

BUSINESS ASSET SALE

Checklist Questions

1. Parties

- allow buyer to assign?
- addresses, telephone and fax numbers
- Buyer forming entity?

2. Broker or not (anyone due commissions on closing)

3. Description of Assets (owned and leased)

- including advertising, memberships, telephone listings, e-mail or web sites, tradenames, trademarks, licenses, franchises, lease for premises (landlord approval of assignment), approvals on any other assignments
- handling of accounts payable and accounts receivable
- "as-is" without warranties, except free and clear ownership

4. Price

- fixed or variable
- include inventory (how priced), minimum or maximum inventory at time of closing
- cash sale?
- Seller carry? (amount, interest rate, terms of payment, collateral, due on sale, personal guarantee of payment)
- allocation of price to goodwill, hard assets, leasehold, leasehold improvements, covenant not to compete
- adjustments to price such as proration of personal property taxes, rents, utilities

5. Earnest money

- who hold?
- interest on deposit credited to whom
- refundable on failure of what conditions
- nonrefundable?
- additional payment of earnest money prior to closing

6. Covenant not to Compete

- area and number of years
- activities precluded

- 7. Closing date and place**

- 8. Liabilities being transferred to Buyer**
 - loans assumed
 - leases (business premises and/or personal property) being transferred to buyer
 - employee contracts, accrued vacation and/or sick leave
 - pension and/or profit sharing plans
 - salaries or wages due to employees as of date of closing

- 9. Inspection Period, access and Information (sales, taxes, internal records)**
 - extent of availability to Buyer
 - warrant or represent accuracy
 - Buyer's due diligence period
 - as-is?

- 10. Operation of Business (days, hours, etc) until closing**

- 11. Contingencies to Buyer's obligation to close**
 - third party financing
 - due diligence objections
 - title objections
 - new lease
 - appraisal

- 12. Repairs and Maintenance pending closing**

- 13. Seller's Representations and Warranties**
 - taxes paid to date of closing (sales, use, unemployment, withholding)
 - no liens or lawsuits pending
 - financial records accuracy

- 14. Buyer's Representations and Warranties**
 - made full inspection to extent desired
 - no reliance on any statements, representation or warranties not otherwise included in Contract
 - make prompt and good faith efforts to satisfy contingencies

- 15. Indemnifications from Seller to Buyer and Buyer to Seller**

16. Tax escrow to guarantee payment of sales taxes

17. Standard Matters:

- Attorney's Fees on default
- Default and Remedies
- Destruction of Premises prior to closing
- Notices
- Colorado law applies
- Nonrecording of Agreement
- Corporation Standing and Director/Shareholder Approvals of Seller and/or Buyer
- No merger for continuing matters after closing
- No modification except in writing and signed

MESSAGE: This Information Sheet is intended to provide general information only. It is not intended to cover all of the legal issues that arise in each situation. It is suggested that none of the documents described above should be signed without first talking to an attorney who is knowledgeable about such matters. This material is dated and the enclosed information may change because of new laws, regulations, or other impacts.

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