

MANAGING LEGAL FEES IN BUSINESS TRANSACTIONS

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Recently I was involved in a business deal where the principals met to negotiate the terms and then brought the lawyers to the table to “document” the deal. Sounds like the cheapest way to handle a transaction, right? Not quite. The lawyers saw issues the principals didn’t anticipate and a significant amount of time was spent going back and forth over issues necessary to fill in the blanks on the deal the principals had negotiated. It wasn’t until the parties arrived at closing that it became clear that one party’s insistence on “simplicity” for a complex transaction would require major surgery on what the lawyers understood to be standard transactional documents. What could have been a nice clean transaction, ended up generating a lot more fees than anyone anticipated.

So what is the best method for controlling legal costs as you consider your next acquisition or sale? As with most legal matters, the best approach is to take certain preliminary steps that can avoid significant costs down the road. Here are a few steps to consider.

1. Discuss the transaction process with legal counsel first. Most clients look to save legal fees on the front end of the process when in fact time spent at that point is in fact often the most cost effective. Discuss the anticipated transaction with your counsel prior to negotiating with the other side. Specifically discuss the issue of fees and how to most efficiently complete the transaction. Talk about what steps you anticipate taking and when it would be most effective to have legal counsel participate in negotiating the deal. An hour spent outlining the deal and discussing strategy at the beginning, can save many hours of billed time at the middle and end of the deal.
2. Consider using a term sheet. If you are negotiating the deal directly, discuss with your attorney whether it makes sense to use a term or summary sheet for the deal that both parties sign off on subject to final documentation. If a term sheet makes sense, ask for a list of items that should be included on the term sheet. While strategy relative to each transaction will dictate what you include, the more detailed you can get, *using non-legal jargon*, the less there will be to adjust during the documentation process.
3. Conference in parties and lawyers together prior to drafting documents. Similar to meeting with legal counsel prior to negotiating the deal, once the term sheet or general outline of the transaction is agreed upon, set up a telephone or in person conference with all the players so that you can make sure everyone is on the same page as to what needs to be done, when and by whom. It is generally an advantage to control the initial drafting of a deal but it also costs more to be the party in charge of the documentation. You need to decide whether you control that process or if it is a shared process. Make sure legal counsel brings to that conference a complete list of what needs to be done and what documents need to be drafted.
4. Set deadlines and stick to them. Deals take on a life of their own many times and to keep them moving in the right direction set deadlines that make sense and stick to them. One of the most effective techniques and tools for controlling costs and dragging the deal, the lawyers and your negotiating partner across the finish line, is to impose deadlines, real or imagined, that force people to take actions and make decisions.