

TRANSACTION MANAGEMENT AND INFORMATION PROCESS

1. PRELIMINARY STAGE

- Ascertain the parties' motivations for making the sale and purchase.
 - Review the parties' valuation of the property to be sold or purchased and examine whether additional consideration needs to be given to this matter.
 - Review the terms of any proposed broker or finder agreement.
 - Consider whether a confidentiality agreement is required to protect the parties and their trade secrets during preliminary negotiations.
 - Consider the appropriate form for the property sale, asset sale, ownership interest sale, merger, etc.
 - Consider the tax aspects of the transaction.
 - Consider alternative means of payment of the purchase price, such as allocation of price to covenants not to compete or consulting agreements.
 - Set up files proposed for the transaction.
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2. DUE DILIGENCE INVESTIGATION OF SELLER'S PROPERTY

2.1 RECORDS

- Verify that the seller is duly incorporated and in good standing in the state of its incorporation.
 - Review the articles of incorporation and bylaws of the seller and any amendments.
 - Determine who are the registered owners of the issued and outstanding shares.
 - Determine whether there are options, warrants, or other rights to acquire shares outstanding.
 - Review all agreements between the seller and his/her shareholders.
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2.2 PERSONAL PROPERTY

- Obtain a list of all machinery, equipment, furniture, and fixtures owned or leased by the seller and depreciation schedules and leases.
 - Obtain a search of appropriate state and local records for Uniform Commercial Code financing statements and other evidence of liens or encumbrances on the personal property of the seller.
 - Review the seller's insurance coverage on personal property.
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2.3 REAL PROPERTY

- Obtain legal descriptions and information about the location and character of all interests in real property owned or leased by the seller.
 - Review the seller's title insurance policies and consider the purchaser's need for title insurance.
 - Obtain copies of and review all appraisals of the seller's real property.
 - Obtain copies of all studies, site evaluations, and governmental filings and reports prepared by consultants or employees of the seller concerning the real property.
 - Review the seller's real property depreciation schedules.
 - Review copies of all leases, including amendments, and investigate whether there are any defaults under the leases.
 - Investigate the presence of hazardous materials or toxic substances on, under, or about any property owned or leased by the seller.
 - Review insurance coverage.
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2.4 FINANCIAL AND TAX INFORMATION

- Review the financial statements of the seller for the current year and the past five years.
 - Review all bank loan agreements.
 - Obtain copies of property tax assessments for the past five years.
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2.5 LEGAL COMPLIANCE AND LITIGATION MATTERS

- Determine whether the purchaser can obtain all necessary licenses and permits by transfer from the seller or otherwise.
 - Review all regulatory reports filed by the seller with governmental agencies within the past five years.
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3. LETTER OF INTENT

- Prepare a letter of intent after a preliminary decision has been made by the parties to proceed with the sale, and have the letter of intent signed by the parties.
 - Determine to what extent the letter of intent is going to be binding and on whom.
 - Prepare timetable, list of responsibilities, and closing memorandum.
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4. PURCHASE AGREEMENT

4.1 PRELIMINARY MATTERS

Identification of parties:

- Names
 - Addresses
 - State or states of incorporation
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4.2 ASSETS AND LIABILITIES SUBJECT TO AGREEMENT

Assets subject to agreement:

- Business building and other real property
- Equipment, furniture, and fixtures
- Insurance policies
- Other assets

Liabilities subject to agreement:

- Contracts
 - Other liabilities
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4.3 PURCHASE PRICE AND PAYMENT TERMS

Amount of consideration:

- Single sum
- Aggregate of separate sums allocated to various properties and assets

Nature of consideration:

- Payment of money

- Other consideration

Allocation of purchase price to various assets sold:

Time and manner of payment:

- All cash on closing
 - Part payment on signing and balance on closing
 - Deposit held in escrow until closing
 - Installment payments
 - Mortgage or other collateral security
 - Forfeiture of deposit for default in paying purchase price
 - Other methods of payment
 - Personal guaranty of payment by buyer
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4.4 CLOSING CONDITIONS AND PROCEDURES

Closing conditions:

- Verify date and location of closing
- Consent of shareholders/owners and/or directors/managers
- Tax rulings
- Approval by counsel or accountants or both
- Compliance with UCC Article 6 or other bulk transfer provisions

Closing deliveries:

- Delivery of instruments of transfer (bill of sale, warranty deed, etc.)
 - Payment of purchase price
 - Estoppel certificates from named organizations
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4.5 REPRESENTATIONS AND WARRANTIES

Representations by seller:

- Authorization of sale
- All outstanding liens, contracts, judgments, and other obligations disclosed
- Title to property and assets
- Care and preservation of property and assets
- Compliance with all laws affecting property
- Survival of representations

Representations by buyer:

- Corporation validly organized and in good standing
 - Authorization of acquisition by directors and by shareholders
 - Other representations
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4.6 INDEMNIFICATION OF BUYER

- Events or actions triggering indemnification
 - Escrow requirements
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4.7 DEFAULTS AND TERMINATION

- Events constituting default
 - Notice and cure requirements
 - Remedies and penalties
 - Other events triggering termination of purchase agreement
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5. POSTCLOSING ACTIONS

- Record security interests.
 - Arrange for the creation of any escrows that may be required.
 - Implement procedures for postclosing adjustment of purchase price, if required.
 - Pay broker's commission.
 - Organize documents.
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6. CONTACT INFORMATION

- Buyer:

- Buyer's counsel:

- Buyer's accountant:

- Buyer's financial adviser:

- Seller:

- Seller's counsel:

- Seller's accountant:

- Seller's financial adviser:

Other Contacts:

- Regulatory bodies
 - Lienholders
 - Other parties from whom consents or approvals are required
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