



## Closing the Transaction

### Meeting Conditions of Sale

After buyer and seller have entered into a Letter of Intent, there may be several conditions to be met before the sale may be closed. Such conditions often address issues like assignment of the lease, verification of financial statements, transfer of licenses, or obtaining financing. There is usually a date set for meeting the conditions of sale. If a condition is not met within the specified period, the agreement is invalidated.

Generally, there are two types of business sale transactions, asset and share sale. Share sales are more complicated as contingent liabilities must be provided for when a business is sold. They most often occur because of pending tax payments, unresolved lawsuits or anticipated but uncertain costs of meeting regulatory requirements. Contingent liabilities can be handled by holding back a portion of the funds earmarked for disbursement to the seller. The sum held back then can be used to pay off the liability as it comes due. Any remaining money can then be disbursed to the seller.

There are many considerations and issues that can arise during due diligence and papering the transaction. It is very important for both parties to use a competent lawyer who is familiar with Mergers and Acquisitions and share sales. The legal profession as almost all professions is becoming more specialized and it is important to retain an experienced Mergers and acquisition lawyer.

### Completion

Sale completion or closings, as they are also called, are usually done when a lawyer performs settlement. In this procedure, the attorney for the buyer draws up the necessary documents for settlement. Buyer and seller meet with their respective lawyers at a predetermined time (after all conditions of sale have been met). Buyer and seller sign documents at the meeting. A good settlement lawyer is also a good problem solver. He or she can help find creative ways to resolve differences of opinion. The buyer's lawyers holds the money in trust and disburses it when all the appropriate documents are signed.

There usually is no formal final meeting at which the signing of the documents takes place. Buyer and seller usually sign them independently of one another. The lawyer agent also performs a lien search. This determines if any liens against the business's assets have been filed in the records of the local courthouse.

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## Documents

A number of documents are required to close a transaction. The purchase and sale agreement is the basic document from which all the documents used to close the transaction are created. The documents most often used in closing a transaction are described below.

Other documents not described below may also be needed depending on the particulars of the transaction.

- 1. Statement of Adjustments:** Shows, as of the date of settlement, the various costs and adjustments to be paid by or credited to each party. Buyer and seller sign it;
- 2. Bill of Sale:** Describes the physical assets being transferred and identifies the amount of consideration paid for those assets. It must always be signed by the seller and is often signed by the buyer;
- 3. Promissory Note:** Used only in an installment sale, it shows the principal amount and terms of repayment of the debt by the buyer to the seller. It specifies remedies for the seller in the event of default by the buyer. It is signed by the buyer and the buyer often must personally guarantee the debt;
- 4. Security Agreement:** Creates the security interest in the assets pledged by the buyer to secure the promissory note and underlying debt. It also sets forth the terms under which the buyer agrees to operate those assets, which constitute collateral. It is used only in an installment sale. Both parties sign it;
- 5. Non-Compete Agreement:** Protects the buyer and his investment from immediate competition by the seller in his market area for a limited amount of time. The scope of this document must be reasonable in order for it to be legally enforceable. The covenant not to compete is sometimes included as a part of the purchase and sale agreement and is sometimes written as a separate document. Both parties sign it. It is not required in every transaction;
- 6. Employment Agreement:** Specifies the nature of services to be performed by the seller, the amount of compensation, the amount of time per week or per month the services are to be performed, the duration of the agreement and often a method for discontinuing the agreement before its completion. Employment agreements are not required in all transactions, but they are used with great frequency. It is not uncommon that the seller remain involved with the business for periods of as little as a week or as much as several years. The length of time depends on the complexity of the business and the experience of the buyer. For periods of more than 2-4 weeks, the seller is often compensated for his services. Both the buyer and the seller sign it; and
- 7. Schedules:** The disclosure schedules contain information required by the acquisition agreement—typically a listing of important contracts, intellectual property, employee information, and other material matters as well as exceptions or qualifications to the detailed representations and warranties of the selling company contained in the acquisition agreement.



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Alf has over forty years of industry experience, building and operating businesses, taking companies public and assisting firms in coordinating and selling their businesses. Contact Alf with your questions regarding the disposition of your business.