoy college football and root for the Georgia Bulldogs. When not working, I am outside, hanging out with friends or family, watching sports, or reading. My favorite author is Ernest Hemingway.

Tips/Advice for GABB Members: More businesses will sell or transfer to the next generation in the next 20 years than at any time in the history of the country. Plant many seeds today and you will reap the benefits in the years to come.

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☆☆UPCOMING EVENTS☆☆

GABB meetings are held on the last Tuesday of every month, except December.

Future GABB meetings will be held on Oct. 25 and Nov. 29.

8:30 AM -GABB Board Meeting
9:45 AM -Networking/Breakfast
10:30 AM -Membership Meeting
12:15 PM-Committee Meetings



NEW September Meeting Location!!!

***On Sept. 27, 2011, the GABB will meet at the ATLANTA BOARD OF REALTORS
5784 Lake Forrest Dr., Atlanta, GA 30328. See GABB emails for directions.***



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Following our Facebook seminar in April, GABB Today editor Diane Loupe created a GABB FaceBook Page. Please “like” us on the page and use it to add notices of upcoming events.

To contact a GABB member or affiliate, go to www.gabb.org To suggest an article for the newsletter, contact the editor at dloupe@mindspring.com

Join GABB in 2011

If you are interested in discussing membership in GABB, please go to www.gabb.org and send the completed Membership Interest Form to initiate contact with our Membership Committee, or contact the GABB Membership Chairs Paul Cushman pcushman@cushmanassociates.com 770.752.4240 or Tom Burdick tom@bekbrokers.com 678.807.9189.