

Legal Considerations for Structuring Business Sale or Acquisition

Zachary B. Buffington

WILLIAMS PARKER

HARRISON DIETZ & GETZEN



Key Factors Impacting Transaction Structure

- Specific industry
- Position and life cycle of business
- Financial situation of parties
- Estate planning goals / succession planning goals
- Tax position and tax consequences
- Asset transaction versus ownership interest transaction
- Financing / post-closing payment obligations



Asset Transaction v. Interest Transaction

- **Asset Transaction**

- Buyer is purchasing only specific assets of Seller
- Buyer is not assuming Seller's liabilities (unless expressly provided in the transaction documents)
- Seller remains responsible for liabilities that are not transferred

- **Ownership Interest Transaction (Stock Transaction)**

- Buyer is purchasing the ownership interest (stock) of the entity
- Buyer is stepping into the legal position of Seller
- Includes all assets of the business and all liabilities of the business

Asset Purchase (Buyer's Perspective)



Experience is
similar to
babysitting

Matt (4)

Interest Purchase (Buyer's Perspective)



Experience is
similar to
babysitting
Avery (1)

Reasons for Purchasing Interest (Buyer's Perspective)

- Licenses and permits
- Regulatory approvals
- Certifications
- Relationships with vendors, suppliers, referral sources, etc.
- Third-party contracts
- Real estate leases

Seller's Perspective

- Tax consequences of sale
- Transfer of liabilities and obligations
- Transfer of contracts



Payment of Purchase Price

- How will the purchase price be paid?
 - Cash payment at closing
 - Seller financing
 - Third-party financing / commercial financing
 - Earn-out arrangement
 - Post-closing consulting compensation

- How will post-closing obligations be secured?

Post-Closing Obligations (Seller's Perspective)

- Promissory note
- Collateral
 - Ownership interest (stock)
 - Business assets
 - Collateral assignments
 - Significant contracts
 - Real estate lease
- Registration and perfection of security interests
- Personal guarantees

Post-Closing Obligations (Buyer's Perspective)

- Indemnification
- Set-off rights
- Purchase price holdback

WILLIAMS PARKER

HARRISON DIETZ & GETZEN

Zachary B. Buffington

(941) 893-4000 | zbuffington@williamsparker.com

