

Certain Basics of Corporate/LLC Sale

A sale of the stocks or other ownership interest in a legal entity such as a corporation or limited liability company (LLC) involves a number of steps.

Frequently, a buyer will require that the officers and/ directors of the entity provided all governmental paperwork (eg, secretary of state, department of corporation, board of equalization, employment development department, etc.) evidencing the incorporation, good standing status of the entity, and statements of information regarding officers or directors or members, and tax information. If the selling entity possesses a license such as an Alcoholic Beverage Control license, the buyer should obtain copies of all licenses and related paperwork. Additionally, the buyer should obtain all shareholder or members agreements, stock options or stock bonuses, buy-sell agreement, employee agreements, and similar instrument affecting ownership rights and limitations.

In addition to all of the above, the buyer should perform his/her/its usual advisable ***due diligence investigation*** into the income and expenses of the entity, its liabilities, secured and unsecured creditors, income tax returns, account receivables and account payables of the business, ownership of patents, licenses, copyrights, and so forth, and similar matters which affect the financial and economic condition of the entity and business. Further, the buyer should obtain tenant leases, equipment leases, collective bargaining agreements, and other documents which may affect the transfer of the business. Any one of the forgoing matters could determine whether the buyers should proceed ahead with the transactions or cancel it.

As part of the sale and purchase, the buyer should obtain warranties and representations by the key individual owners of the entity as well as the entity and indemnities from them since the risk of inheriting unknown or undisclosed liabilities is usually greater in the sale of stocks than in the sale of assets.

Again, professionals such as experienced brokers, leasing agents, certified public accountants, contractors, and attorneys may be invaluable in deciding whether to purchase or cancel a sale and purchase of stocks or other ownership interest.

The forgoing sale may be performed with or without a business escrow (unless required by law as in the case of a sale involving an Alcoholic Beverage Control license). However, some closing should be agreed upon and a method of exchanging cash or other valuable consideration for the sale of the stocks or membership interest in a selling entity and ensure that all consents have been obtained (e.g., landlord lease consents, governmental consents such ABC transfers, secured creditors' consents, etc.).