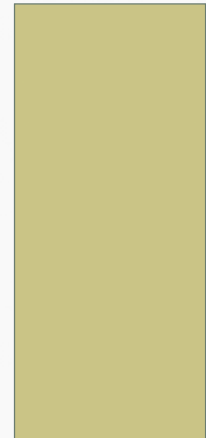


# MICROBUSINESS LAW

## A TELECONFERENCE FOR NATIONAL BUSINESS INSTITUTE

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# AGENDA

- What your small business clients need to know
- Drafting Governing Documents
- Business Contracts for Microbusinesses
- Intellectual Property Considerations
- Acquisition Agreement

# YOUR TEAM AND WHO DO YOU REPRESENT

- Who is your client
- Your team
  - Consultant
  - Attorney
  - Accountant
  - Banker
  - Commercial Broker

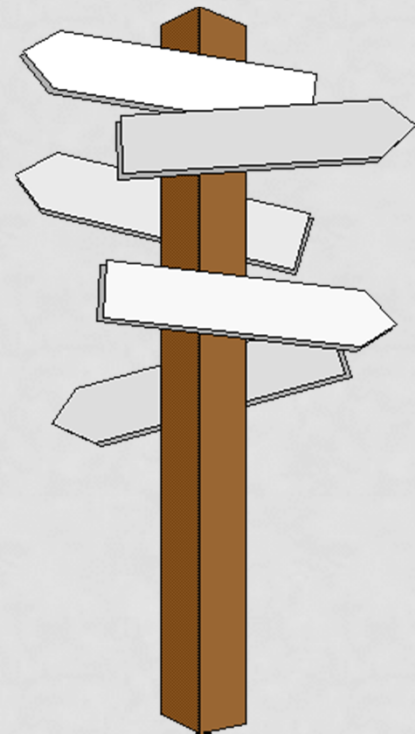




WHAT YOUR SMALL  
BUSINESS CLIENTS NEED TO  
KNOW

# TYPES OF BUSINESSES

- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation
  - S corporation
  - C corporation
  - Professional Corporation
- Limited Liability Company



# SOLE PROPRIETORSHIP

- Individuals who conduct business on their own
  - without another owner
  - without forming a separate legal entity
- Owner's personal taxable income includes the profits of the business
- Owner is personally liable for all debts of the business
  - Lawsuits
  - Accidents and injuries in office
  - Contract breaches
  - Operational liabilities (employment law, etc.)
- Creditors can reach all of the owner's personal assets (eg., homes and personal bank accounts)

# PARTNERSHIP

- More than one person owns a business without forming a separate legal entity
- Simple - formed by sharing profits
- Uniform Partnership Act:

“[T]he association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.”

# PARTNERSHIP

- Offers no protection against liability
- Law provides many rights and obligations to each partner
- People often simplify the effect of partnership law by having their own partnership agreement to deal with control of the business operations, sale of the business, allocation of profits and similar matters
- No taxpayer identification number
- Each partner reports income on personal tax returns



# LIMITED PARTNERSHIP

- Formed by the filing of a Certificate of Limited Partnership
- Limited and general partners
- No liability protection for general partners
- Uniform Limited Partnership Law
  - “[A] general partner of a limited partnership has the liabilities of a partner in a partnership.”

# LIMITED PARTNERSHIP

- Provides limited liability for limited partners who are merely investors and are not involved with the operation of the business
- No management rights, although allowed limited voting in issues such as dissolution, sale of substantially all assets, admission/removal of a partner, other significant decisions
- Uniform Limited Partnership Law

“[A] limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.”
- Commonly used for real estate investments and estate planning

# CORPORATION

- C or S corporation
- Provides owners/investors with strong protection against personal liability
- Only in special circumstances can the creditors of the corporation “pierce the corporate veil” to reach to the personal assets of a shareholder

# CORPORATION

- How to “pierce the corporate veil”
  - Absence or inaccuracy of corporate records
  - Failure to maintain arm's length relationships with related entities
    - Inter-company loans
    - Sharing of space, equipment, employees and resources
  - Failure to observe corporate formalities in terms of behavior and documentation (annual and regular meetings)
  - Failure to pay dividends
  - Intermingling of assets of the corporation and of the shareholder
  - Non-functioning corporate officers and/or directors
  - Significant undercapitalization of the business entity (capitalization requirements vary based on industry, location, and specific company circumstances)
  - Siphoning of corporate funds by the dominant shareholder(s)
  - Treatment by an individual of the assets of corporation as his/her own
  - Was the corporation being used as a "façade" for dominant shareholder(s) personal dealings (alter ego theory)
- Not all factors need to be met in order for the court to pierce the corporate veil

# CORPORATION

- C corporation
  - Traditional corporation (or "C-corporation") pays corporate tax on its earnings and any profits paid to shareholders are then taxed again as dividends
  - "double taxation"
- S corporation
  - "S election" with the IRS - profits are taxed only at the shareholder level
  - Shareholders may be individuals, certain trusts
  - May not be partnerships, corporations or non-resident alien shareholders
  - Have no more than 100 shareholders
  - Have only one class of stock

# LIMITED LIABILITY COMPANY

- Hybrid between a partnership and a corporation
- Operates like a partnership in that its income can be taxed only at the owners' level
- Operates like a partnership in that it has protections against liability

# PROFESSIONAL CORPORATION

- Professional corporation or professional association
- Licensed professionals, such as attorneys, physicians, engineers, accountants
- May only be owned by the licensed individuals
  - De minimis exceptions (accountants)
- PC v LLC
  - Consult with licensing body
  - Consequence of failure to properly incorporate (eg, third party payor rejection for health care providers)

# DRAFTING GOVERNING DOCUMENTS





# FORMATION STEPS

## Consult with an Accountant/Lawyer

- Tax considerations often dictate choice
- Liability protection often dictates choice

# FORMATION DOCUMENT

- Sole Proprietorship – None
- General Partnership – Generally, none
- Limited Liability Partnership - Certificate of Limited Partnership
- Corporation - Certification of Incorporation
- Limited Liability Company - Certificate of Formation

# FORMATION DOCUMENT CORPORATION / LLC

- Name
  - Proper ending (Inc., LLC)
  - Business names must be unique
  - Conduct a name availability search
  - Some states restrict the use of specific characters in the name (banking, insurance)
- Purpose
  - Engage in any lawful act
  - Specific activity
- Shares
  - Authorized shares (issued shares)
  - Classes
- Registered agent
  - In or out of state
  - Third party agents (CTC)



# FORMATION DOCUMENT CORPORATION / LLC

- Indemnification of directors and officers
  - A director shall not be personally liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director; provided that this sentence shall not eliminate or limit the liability (i) if acts were in bad faith or involved intentional misconduct or (ii) a knowing violation of law
- Any other provisions
- Filing with appropriate Governmental Department
  - Secretary of State / Department of Treasury
  - Approval of Department of Banking and Insurance (NY banking and insurance)
  - Approval of Department of Education (NY licensed individuals)
  - Publishing requirement (NY LLCs)

# IMMEDIATE STEPS ONCE FORMED

- Taxpayer identification number
- Open bank account
- Obtain insurance
- Make S election



# GOVERNING DOCUMENT

- Sole Proprietorship – None
- General Partnership and Limited Liability Partnership – Partnership Agreement
- Corporation – Stockholders Agreement, Bylaws and Initial Minutes
- Limited Liability Company – Operating Agreement and Initial Minutes

# IMMEDIATE STEPS ONCE FORMED

## Initial Consent of Shareholders

- Election of Directors



# IMMEDIATE STEPS ONCE FORMED

- Initial Consent of Directors
  - Adoption of Bylaws
  - Election of Officers
  - Adoption of corporate seal
  - Adoption of stock certificates
  - Issuance of initial shares
  - Bank account
  - S election
  - Alternate name (d/b/a)
  - Other





# IMMEDIATE STEPS ONCE FORMED CORPORATION

- Bylaws
  - Process of Adoption
  - Identification of Business Offices
  - Shareholders
    - Classes
    - Annual Meeting
    - Special Meeting
    - Regular Meetings
    - Notice requirements
    - Place of Meeting
    - Quorum
    - Voting
    - Proxies
    - Action without a meeting
    - Attendance via telephone



# CORPORATIONS

## Bylaws

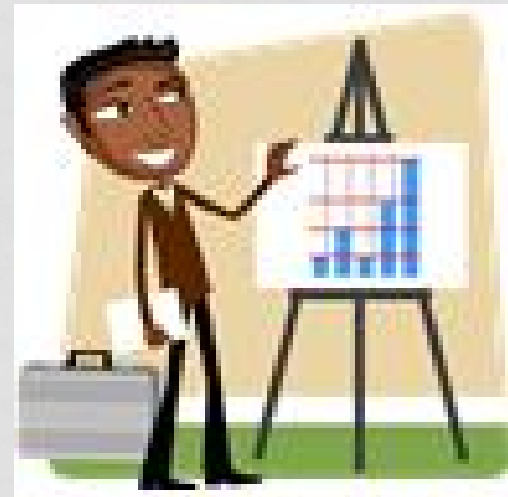
- Board of Directors
  - Number
  - Classes
  - Election
  - Term and term limits
  - Staggered Board
  - Annual Meeting
  - Special Meeting
  - Regular Meetings
  - Notice requirements
  - Place of Meeting



# CORPORATIONS

## Bylaws

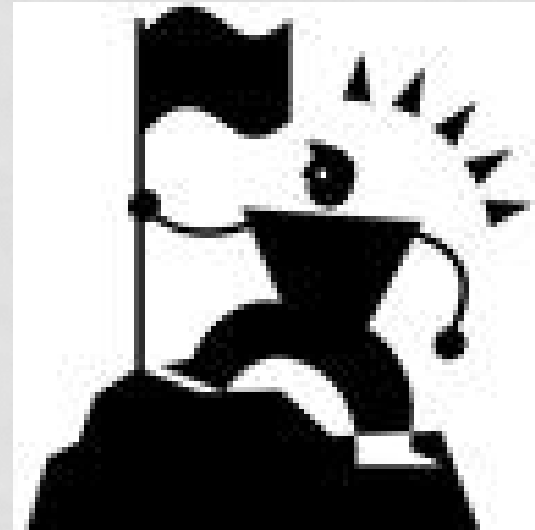
- Board of Directors
  - Quorum
  - Voting
  - Removal
  - No proxies
  - Action without a meeting
  - Attendance via telephone



# CORPORATIONS

## Bylaws

- Officers
  - Election and removal
  - Term
  - President
  - Vice President(s)
  - Treasurer
  - Secretary
  - Other



# CORPORATIONS

## Bylaws

- Other Provisions
  - Committees
    - Standing
    - Ad hoc
    - Advisory
  - Indemnification of Officers and Directors
  - Amendments
  - Fiscal Year



# CORPORATIONS AND LLCs

- Must follow corporate formalities
  - Annual reports
    - Must file annually
  - Revocation of charter
    - Is the name still available
    - Reserve name
    - Application packet to reinstate charter
    - Tax clearance – will take time



STOCKHOLDER AGREEMENT  
OPERATING AGREEMENT  
PARTNERSHIP AGREEMENT

- Not legal requirement in most states
- But must have from a business perspective
- Ideally, prepare early in relationship
- Outlines “expectations”



# OWNERS OF NEW ENTITY

- Names
- Ownership percentages
- Classes of Owners
  - Voting and non-voting
  - Liquidation preferences
  - Distribution preferences
- Founders / Senior Owners



# MANAGEMENT OF FIRM

- Board of Directors / Board of Managers
- Management Committee
- Officers



# MANAGEMENT OF FIRM

- Voting requirements for different types of entity action
  - Simple majority (more than 50%)
  - Supermajority (66%, 75%, other)
  - Unanimity
  - Veto by Class / Founders
  - Unilateral by Class / Founder
- Day to day decisions
- Significant decisions



# MANAGEMENT OF FIRM

## Significant decisions

- New partners
- The sale of firm
- Amending organizational documents
- Merging with another firm
- The establishment or modification of any employee retirement plan or benefit program
- Debt over specified amount
- Allocation of the compensation
- Change in the amount or scope of coverage of any insurance policy maintained



# MANAGEMENT OF FIRM

## Significant Decisions

- Change in the location of any principal office
- Hiring, firing, compensation and fringe benefits offered to employees
- Dissolution
- Capital calls
- Settlement of litigation
- Entering into a contract with a related party and/or their spouse
- Check signing over specified amount
- Accounting changes
- Operating budget (allow operation within a variance?)
- Other

# DEADLOCK

Resolution of deadlocks by owners

- Appointment of neutral arbitrator to settle dispute
- Entity or other owners purchase of membership units of disgruntled, withdrawing owners(s) at stipulated or appraised price

# DUTIES

- Expectations
- Duties and time commitment
  - Full or part time
  - Hours
  - Specific duties or general activities
  - Just because you are an owner does not mean you have a commitment to perform services
  - Just because you are an owner does not mean you are entitled to show up

# COMPENSATION AND DISTRIBUTIONS

- Distributions (profits)
  - When determined
  - How often are distributions required
  - Phantom tax distributions
- How is compensation determined if services performed (salary)
  - Equal
  - Formula
  - Compensation Committee
  - Compensation during disability





# COMPENSATION AND DISTRIBUTIONS

- Benefits
  - Health, life, disability, malpractice insurance
  - Pension
  - Cell phone
  - Automobile
  - Continuing education, subscriptions, periodicals
  - Licensing fees
  - Other
- Vacation and time off



# BUY-SELL RESTRICTIONS

- No owner may withdraw or resign from the company, nor may an owner sell, assign, transfer, exchange, pledge or dispose of ownership, in any manner, whether voluntary or involuntary, or by operation of law, or otherwise
- Permitted transfers
  - Estate purposes
  - Family members

# BUY-SELL RESTRICTIONS

- Right of First Refusal
- Drag along rights
- Tag along rights

# PERSONAL GUARANTEES CAPITAL CALLS

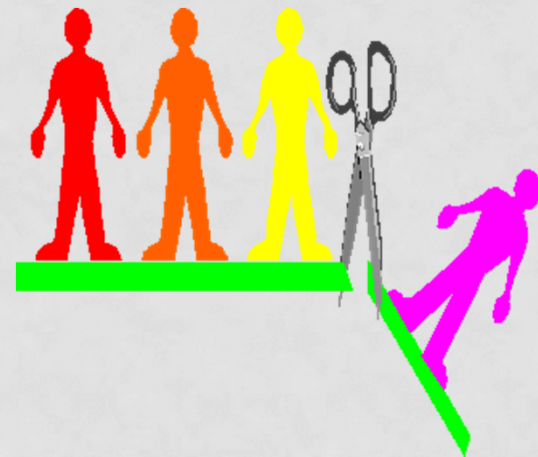
- Obligation to provide personal guarantees of company obligations
  - Office Lease, Equipment Lease and Lines of Credit / Bank Financing often require owner guarantees
  - Necessary corporate vote to require guaranty
  - Consequence if fail to provide
- Capital Call obligations
  - Necessary corporate vote to require capital call
  - Consequence if fail to provide
    - Buy-sell trigger
    - Dilution
    - Loan
    - Loss of vote



# TERMINATION OF SERVICES/OWNERSHIP

## Triggering events

- Voluntary withdrawal by an owner
  - Necessary lead time
  - Failure to give necessary lead time
  - Business' right to terminate early
- Death
- Disability
  - Definition of insurance policy
  - Definition as agreed by owners
- Bankruptcy or incompetency



# TERMINATION OF SERVICES/OWNERSHIP

## Triggering events

- Termination by entity without cause
  - Is this permitted
- Termination by entity for cause
  - breach of organizational documents
  - committing / indictment of a felony
  - excessive absences
  - fraud
  - intoxication and drug use
  - suspension, restriction, etc. of license
  - malpractice insurance issues
  - Catch-all: any other conduct constituting cause for termination in the company's reasonable discretion, it being impossible to specifically enumerate all events, conduct, and occurrences which would be injurious to the company and which would constitute cause

# BUY-OUT



If a buy-out is required, how is the departing owner's ownership interest valued?

If trigger is death or disability:

- Is insurance maintained?
- Life and/or disability insurance to set price
- Fund payment

# BUY-OUT



If a buy-out is required, how is the departing owner's ownership interest valued? Other triggers:

- Formula Value
  - Pro: Automatically changes with increase/decrease of business
  - Con: Hard to agree on appropriate formula
- Third-party appraiser
  - Pro: Theoretically fair
  - Con: Different valuations likely (can use average of appraisal structure)
- Certificate of Agreed Value (ie, the owners set annually)
  - Pro: Theoretically fair
  - Con: Forget



# BUY-OUT



## Payment of buy-out

- Terms. Is the purchase price paid in lump sum or in installments
- If installments
  - Number of installments
  - Interest rate
  - Collateral
  - Caps on multiple payouts
- Payment terms upon death or disability of an owner if insurance has been obtained to fund a buy-out

# RESTRICTIVE COVENANT

- Three prong test:
  1. whether the restraint imposed protects a legitimate business interest
  2. whether it will cause an undue hardship on the employee
  3. whether it will injure the public
- Covenant not to compete / engage in same business
- Covenant not to solicit clients
  - Who is a “client”
  - Example: title company - is the client the homeowner or the referring attorney
  - General solicitation v targeted solicitation
- Covenant not to solicit employees
  - Current employees
  - Past employees
- Covenant not to solicit facilities
- Covenant not to solicit vendors

# MISCELLANEOUS GOVERNING DOCUMENT PROVISIONS

- Transparency
  - Financial reporting
  - Owner right to information:

Uniform Limited Partnership Law: “A limited partner has the right to ... information regarding the state of the business and financial condition, ... a copy of the limited partnership’s federal, State and local income tax returns, .... other information ... as is just and reasonable.”

NJ Revised Uniform Limited Liability Company Act: The company shall furnish “without demand, any information concerning the company’s activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member’s rights and duties, ... on demand, any other information concerning the company’s activities, financial condition and other circumstances...”

NJ Business Corporation Law: Upon request, the corporation must deliver balance sheet and P&L. If a shareholder for at least 6 months or if have at least 5% ownership, can inspect minutes of shareholders. Court can require disclosure of other information “upon proof by a shareholder of proper purpose”



BUSINESS  
CONTRACTS FOR  
MICROBUSINESSES

- Employment Agreement
- Office Lease

# EMPLOYMENT AGREEMENT

- Employee or independent contractor
  - Employees have employment law protection
  - Misclassify an employee as an independent contractor - may be held liable for employment taxes
- Degree of control and independence examined by IRS
  - Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?
  - Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
  - Type of Relationship: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?
- Do you need an employment agreement
- At-will employee

# EMPLOYMENT AGREEMENT

- Start date and contingencies (ie, obtaining licensure)
- Duties
  - Full time or part time
  - Identify special duty requirements
- Principal offices
- Compensation
  - Salary
  - Bonus (identify formula)
  - Timing of payment
- Benefits
  - Health, dental and/or life insurance
  - Pension / 401(k) participation
  - Continuing education allowance
  - Auto allowance
  - Other

# EMPLOYMENT AGREEMENT

- Days off
  - Vacation
  - Continuing education
- Partnership
  - Is there partnership opportunity
  - If so, when
- Termination
  - Without cause (required notice)
  - For cause
- Restrictive covenant
  - Non-Compete
  - Term
  - Mileage/geographic area
  - Non-solicitation of clients, employees and referral sources
  - Term



# LEASE

- Tenant
- Landlord
- Guarantee Provision
- Length of Lease Term
- Date of Commencement of Term
- Renewal Option
- Landlord's Work
- Tenant's Work
- Permitted Use
- Exclusive Use/Prohibition on Landlord

# LEASE

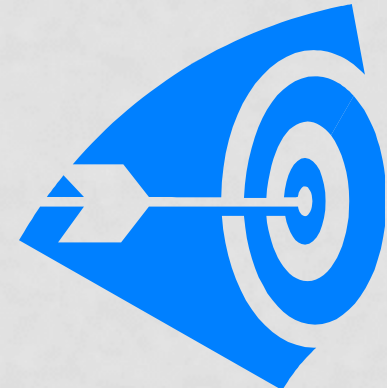
- Rent
  - Rent Concession
  - Additional Rent items
  - Gross Sales Rent
  - Common Area Maintenance
  - Real Estate Tax
  - Landlord Insurance
  - Overtime heating and air conditioning charge
  - Electric charge
- Security Deposit
- Utilities
  - Gas, heat, electric, plumbing/water, A/C, Janitorial services
  - Meters

# LEASE

- Right of First Refusal to Expand, Buy or Lease
- Assign/Sublet Clause
- Obligations for Repairs or Maintenance
  - Interior
  - Building Systems
  - Structural portions, load bearing walls, roof and basement
  - Representations regarding condition
  - Landlord guaranty
- Parking Restrictions, Exclusive/Non-Exclusive Spaces
- Subordination and Non-Disturbance
- Tenant's Alterations
- Tenant's Signs
- Due Diligence
- Zoning and c/o issues

# INTELLECTUAL PROPERTY CONSIDERATIONS

- Filing of an alternate/fictitious name (d/b/a)
- Formation of entity does not, in of itself, grant trademark
- Trademark filing
- Rights of usage
- Intellectual property considerations
  - Marketing and significance of name
  - Logo
  - Trademark of name
  - Usage



# ACQUISITION AGREEMENT

# EXITING THE BUSINESS

- How to get out?
  - Sale to co-owners
  - Sale to management and other insiders
  - Sale to third party



# SALE TO CO-OWNER

- Sale to co-owners
  - Look at the organizational documents (Stockholders Agreement / Operating Agreement)
  - If it is silent, then negotiate



# SALE TO THIRD PARTY

## General Timeline

- Seller determines value/asking price and cash/financing mix
- Introduction of Buyer and Seller (by broker or otherwise)
- Confidentiality Agreement
- Letter of Intent
- Due Diligence
- Execution of Definitive Agreement (Exhibit 6)
- Satisfaction of financing contingencies and other contingencies
- Negotiation of final closing documents
  - Lease
  - Employment Agreement
  - Other
- Closing



# YOUR TEAM

- Who is your team
  - Investment Banker
  - Valuation Consultant
  - Accountant
  - Attorney



# STRUCTURE OF TRANSACTION

- Stock vs. asset purchase
  - Asset Transfer: Assets of business are sold to Buyer; Seller continues to exist after the closing
    - Advantages
      - Legally “cleaner” (no liabilities)
      - Gives Buyer depreciable basis in assets
      - Safer for Buyer from successor liability perspective
    - Disadvantages
      - May require third party consent (e.g., landlord)
      - May be tedious or not possible to identify all assets
      - Tax considerations to seller



**SOLD!**

# STRUCTURE OF TRANSACTION

- Stock Transfer: Stock or ownership interest of entity is sold to Buyer; Buyer becomes the owner of the entity owning the business
  - Advantages
    - Minimally disruptive of the business (not even the bank accounts need be changed)
    - Transfer of stock may not trigger required consents (e.g., leases)
    - All employment and contractual relationships continue without interruption
    - Capital gains treatment to sellers
  - Disadvantages
    - No protection from liabilities of business
    - No depreciation on ownership interest acquired
    - May not be able to identify all persons claiming ownership in stock

# DUE DILIGENCE

- Due Diligence
  - Legal review of contracts and leases
  - Accounting review of financials
  - UCC, tax lien, judgment and pending suit searches
  - Ownership/Title to Key Assets; i.e., software
  - Interviews with employees, key customers and suppliers
  - Appraisals of personal and real property
  - Title work for real estate
  - Environmental review of real estate
  - ERISA review of employee benefit plans

# APPROVALS

## Required Approvals

- Division of Taxation bulk sale notification (varies by state)
- UCC bulk sale notification (varies by state)
- Required consents/assignments
  - landlords
  - contracts
  - governmental permits and licenses
- Hart-Scott-Rodino filing applicability
  - Size-of-Person Test: one party has \$152.5M or more in annual sales or total assets and the other has \$15.3M or more
  - Size-of-Transaction Test: met if, as a result of the transaction, the buyer will acquire or hold voting securities or assets of the seller valued in excess of \$76.3 million
- WARN Act applicability
  - 100 or more employees
  - Plant closing
  - 60 days notice

# ASSETS

- Identification of Assets
  - asset listing
  - inventory
  - accounts receivable
  - cash
  - computer software
  - corporate name
  - contracts
  - excluded assets

# LIABILITIES

- Identification of Agreements and Obligations
- Agreements include:
  - Purchase and supply contracts
  - Consulting, management, employment and other service agreements
  - Property leases and subleases
  - Equipment leases
  - Agreements with respect to shared facilities and functions
  - Licenses
  - Other
- Obligations include:
  - Lines of credit (whether or not money has been borrowed)
  - Loan and credit agreements, mortgages, promissory notes, security agreements, guarantees and other evidences of indebtedness
  - Installment purchase agreements.
  - Finance leases
  - Property taxes
  - Accounts payable
  - Other



# LIABILITIES

- Review all agreements
- Are the agreements in the business' name and/or individual seller?
- Are any agreements personally guaranteed by the individual owners?
- Can the agreements be assigned to the purchaser?  
Are third party consents needed?

# VALUATION

- How is the business be valued?
  - Determined by third party appraiser, accountant or other third party
  - Determined by formula:
    - Book value
    - Corporate earnings
    - Valuation of particular assets
    - Other



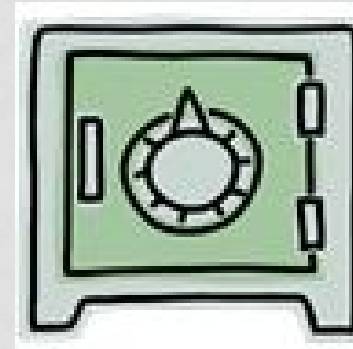
# PAYMENT

- Adjustments to the Purchase Price
  - Net working capital / balance Sheet True-up
  - Bad / uncollected accounts receivable
  - Insufficient post-close sales
  - Other
    - Insurance
    - Utilities
    - Rent
    - Pre-paid deposits and expenses



# PAYMENT

- Payment of Purchase Price
  - Lump sum cash payment
  - Pay in installments over specified months/years



# PAYMENT

- Lump sum cash payment (ie, outside financing from bank or other lender)
  - Seller's perspective:
    - cash deal for sale
    - no future involvement with business
    - may involve lender's scrutiny of Seller's books
  - Buyer's perspective:
    - special deals may be available (e.g., Small Business Administration)
    - transaction costs involved (points, appraisal, lender's attorney)
    - may be problematic for some businesses and some Buyers
    - may require additional collateral



# PAYMENT

- Pay in installments over specified months/years (ie, seller financing)
  - Seller's perspective:
    - may spread realization of gain on sale over time
    - may be only way to make deal happen
    - continued sharing of business risk
  - Buyer's perspective:
    - generally much reduced transaction costs (no points, little documentation beyond that for closing)
    - certainty of availability
    - keeps Seller's money handy in the event of post closing problems

# PAYMENT

- If Seller Financing
  - Payment Terms
    - Interest
    - Number of installments
  - Security / collateral
  - Unsecured promissory note
  - Note to be secured by:
    - Security interest in some/all assets
    - Personal Guaranty
    - Mortgage
    - Pledge of ownership
    - Other collateral



# EARNOUT

- Seller obtains additional future compensation based on the business achieving certain future financial goals
- Considerations:
  - May be only way Buyer will do deal
  - Ensures Buyer gets what it is buying
  - Seller is thus tied to business after closing (mismanagement)
  - Buyer may have the ability to block the earnout targets from being met
  - Outside factors may impact the company's ability to achieve earnout targets



# REPRESENTATIONS AND WARRANTIES

## Representations and Warranties

- Buyer wants to make sure it gets what it paid for
- Seller resists giving representations
- Seller qualifies representations (materiality and knowledge)
- Duration of representations
- Personal liability for misrepresentations

# REPRESENTATIONS AND WARRANTIES

- Corporate Existence
- Authorization
- No Violation
- Capitalization
- Insurance
- Litigation
- Governmental Authorizations; Compliance with Laws
- Income Tax Matters
- Financial Statements
- Identify Employees
- Benefit Plans and Employment Matters
- Brokers; Finders
- Permits
- No Adverse Change

# REPRESENTATIONS AND WARRANTIES

- Title to Assets; No Encumbrances
- Condition of Assets
- Real Property Leases
- Equipment
- Intellectual Property
- Contracts
- No Defaults or Violations
- Environmental Matters
- Inventories
- Accounts Receivable
- Assets Sufficient for Conduct of Business
- Related Party Transactions
- Suppliers
- Customers

# RESTRICTIVE COVENANT

- Restrictive Covenant
  - non-compete
  - non-solicitation of customers
  - non-solicitation of employees
  - time period
  - non-disclosure of confidential information
  - who should execute

# INDEMNIFICATION

- Indemnification
  - corporate and/or personal indemnitors
  - joint and several
  - time period
  - caps and baskets

# CLOSING CONDITIONS

- Conditions to closing
  - Representations
  - Performance
  - Approvals and consents (government and non-government)
  - Opinion of Counsel
  - No Proceeding or Litigation
  - No Material Adverse Change
  - Title Insurance
  - Environmental Audit
  - Financing
  - Key Employees
  - Other

# OTHER CONSIDERATIONS

- Other considerations
  - Multiple owners
  - Payroll issues
  - Benefit plans
  - Press release



## QUESTIONS?

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# MICROBUSINESS LAW

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