

**Outgrowing your
Business:
How do you know?**

February 28, 2008

Ted Lauer

SVP, SBA Department Manager-Access
National Bank

- Managed SBA Lending Dept for #1 ranked SBA Lending Institution in SBA's WMADO ('92 - '96)
- Co-founded National Association of Government Guaranteed Lenders (NAGGL) Region III Sub-Committee (1996)
- Served on Board of Directors for NAGGL (1995)
- Co-founded Access National Bank (1999)
- BA (Economics) & MBA from Wake Forest University

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progressive business banking

Neil Kossler

CPA, MST

- Managing Member of Kossler Jones & Company, LLC - founded in September 2004
- 20+ years experience in Public Accounting, Certified Public Accountant since 1993
- Holds a Masters in Science in Taxation and Bachelors of Science in Law Enforcement from George Mason University
- Appointed an AICPA Ambassador for Virginia Society of CPAs as a speaker, educator and panelist on behalf of the profession since 2006
- Specializes in Tax & Strategy Planning for small to mid sized businesses, Business Management and Structuring, and Real Estate.
- In addition, Business Valuation Analyst & Auditor

Stuart Sorkin

Transactional Attorney-General Council

My practice areas range from buy-sell agreements, raising of capital and financing, acquisition, development and sales of businesses and real estate, employee incentive compensation, federal and state income tax consequences of transactions, financial, retirement and estate planning, including asset protection. I am a certified public accountant. I earned my J.D. degree from the University of Miami and I have a master's of law degree in taxation from Georgetown University. I was named to National Register's Who's Who in Executives and Professionals 2005-2006 and have been interviewed by the Wall Street Journal, Time Magazine, USA Today, Money Magazine and BankRate.com, as well as, I am a frequent lecturer on various aspects of exit strategies and federal income and estate taxation.

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Introducing...
Ted Lauer

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About *Access National Bank*[®]

- Opened in 1999
- Publicly listed in July '04 NASDAQ[®] "ANCX"
- SBA "Preferred Lender" Status as of July 2006
- #1 ranked SBA Lender in 2007 among NoVA community banks
- Locations in: Reston (HQ), Tysons, Chantilly, Leesburg and Manassas

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Why Get an SBA Loan?

- Longer term (smaller payments), No balloons
- Smaller down-payment: conserves cash
- Loan approvals not otherwise available



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Notable SBA borrowers....

- FedEx
- Mrs. Fields Cookies
- Nike
- AOL
- Allen Edmonds Shoes
- Calloway Golf
- Totino's Pizza
- Staples
- Outback Steakhouse
- Winnebago
- Gymboree
- Sun Microsystems
- Jenny Craig
- Under Armour

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Eligibility for 7(a) Program

CRITERIA

- For-Profit
- Affiliation
- Personal resources
- Credit elsewhere
- Franchise Agreements
- Meet Size standards
- Business Types
- Use of proceeds
- Citizenship

Remember the tenants of eligibility:

- Business Owner must be eligible
 - Business must be eligible
 - Project must be eligible

Loan Uses

- Working Capital (short or long term)
- Business Acquisition / Buy a Franchise
 - Refinance & Consolidate Debt
 - Equipment Purchase
 - Real Estate (owner occupied)
 - Research & Development

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Permanent Working Capital Loans

- Long Term Financing for Current Asset Growth
- Serves as a Substitute for Equity Capital
- Start-ups & Franchises (www.franchiseregistry.com)
- Finance Acquisition of Existing Business
- Typical Maturity is 7-10 years



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Business Acquisition Loans

- Must Acquire 100% of Business
- Stock or Asset Transfer
- Experience/Training Essential
- Purchase Contract Should Itemize Values for Each Asset Being Purchased
- 20% Down Payment is Typical
- Subordinated Seller Financing is OK
- Valuation of Business to Support Contract Price

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Refinancing / Consolidating Debt

- 20% or More Loan Payment Reduction
- Eligible Debt:
 - Revolving Lines
 - Credit Card Debts
 - Balloon Notes
 - Demand Notes
- Cannot Refinance Shareholder Debt
- Business Debt Only

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SBA Express Loans

- Loan limit up to \$350,000
- Streamlined application & paperwork
- Allows “hybrid” borrowing for short term or long term working capital.
- Start as revolving line; can be termed out
- Up to 7 years term



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Patriot Express

- 75-85% Guaranty
- Potentially Reduced Restrictions on Collateral Requirements
- Loans up to \$500,000
- Available to:
 - All US Veterans
 - Spouses and Widows/Widowers of US Veterans
- Access National Bank is among the first Community Lenders approved Nationwide!



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Preferred Lender Program (PLP)

- SBA delegates credit decision to the Bank
- Bank gets audited by SBA every couple years
- Same day loan approvals from SBA as their review is just on “eligibility”

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Access National Bank's Underwriting Criteria

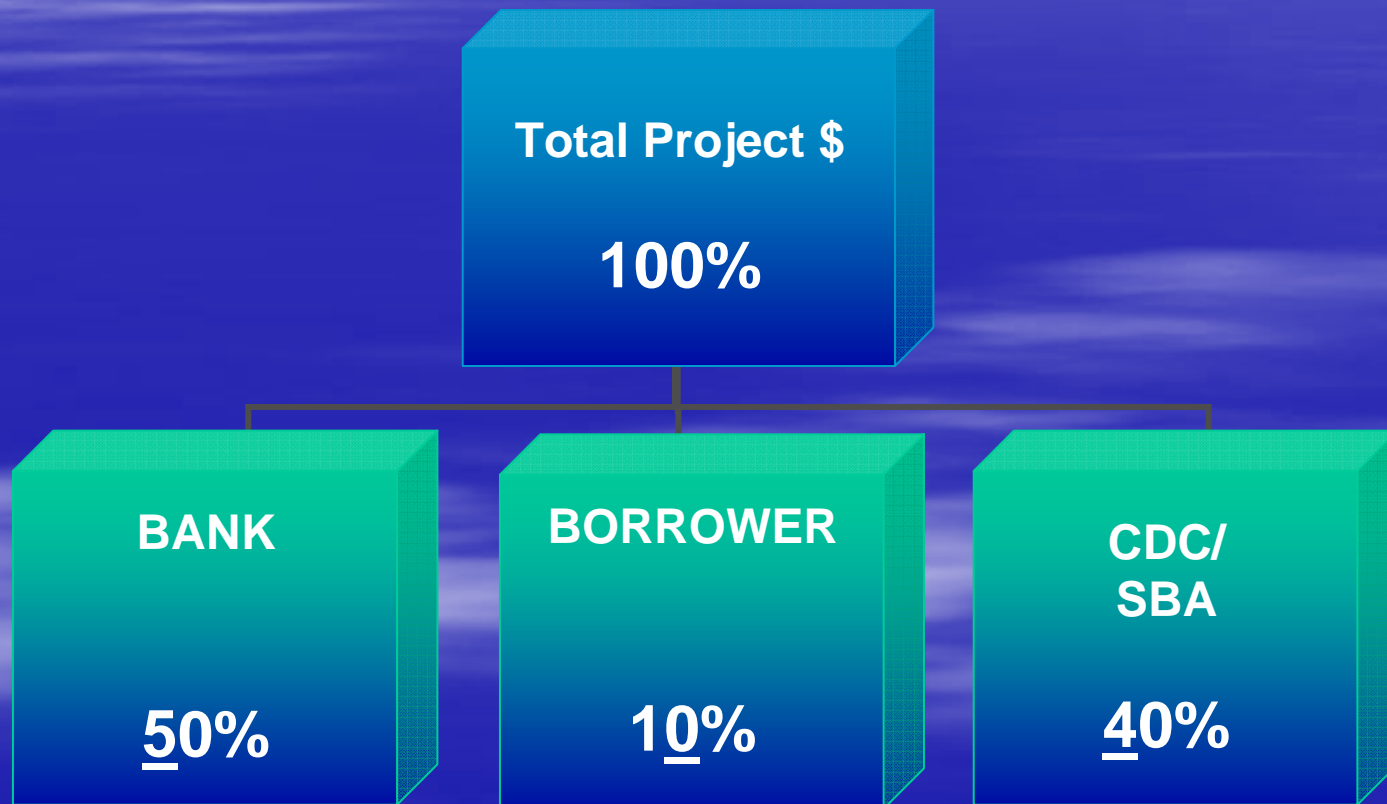
- Cash flow
 - Demonstrated or Projected
- Management
 - Expertise & Character
- Equity in Business & Project
 - Debts vs. Equity
- Sufficient Collateral



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BASIC STRUCTURE - 504 LOAN

for Owner Occupied Real Estate &/or Equipment



SBDC Programs and Services

- One-on-one confidential business counseling
- Small group training seminars
- Conferences, workshops, seminar series
- Resource referral to local, state, federal and private sources
- Focus on Business Plan Development and Updating
- www.virginiasbdc.org/

Meet all of your financial needs with *Access National Bank*

You don't have to leave your office to receive the benefits of:

- SBA Lending
- Personal Attention & Responsiveness
- Online Business Banking
- Online Bill Pay
- Online Check Images
- Real Time Transactions
- Courier Pick Up

...and introducing e-Deposit!!

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Case: Business Acquisition

- Software developer selling primarily to U.S. Govt has \$3 Million Revenue & \$300,000 EBITDA
- Competitor For Sale with \$2 Million Revenue & \$200,000 EBITDA
 - Price is \$2 Million
 - Payable \$1.25 Million at Closing
 - Seller Take-Back Note of \$750,000
 - Payable 8% Interest-Only for 5 Years
- Projected Combined EBITDA for the Two Companies is \$600,000.



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Questions

Ted Lauer

Access National Bank

300 Fort Evans Road, NE

Suite 103

Leesburg, VA 20176

Phone: (703) 871-2104

TLauer@AccessNationalBank.com

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Introducing...
Neil Kossler

KOSSLER JONES & COMPANY, LLC
CERTIFIED PUBLIC ACCOUNTANTS

About Kossler Jones & Company, LLC

- Founded in 2004 and located in Fairfax
- Specialize in small to mid size businesses
- We offer the following services
 - Tax Preparation and Planning
 - Accounting and Assurance Services
 - Business Valuations
- AICPA CPA Ambassador for VSCPAs, Tax
- Smart CEO - Smart CPAs in the Washington area - 2 years running,

KOSSLER JONES & COMPANY, LLC
CERTIFIED PUBLIC ACCOUNTANTS

Business Entity Selection

February 28, 2008

KOSSLER JONES & COMPANY, LLC
CERTIFIED PUBLIC ACCOUNTANTS

Business Entity Types

- One of the most important choices to be made by a business is what sort of entity it should be.
- Decide after serious contemplation of both the tax and legal implications of the entities available.
- Five (5) Basic Entity Types:
 - Sole Proprietorship (SP)
 - General Partnership
 - C-Corporation
 - S-Corporation
 - Limited Liability Company (LLC)

Overview of Basic Choices

Numerous factors to consider when choosing your entity.

- Tax effects
- Retirement options
- Treatment of benefits
- Treatment upon sale
- Ability to choose a fiscal year
- State licensing fee
- Ability to work across multi-state borders
- Liability purposes
- Ability to bring in new investors/owners

It is critical to have a trusted and proficient advisor to help you make the most beneficial decision both for right now, and for the future needs of your business.

Sole Proprietorship (SP)

- Formation: The simplest of the entities to set up, or accidentally end up in. If you own your business 100% by yourself, and do nothing else to choose an entity, this is your default entity.
- Legal: A business that is an extension of the owner.
- Filing: The income and expenses are reported directly on the owner's tax return, and the owner is fully at risk for liability purposes. This entity has the least amount of compliance paperwork associated with it.
- Advantages:
 - The income of a SP is taxed at the owner's individual marginal rate.
 - Income flows to the Schedule SE on the return (Tax Rate is 15.3% for the self employment taxes for the first \$90,000 (amount indexed to inflation).
 - This means that with state taxes added in (which range from 0% to 10%), you can have taxation that is in excess of 60% of the net income from the business.

General Partnership

- Formation: When 2 or more people get together to form a business, its default status is that of a general partnership.
- Legal: It is advisable to have a written partnership agreement, although that is not a requirement.
- Filing: The income and expenses of the partnership are reported in its own tax return (a Form 1065),
- Advantages :
 - Net income flows out to the owners based upon the partnership agreement and economic reality.
 - The owners' then pay the tax owed on the income much as a sole proprietorship does.
- Disadvantages:
 - Unlimited Liability
 - Responsible for all business actions of your partners
 - Can end up with Partners by accident

C-Corporation

- Formation: By filing articles of incorporation with the state.
- Legal: It is own legal entity, offering the greatest amount of legal protection to the owners as long as all the rules are followed.
- Filing: File its own tax return, and pays its own tax. The only way to get money out of a corporation to the owners is through ordinary and necessary business expenses (salary, rent, interest, etc.) and dividends.
- Advantages
 - Better treatment of benefit packages,
 - Ability to choose a fiscal year,
 - Better tax utilization of retirement plans,
 - Ability to better control income flowing out to the owner to maximize benefits
 - Ability to create multiple ownership classes and rights
- Disadvantages
 - Payroll company required,
 - Risk of double taxation,
 - Higher standard of books needs to be kept,
 - Government compliance,
 - Loss of flow through treatment for income taxes

S-Corporation

- Formation: Same as C-Corporation, but must elect to have S Status by filing form 2553.
- Legal: S-Corp is its own entity,
- Filing: Files its own return.
- Net income of the business flows out to the owners, and is taxed at the owners' marginal rates. The character of the income is not subject to self-employment taxes
 - Some unsophisticated taxpayers choose an S-Corporation as a vehicle to avoid paying the self-employment taxes.
 - This is usually not a viable use, as the Treasury has consistently fought and won in court the ability to recharacterize the distributions as salary, forcing the payment of payroll taxes. It is required that the owners pay themselves a reasonable salary for their position.
- Advantages:
 - Flow through of losses to the owners' tax return,
 - Avoiding of double taxation or timing issues,
 - Decided tax advantage upon the sale of the business.
- Disadvantages:
 - Inability to have more than one class of stock,
 - Difficulty in having anything other than a calendar year,
 - Not a good choice for owners who need to take tax advantage of robust benefits.

Limited Liability Company (LLC)

- Formation: File with the state.
- Legal: Same Legal protection as a Corporation, with added restrictions of creditors rights if they gain ownership.
- Filing: It depends
- Advantages: Unique Treatment (by IRS)
 - Single member LLC (owned by one person) is by default disregarded so for self employed owner it is taxed as a sole proprietorships, but with better liability protections.
 - An LLC owned by more than one person is by default treated for tax purposes as a partnership, but it also has a higher level of liability protection.
 - Can elect to be taxed as a corporation, and then elect S-Status.
 - LLC can achieve nearly any of the results above.

	Sole Proprietor	Partnership	S Corp	C Corp	LLC
Liability protection?	No	No. Not only don't you get liability protection, but all partners are jointly liable for actions of other partners in partnership.	Yes	Yes	Yes
No. of owners allowed	1	At least 2. No top limit	No more than 75	Unlimited	Unlimited
How income is taxed	Owner pays tax on personal returns.	Profits flow through to partners, paid on personal returns.	Profits flow through to partners, paid on personal returns.	Corporation pays a tax on profits; owners pay a tax when cash or property is distributed.	Profits flow through to partners, paid on personal returns.
Deduct losses on personal returns?	Yes	Yes	Yes	No	Yes
Avoid payroll paperwork?	Yes	Yes	No	No	Yes
Special allocations of income or expenses among owners?	Not applicable	Yes	No	No	Yes
Is a written agreement advisable when starting?	Not necessary	Yes	Yes	Yes	Yes

Questions

Neil Kossler

Kossler Jones & Company, LLC

3915 Old Lee Highway, #23C

Fairfax, VA 22030

Phone: (703) 766-7660

NKossler@KosslerCo.com

KOSSLER JONES & COMPANY, LLC
CERTIFIED PUBLIC ACCOUNTANTS

Introducing... Stuart H. Sorkin

**GENERAL COUNSEL, P.C.
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Growing your Business

**How to execute a profitable exit
strategy and protecting your
financial future**

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Preparing to Buy/Sell a Business

- Agreements to Maintain or Increase Value
 - Buy/Sell Agreement
 - Employment Agreements/Golden Handcuffs
 - Protect Intellectual Property
 - Agreements to lock-up customers & vendors
- Prepare for Due Diligence
 - Are corporate records and governmental filings up to date
 - Review leases, loans, material contracts & insurance
 - Summary of all legal controversies
 - Clean – up financial statements

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Reasons for an Operating/Buy-Sell Agreements

Management Issues

Employee retention

Third Party Purchasers

Death

Disability

Bankruptcy

Divorce

Withdrawal from business

 Voluntary

 Involuntary

Special Income Tax Issues

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Operating /Buy-Sell Agreement Management Issues

- . Decision making
 - Decisions which can be made by any owner
 - Decisions which require super majority or unanimous consent
- Requirements for requesting additional equity and enforcement of requests for additional equity
- Resolving disagreement through a mutually agreed upon non-professional arbitrator
- Reverse offer

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Operating/Buy-Sell Agreements - Employee Retention

- Equity Ownership
 - Actual Purchase
 - ESOP
 - Stock Options
 - Profit Share on significant events
 - Bonus pool awarded annually
 - Fixed portion
- Payment for Equity
 - Cash payments from bonuses (capital gain to employee)
 - Sweat equity (ordinary income to employee)
- Voting verse non-voting
- Reduction in payment or pay-out for equity for early withdrawal

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Operating/Buy-Sell Agreements

Events which may trigger repurchase

- Which events create a mandatory or option repurchase
- Valuation of Business
 - Annual mutual agreement of owners
 - Value of Assets
 - Book value
 - Fair Market Value
 - Adjusted Net Income
 - Third party appraisal of business
 - Resolution of disputes in valuation
 - Look-back in setting valuation
 - Reduction in valuation for early or wrongful withdrawal
- Allowing either the entity or the owners to execute repurchase

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Operating/Buy-Sell Agreements funding and pay out of repurchase

Do not kill the goose that is laying golden eggs

- Life Insurance
 - Ownership (entity, individual cross purchase, escrow agent or trust)
 - Payment of Premiums (by whom, bonus, gross-up for taxes or loans)
- Disability Insurance
- Third-party financing
- Seller financing
 - Fixed note payments
 - Variable note payments based upon earnings
- Increase in pay-out period for early or wrongful withdrawal
- Allocation of purchase price to covenant not to compete
- Payments to departing owner for services after termination
- Release of existing guaranties of departing owners

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Third party purchaser

- Types of transfers
 - Asset Sale
 - Purchaser can pick and chose assets and gets a step-up in basis on assets purchased, potential entity level tax and depreciation recapture
 - Equity Sale
 - Seller gets capital gains but purchaser is assuming obligations of entity
 - Merger
 - Seller get a deferral on the capital gain but any cash received in taxable

What is the Seller's uses for the sales proceeds?

- To produce a current income stream for Seller's living expenses
- To start a new business
- To investment for retirement
- To pass on to the next generation
- To make charitable gifts

Types of Seller's Payment

- Cash
- Stock
- Installment Sale
 - Payment Stream
 - Security for Repayment
- Consulting/Non Compete Payment
- Employment Contract

Questions

Stuart Sorkin

General Counsel, P.C. 2008 (c)

(703) 556-0411

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Feed Back

Please take a moment to complete the Feed Back Survey.



Questions?



It's QUESTION TIME!!

For a PDF copy of this seminar please visit
Access National Bank's website:

www.accessnationalbank.com

Resource Center

Industry News & Articles

Outgrowing your Business: How do you know?

The screenshot shows the Access National Bank website's Resource Center page. The header includes the bank's logo, navigation links (Home, Business Banking, Private Banking, Deposit Rates, News & Events, Resource Center, Calculators), and a search bar. The main content area is titled "Resource Center" and "Industry News and Articles". It features a description of the section's purpose, a photo of two people, and a list of seminars. The footer contains legal disclaimers and logos for ANCX NASDAQ LISTED, Access National Bank, and FDIC Equal Housing Lender.

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Resource Center

- › Deposit Applications
- › Loan Application Materials
- › Forms
- › **Industry News and Articles**
- › Check 21 Information
- › Federal Reserve

Resource Center
Industry News and Articles

The Industry news and articles section is intended to provide information, articles and resources to help mid size and small business grow their business.

Access National Bank is dedicated to serving small businesses in the DC Metro area. Monthly through out the year, Access National Bank sponsors seminars in an interactive environment for entrepreneurs and small business owners to help prepare for the growth of their businesses, including identifying options available to finance specific business needs.

Here is an archive of our seminars this year for those unable to attend:

[Financing Solutions for Emerging Businesses](#) - 01/15/2009

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