

JUSTIN S. DANIELS

PRACTICAL LEGAL TIPS



"Cash on Hand is Worth More than an Earnout in the Bush"

Earnouts are a common feature in the sale of service businesses whose revenues are dependent on customers continuing to use the service after the transaction is complete. An earnout means that all or a portion of the purchase price will be paid to the seller at a point in the future provided that the business being sold meets certain post closing financial performance criteria. Many seller's agree to an earnout in the hope of receiving additional money after closing assuming the business will perform well financially after the closing. What they fail to consider is that the buyer may wish to run the business differently post closing or may account for sales differently and that either may cause the business to miss the financial targets. Either situation results in an unhappy seller who did not receive the additional earnout revenue. A seller may be better off most times accepting a bird in hand of the lump sum cash payment at closing as opposed to the prospect of more purchase price coming later from an earnout in the bush.

As always, your trusted legal resource for practical advice.

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