

# Buying Or Selling A Business Checklist

This Transaction Guide covers the sale of small, unincorporated businesses and professional practices. Although the topics examined here may also be relevant to the sale of a corporation or partnership, procedures relating specifically to a corporate merger and acquisition or sale of a partnership are not covered. Code references apply to California Codes. Other states likely have similar provisions.

## A. Facts Regarding Seller

NOTE: Throughout this Transaction Guide, the term "business" is used to designate either the business or professional practice being sold.

1. Name, address, and telephone number of seller.
2. All business names and addresses used by seller during preceding three years [SEE Com. Code S 6104(a), 6105(a)(2)].
3. Legal status of seller:
  - a. Individual.
  - b. Partnership.
  - c. Corporation.
  - d. Husband and wife.
4. Sales tax permit number, if seller has sales tax permit for business [SEE Rev. & Tax. Code S 6071;]
5. Employer number issued by Employment Development Department, if applicable [SEE Unemp. Ins. Code S 13020].
6. Federal employer identification number, if applicable.

## B. Facts Regarding Buyer

1. Name, address, and telephone number of buyer.
2. Legal status of buyer:
  - a. Individual.
  - b. Partnership.
  - c. Corporation.
  - d. Husband and wife.
3. Whether buyer will continue seller's business or practice.

## C. Facts Regarding Business

1. Name and address of business being sold.
2. Any fictitious name under which business was conducted, and dates on which fictitious business name statement was filed or published.

NOTE: For coverage of fictitious business name statements [SEE BUS. & PROF. CODE SS 17900-17930].

3. Every county and city in which business is conducted.

NOTE: Any required bulk transfer notice must be published in the judicial district where the business assets are located [SEE COM. CODE S 6105(b)(2)].

4. Any other states and countries in which business was conducted.

NOTE: Although taxation of multinational businesses is a specialized topic beyond the scope of this chapter, this fact is necessary to accurately determine the tax consequences of the sale.

5. Nature of business being sold.
6. Whether business manufactured or sold products that might be subject to potential products liabilities actions.
7. Whether business is operated under franchise agreement.
8. List of business assets, including accounts receivable, listing:
  - a. Value of each asset.
  - b. Manner in which value was determined.
9. List of business liabilities, including accounts payable, listing:
  - a. Names of creditors.
  - b. Purposes of obligations.
  - c. Terms of obligations.
10. Nature of interest in real property occupied by business:
  - a. Fee interest.
  - b. Lease of premises.
  - c. Sublease of premises.
11. Name and address of seller's lessor, if lease will be assigned to buyer.
12. Names of customers or clients, if applicable.
13. Names and addresses of any insurance agents or brokers serving the business.
14. Details of any pending litigation.
15. Location and account numbers of all existing bank or investment accounts for business.

#### **D. Facts Regarding Sale**

1. Whether retail alcoholic beverage license will be transferred with business.
  2. Total purchase price for sale of business.
- NOTE: This Transaction Guide does not cover the manner in which a business should be evaluated or priced by a prospective buyer. It assumes that the parties have consulted a financial advisor regarding the fair market value of the business being sold.
3. Manner in which purchase price will be paid:
    - a. Cash on execution of sale contract.
    - b. Cash on close of escrow.
    - c. Installments according to terms of promissory note.
    - d. Combination of cash, cash on close of escrow, or installments.
  4. If portion of purchase price will be paid in installments or on deferral basis, any security to be given for payment of purchase price:
    - a. Security interest in fixtures, equipment, and inventory.
    - b. Security interest in accounts receivable.
    - c. Deed of trust on business real property or other real property.
    - d. Security interest in personal property owned by buyer and not connected with business.
    - e. If buyer is corporation, personal liability of one or more of corporate officers or owners.
    - f. Other security.
  5. Any assets to be excluded from sale:
    - a. Accounts receivable.
    - b. Real property to be retained by seller and leased to buyer.
    - c. Work in progress.

NOTE: When a professional practice, such as a law practice, is being sold, it may be impossible or illegal to attempt to transfer work in progress to the buyer without the consent of the client.

    - d. Other assets of business.
  6. Whether buyer will assume any obligations of business:
    - a. Installment sales contracts for particular items of furniture and fixtures.
    - b. Products liability claims arising later but based on seller's operations.

c. Contracts for services or goods used in business.

NOTE: For example, a buyer may wish to assume the law book contracts of a law practice.

7. Manner in which buyer and seller will pay or share following sale costs:
  - a. Escrow and attorneys' fees.
  - b. Recording and publication costs.
  - c. Inventory costs.
  - d. Other costs.
8. Items to be prorated in escrow between buyer and seller, for example:
  - a. Rent of premises occupied by business.
  - b. Utilities.
  - c. Personal property taxes levied on fixtures and equipment of business.
  - d. Employee salaries.
  - e. Union welfare contributions and other employee benefits.
  - f. Insurance policies for business.
  - g. Equipment leases.
  - h. Other business expenses.

## **E. Documents**

1. Copy of franchise agreement, if any, under which business is operated.
2. Any leases to be assigned to buyer.
3. Any of following instruments to be assigned to buyer:
  - a. Contracts.
  - b. Notes.
  - c. Deeds.
4. Inventory of business assets being sold.
5. Any installment purchase contracts or other instruments executed by seller granting third party security interest in any of business assets.
6. Instruments, such as deeds or title policies, that show legal description of any real property to be transferred.
7. Instruments, such as certificate of ownership of motor vehicle, evidencing ownership of any personal property to be transferred.
8. All insurance policies held by business or owners for business purposes.
9. All licenses or permits issued to business or owners.
10. If buyer is partnership, copy of partnership agreement.
11. If buyer is corporation, copy of board and shareholder resolutions authorizing purchase.
12. List of all employees of business, including:
  - a. Names.
  - b. Social security numbers.
  - c. Positions.
  - d. Salaries.
13. Collective bargaining agreement, if any.
14. Tax returns for preceding several years.
15. Any fictitious business name statement filed.

NOTE: The buyer may have to file a new fictitious business name statement, and the seller may have to file a statement of abandonment of fictitious business name. For coverage of fictitious business name statements [SEE BUS. & PROF. CODE SS 17900-17930].
16. Any environmental permits held by business.