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**BUSINESS LAW:**  
**GETTING ORGANIZED AND STAYING**  
**ORGANIZED IN A CORPORATE PURCHASE**  
**OR SALE TRANSACTION**

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## GETTING ORGANIZED AND STAYING ORGANIZED IN A CORPORATE PURCHASE OR SALE TRANSACTION

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Even in this time of going green or going paperless, the amount of paper generated for a corporate transaction can be overwhelming. It does not matter whether you are representing the buyer, the seller, or whether it is a stock purchase, asset purchase or merger, there will be a LOT of documents.

In purchase transactions, paralegals usually are involved in gathering, organizing, and distributing the information. It is important to get organized early so you can stay organized throughout the project.

### **I. Gathering Due Diligence Information**

- The due diligence phase occurs at the very beginning of a transaction. It is the period of time right after the signing of a letter of intent, memorandum of understanding or an offer to purchase. Typically, the due diligence period is a 60 to 120 day period and is defined in the agreement between the parties. It is during this time that the gathering of information from the Seller goes to the Buyer's counsel for review and can be referred to as a "disclosure period." During this time, the Buyer decides, based on the due diligence, if he is comfortable with what is being purchased and determines if the deal will move forward.
- Buyer's side prepares the due diligence checklist and presents it to Seller.
- The due diligence checklist should be tailored to the transaction. The due diligence checklist attached as Exhibit A is a fairly exhaustive list and may have a lot of things that are not necessary for your specific transaction. Once you have an understanding of what the company assets are, you can start putting together a due diligence checklist. This checklist is an excellent method of tracking the progress of gathering this information and a communication tool to the other parties of what is needed and by whom.
- The size of the transaction and the type of business being purchased will determine how much information will be provided. For instance, a company with several office locations and employees will have different requirements than a manufacturing company. If real estate is involved, such as owning or leasing buildings, it will make a difference in the documents gathered.

- Most transactions require a Confidentiality or Nondisclosure Agreement before due diligence documents are released to other parties. As a paralegal, it is very important that any documents you review or information you gather is carefully guarded, using strong practices of confidentiality. Quick e-mails to the wrong party on due diligence information could result in a breach of contract.
- If you are representing the Buyer and are preparing the due diligence checklist, I suggest sitting down with your client or your supervising attorney to make sure you know how Seller operates so that the due diligence checklist is complete. Remember, if you do not understand the transaction, you could miss some very important steps in the due diligence phase.
- If you are representing the Seller and have received the due diligence checklist, I suggest sitting down with your client to make sure they understand what needs to be provided for each item on the list. Being clear on what is needed can save many hours of work and frustration.
- The accounts payable records for the last year can be very helpful to see who the Seller has paid. They may only pay someone a few times a year but they may have an oral or written contract with that person to provide a service.
- If the Seller is located in more than one state, consider finding local counsel to assist with local regulations and zoning.
- As documents are collected by the client, they may send them to you to be compiled to send to Buyer's counsel. If I receive them by hard copy, I scan them into our document management system and I also retain the hard copies.
- Prior to sending to Buyer's counsel, always review all of the documents to make sure that they are accurate in response to the requests. If client does not provide documentation for an item, confirm with client that there is nothing to send for that request and make a notation on the checklist. If the response is N/A or None, prepare a sheet with the number from the checklist, a brief description and then N/A or None. This will help Buyer's counsel know it was addressed and not just overlooked.
- Always be sure that you have a copy of every document you send to the opposing party and some correspondence showing that it was sent. You can either do this in an electronic file or hard copy.
- Spend some time reviewing the documentation to assure that the client has not forgotten any items on the list. For example, if client has multiple locations and they have submitted contracts for waste management for only a few of these locations, question who handles waste management for the balance. You might learn that they have additional contracts that have been overlooked. You also might learn that they use a service that does not require a written contract. If that is the case, it needs to be listed as an oral contract and added to the list.

- Check to make sure that all entities involved in the transaction are in good standing with the Secretary of State or other governing entity. You do not want to wait and find this out right before closing!
- If the Buyer is going to require a tax clearance certificate, go ahead and order a preliminary one so there are no surprises as you get close to the closing.

***How to organize what you get!***

- When you are compiling documents to send to Buyer's counsel, use the numbers assigned on the due diligence checklist to make it easier to respond to the other party and for your client and co-workers to keep things organized and up to date on what is needed prior to close of the transaction.
- Most of the time online "data rooms" are set up to share documents on a secure website. You may use something like NetDocuments or Box that allows you to upload documents to a secure location. "Viewers" who are out of the office such as outside counsel, clients, accountants, etc. get passwords so they can view documents. No paper has to be passed back and forth. Both sides can review and print what they want.

## **II. Reviewing Due Diligence Information**

- Due diligence items need to be reviewed by both sides.
- Review all contracts including equipment leases, real estate leases, and other contracts that may be connected with your transaction. Become familiar with the terms in the Agreements and used by all parties. When reviewing the contracts, verify expiration of each and make a note to client.
- If motor vehicles, boats, trailers, or airplanes are involved, be sure that all "titled" vehicles have current registrations and that the original titles are readily available. If there are loans on titled vehicles, you will need to obtain payoff information prior to closing so title can be transferred the day of closing. This payoff should appear on the closing statement of the transaction.
- Perform UCC searches to determine if any assets have liens. This will help you determine what documents you should be receiving from your client or the other party. Confirm that all UCC terminations have been filed timely. You may have to contact lenders to get that done prior to closing. A sample UCC research summary that I always use is included in the Attachments to this manuscript.
- If a real estate purchase is involved, there should be a title search done on the property and payoffs for any deeds of trust will need to be obtained. In the event mortgages have been paid, but the deeds of trust are still on record, you need to receive certificates of satisfaction for recording at

closing. All exceptions on the title opinion will need to be reviewed and approved by the Buyer in advance or if a lender is involved, the lender will require a copy of the preliminary title opinion and a copy of all exceptions for review.

- Permits, licenses and/or registrations need to be current. If not, and you are representing the Buyer, confirm with Seller's counsel that current ones have been obtained. If you are representing the Seller, you may be asked to provide current information to the Buyer which may involve working directly with each agency.
- Confirm that all entities are in good standing in all states where they are authorized to do business. If there are going to be changes made to any documents filed in other states, get those forms prepared and signed prior to closing.
- Keep a list of questions as you review documents. Your client or the other side may have the same questions. Someone should be able to answer them!

### **III. Preparing the Purchase Documents**

- The Purchase Documents will be made up of a Purchase Agreement (which will include Exhibits and Schedules) and other documents such as a Bill of Sale and Assignment, Deed, Employment Agreement, etc.
- The Purchase Agreement will have Exhibits and Schedules attached. The Exhibits are usually "forms of" agreements which will be signed independently at the closing. For example, Bill of Sale and Assignment, Promissory Note, Consulting Agreement, etc. Exhibits usually are "lettered" - - Exhibit A, Exhibit B, etc.
- Schedules are things like copies of tax returns, list of assets, list of customers, etc. These usually are "numbered" based on the paragraph in which they appear in the Purchase Agreement. You might have Schedule 1.2 which means the explanation of what is to appear on or be attached to that Schedule is found in Section 1.2 of the Purchase Agreement. This method makes it much easier to find the reference in the Purchase Agreement.
- While negotiations continue and drafts of the Purchase Documents are being passed back and forth, be sure to keep reading the drafts. In order to complete the Schedules, you will need to know what should appear on each one and changes that may have occurred. The due diligence materials that you have gathered and/or reviewed are going to be used on the Schedules.
- Make a cover sheet for each Schedule. At the top it should say Schedule \_\_\_\_ and the description of that schedule. Use Schedule descriptions from the table of contents to the Purchase Agreement. Keep things consistent, it makes it much easier as documents move from office to office.

- Make sure you know what is included on each Schedule. Is it just a list or will documents need to be attached as well? If things are to be attached, it can be helpful to list on the cover sheet what you are going to attach to the Schedule and then attach/scan the attachments behind it.
- Some people like to have one document that is the entire stack of Schedules. Others like to save each Schedule as a separate document. If you save each one as a separate document, there will be more documents but it probably will be easier to insert attachments and quickly review Schedules. It seems to be easier to add and subtract scanned pages this way.

#### **IV. Other Pre-Closing Documents and Matters**

- Start a Closing Checklist. As you read through the Purchase Documents, make a list of all of the things that need to be done by both sides so you can include it on the Closing Checklist. A sample Closing Checklist is included as an Attachment to this manuscript.
- Do not forget that the Exhibits to the Purchase Agreement are usually "forms of" not the actual document to be signed. For example, on the sample Closing Checklist, Exhibit A is the Bill of Sale and Assignment. This is the "form of" Bill of Sale which will be executed. It should be attached to the Purchase Agreement and should remain unsigned. The Bill of Sale and Assignment which will be executed is listed later under Other Agreements and Documents.
- You will need to obtain Certificates of Existence right before closing so do not forget to include them on the Closing Checklist.
- If shareholder approval is required for the transaction, be sure to inquire prior to closing how those signatures will be obtained. Also check the Bylaws of the company to see what notice provisions are required. Shareholder approval is not always required. Check the Bylaws of the company and also the statutes to determine if it is required in your transaction.
- Director minutes will have to be prepared. Determine if a meeting will be called or will consent minutes be prepared. If you have to call a meeting, you will find the notice provisions in the Bylaws.
- There are a couple of different ways to obtain approval. One way is to obtain minutes of the Board of Directors to present the transaction; minutes of a meeting of the Shareholders to approve; and a final meeting of the Directors for final approval and to give authority to the officers to move forward with the transaction. Another way is to do one set of minutes that are joint resolutions of the shareholders and directors. Either way is fine and gets us to the same result.
- There will probably be various certificates that need to be signed such as an Incumbency Certificate, Secretary's Certificate, and others required by the Purchase Agreement where officers or shareholders have to certify as to the representations and warranties included in the Purchase Agreement.

The certificates will be very specific to each transaction as to who has to sign and what needs to be certified.

- If there are UCCs on file, discuss who will be contacting the secured party about assigning the equipment to the Buyer or getting a payoff and release at or prior to closing. This needs to be monitored closely because the timing can be critical.
- Prepare assignments for all contracts that are to be assigned and make a note regarding those which can not be assigned. Some assignments may require a notice prior to the assignment. Be sure to check these and prepare notices in advance of closing. Verify with vendor when the payment is due and address payments that need to be sent and the amount of the payments.

## **V. Closing**

- If there is a loan involved, review lender package.
- Prepare closing statement for all parties to sign to include the distribution of funds and to whom.
- Prepare payoff wires or letters of transmittal for those payoffs, if needed. Be sure that your payoffs are at least one day after closing to allow for mailing or wiring funds.
- Prepare all Exhibits in original form for signing by all parties.
- Prepare final Purchase Agreement with all exhibits and schedules attached.
- Prepare your final Closing Checklist with all items noted either received, need or n/a.
- Obtain wiring instructions for Seller.

## **IV. Post-Closing Matters**

- File UCC financing statements and/or terminations, as appropriate
- Prepare closing binders or electronic closing binder
- File name change documents or dissolution, if applicable
- Take a deep breath!

**ATTACHMENT A**  
**SAMPLE DUE DILIGENCE CHECKLIST**

1. Corporate Documents of the Company and Subsidiaries
  - A. Copies of Articles of Incorporation and all amendments thereto.
  - B. Copies of Bylaws and all amendments thereto.
  - C. List of all Officers and Directors of the Company.
  - D. List of all predecessor entities of the Company.
  - E. List of states where Company owns or leases property or conducts business or is qualified or required to be qualified to do business.
  - F. List of any assumed names used by the Company together with locations where names are used.
  - G. Copies of minutes of all meetings of shareholders for last three years.
  - H. Copies of minutes of all meetings of board of directors for last three years.
  - I. List of subsidiaries and copies of all documents requested in Section I for each subsidiary.
2. Capitalization and Shareholders
  - A. Copy of Shareholders Ledger or Stock transfer records.
  - B. List of current shareholders, stock certificate number, date on stock certificate, number of shares represented by each stock certificate, and total shares owned by each shareholder, and who has the original stock certificates.
  - C. List of holders of any options or rights to purchase any shares in the Company, giving name, number of options or rights held, exercise or conversion prices, dates of grant or issue and relationship of holder to the Company.
  - D. List of each class of securities of the Company, setting forth the number authorized and outstanding and describing any preemptive, registration, dividend, voting, liquidation and conversion rights, and any redemption or sinking fund provision relating thereto.



- E. Copies of any shareholders' agreements among shareholders of the Company, and any other agreements restricting or relating to the voting of shares or restricting the sale or transfer of the stock or assets of the Company.
- F. Copies of all annual reports prepared by the Company and distributed to the shareholders for the past three years.
- G. Copies of all proxy statements prepared by the Company and distributed to its shareholders during the past three years.
- H. Copies of all other correspondence prepared by the Company and distributed to the shareholders during the past three years.
- I. Copies of any agreements or instruments containing restrictions on transfer of or encumbrances upon, or options or other agreements to purchase, securities of the Company.
- J. Copies of all voting trusts, voting rights agreements and all other agreements with respect to securities of the Company.

3. Customers

- A. List of all Company customers active over the past three years. Include in list revenue from each customer for past three years, as well as revenue projected in next fiscal year.
- B. Brief description of each customer active over past year, nature of their business, and relationship with Company as well as payment history.
- C. Documents and descriptions of any customer complaints or product deficiencies within the past three years, including information on any complaints re: below standard products.
- D. Customer satisfaction surveys, if any.

4. Material Contracts and Agreements

- A. List of banks or other lenders with whom Company has a financial relationship (briefly describe the nature of the relationship - lines of credit, equipment lessor, etc.).
- B. Copies of credit, loan, and security agreements, including:
  - (1) Credit agreements
  - (2) Letters of credit

- (3) Loan agreements
  - (4) Promissory Notes
  - (5) Security agreements
  - (6) Guarantees
  - (7) Indemnification Agreements
  - (8) Balances due and interest rates
  - (9) Existence of defaults
- C. Copy of any contract that cannot be terminated by the Company by less than thirty days' notice.
- D. Copy of any contract requiring assignment.
- E. Copies of all customer contracts.
- F. Summary of all material oral contracts.
- G. Copies of contracts with related parties (shareholders, directors, officers and affiliates).
- H. Franchise Agreements.
- I. Copies of any joint venture or partnership agreements.
- J. Copy of membership agreements or relationships with trade associations.
- K. Company's standard language/form of:
  - (1) Warranty
  - (2) Purchase Order
  - (3) Invoice
- L. Broker's or finder's agreements.
- M. List and copies of each of the following, as applicable:
  - (1) Fuel and other energy supply agreements
  - (2) Product purchase and sale contracts
  - (3) Commission, sales agent and similar contracts
  - (4) Data processing contracts
  - (5) Telephone contracts
  - (6) Transportation contracts
  - (7) Internet contracts
  - (8) Government contracts
  - (9) Waste disposal contracts
  - (10) Collection services contracts

- (11) Advertising and public relations contracts
- (12) Service sharing arrangements with any entity
- (13) Futures contracts
- (14) Raw material supply contracts

N. Copy of any other contract or commitment of the Company which is material to the business.

5. Litigation

- A. List and brief description of each threatened or pending claim, lawsuit, arbitration or investigation, including OSHA matters, EEOC matters, environmental matters, federal contract investigations, and workers compensation matters to which the Company is a party and which is in any way related to the Company, and all incidents which may lead to such litigation along with a statement of the status of each and whether it is covered by insurance.
- B. Copies of any pleadings or correspondence for pending or prior lawsuits involving the Company.
- C. Summary of disputes with suppliers, competitors, or customers.
- D. Copies of decrees, orders, or judgments of courts or governmental agencies.
- E. Copies of settlement documentation.
- F. Documents relating to any product liability inquiry or claim whether or not resulting in litigation.

6. Financial Information

- A. Copies of audited financial statements for three previous years (unaudited if audited financials are unavailable).
- B. Copies of quarterly income statements for last two years and the current year (to date).
- C. Copies of financial or operating budgets or projections.
- D. Business plan and other documents describing the current and/or expected business of the Company including all material marketing studies, consulting studies, or reports prepared by the Company.

- E. A description of all changes and accounting methods or principles during the last three fiscal years.
- F. Any documents relating to material write-downs or write-offs other than any ordinary course.
- G. Revenue, gross margin, and average selling price by product or service.
- H. Accounts receivable reports (aging, quality, special problems) for the last two years.
- I. Name of accountant(s) and length of relationship with accountants; indicated whether the accountant(s) own any interests in or hold any position with the Company or its subsidiary.
- J. Accountant's inquiry letters and replies to them for last five years.
- K. Lists of each of the following together with names of all persons authorized to draw thereon, have access thereto or give instructions with respect thereto.
  - 1. Bank accounts
  - 2. Safety deposit boxes
  - 3. Money market accounts
  - 4. Escrow accounts
  - 5. Brokerage accounts
- L. Copies of all loan documents, mortgages, industrial development bonds, and other credit or financing arrangements to which the Company is a party or with respect to which any assets of the Company serve as collateral, including periodic compliance reports and other correspondence with lenders during the last two years.
- M. Copy of the latest inventory (including identification of obsolete or excess inventory) and a general description of the major categories of such inventories, the method used in valuation (LIFO, FIFO, other), inventory control systems, and turnover.
- N. List of prepaid expenses.
- O. List of liabilities of any nature, including contingent liabilities, not disclosed on the financial statements or incurred in the ordinary course of business, including any condition existing which might adversely affect the facilities, assets, prospects, or business of the Company.

- P. Breakdown of sales, expenses, and income/loss of the Company by product categories by month for each of the last three fiscal years and the most recent interim period.
  - Q. Copy of the latest report on the aging of accounts receivable. Summary of such receivables by customer, geographical area, or other appropriate categories, aged as of the end of the last fiscal year and the most recent practicable month-end, including explanation of significant balances in any more than 30 days past due. Summary of bad debt expense and bad debt reserve of the Company for the last three fiscal years and the most recent interim period.
  - R. Listing of the Company's trade and other accounts payable as of the most recent month-end.
  - S. Listing of the Company's accrued liabilities as of the most recent month-end, including a schedule outlining the accrual method(s) used.
  - T. List of the 20 largest customers of the Company for the last three fiscal years and the most recent interim period, including sales volume.
  - U. List of any marketing, promotional, and co-op advertising programs with the related allowances, including spending dollars by quarter and customer and percentage co-op entitlement by customer.
  - V. List of all significant changes in financial reporting practices in the last three years.
7. Real Property Assets
- A. List of real estate owned, leased, or otherwise used by the Company.
  - B. Copies of deeds.
  - C. Copies of title insurance policies.
  - D. Copies of land contracts and assignments.
  - E. Copies of deeds of trust.
  - F. Copies of leases and subleases.
  - G. Copies of surveys.
  - H. List of security deposits held or given.

- I. Copies of easements and rights-of-way required for operation of business.
  - J. Copies of most recent real estate appraisal.
  - K. Copies of options and rights or first refusal on real property to and from Company.
  - L. List of zoning variances.
  - M. Copies of property tax bills for last three years.
  - N. Copies of certificates of occupancy.
  - O. Copies of all other agreements entered into by the Company or any subsidiary for the last three years relating to a material acquisition or disposition of assets or liabilities, construction of facilities and similar matters.
8. Personal Property Assets
- A. UCC searches (State and County) for state of incorporation and states and counties in which Company has material operations.
  - B. Fixed asset list and methods of depreciation and amortization.
  - C. Condition of assets and service records.
  - D. Copies of appraisals.
  - E. Copies of equipment leases.
  - F. Copies of maintenance contracts.
  - G. Copies of any documents of title.
  - H. Copies of motor vehicle titles and registrations.
9. Taxation
- A. List of federal, state, and local taxes to which the Company is subject showing assessment dates, dates when returns are to be filed, and dates when taxes are due.
  - B. Federal and state income returns for the last three years.
  - C. Audit and revenue agents' reports for last three years.

- D. Settlement documents and correspondence for last three years.
  - E. Sales and use tax returns for last three years.
  - F. Evidence of Company being current on sales tax, unemployment, social security, withholding, real property taxes, personal property taxes, and other tax payments.
  - G. List of all open federal and state tax years.
10. Licenses
- A. Sales tax license.
  - B. Permits or governments consents.
11. Sales
- A. 12 months' history of prices by product code.
  - B. 12 months' history of prices paid by customers by product code.
  - C. Copies of outstanding sales contracts.
  - D. Profitability by product category.
  - E. Copies of any sales agreements/contracts.
12. Employee Matters
- A. List of employees and location among facilities including rates of compensation.
  - B. Copy of organizational chart.
  - C. Copies of job descriptions.
  - D. Copy of personnel policies or manual.
  - E. List of worker's compensation claims and payments.
  - F. Copies of all plan and trust documents, including amendments or material modifications, for any pension, retirement, savings, severance, long-term incentives, profit sharing, executive compensation, deferred compensation, bonus, stock, or option plans.

- G. Copies of all summary plan descriptions and material modifications for employee welfare plans, funded or unfunded, covering active and/or retired employees for health, medical, dental, vision, disability (short and long-term), cafeteria, accidental death and dismemberment, and life. All stop loss contracts or any other insurance policy covering these benefits.
- H. Copy of the latest IRS determination letter for any retirement, profit sharing, or pension plan.
- I. Copies of all Forms 5500 annual reports (with related schedules and exhibits) for the past three years.
- J. Copies of all audit reports concerning pension and retirement plans for the past two years.
- K. Copies of all written inquiries or complaints as to ERISA compliance or compliance with trust instruments, plans, and summary plan descriptions for the past five years.
- L. Copies of all documentation relating to any IRS or DOL employee benefit audit within the past five years.
- M. A list of vacation plans, holiday plans, and other employee fringe benefits not outlined above, including but not limited to, moving and relocation expenses, travel/entertainment policy, tuition reimbursement, company autos and/or car allowances.
- N. Copies of all administrative service contracts for all employee benefit plans.
- O. Copies of EEO-1 reports filed with the DOL for the past three years.
- P. Copies of all EEOC claims and determinations for the past three years. Copies of position statements and supporting documentation for all claims without determinations.
- Q. Copies of all collective bargaining agreements and the number of employees covered by each agreement.
- R. Copies of all unfair labor charges filed with the NLRB within the past three years.
- S. Copies of all employment agreements and descriptions of any oral employment agreements applicable to officers or employees of the Company.



- T. Copies of independent contractor/consultant agreements.
- U. Copies of confidentiality agreements.
- V. Copies of noncompetition agreements.
- W. Copies of severance agreements.

13. Labor Relations

- A. Copies of all labor union contracts and collective bargaining agreements that cover employees of the Company, including the number of employees covered by each agreement and the anticipated expiration dates.
- B. Description of "labor unrest" situations -- all pending or threatened strikes or other labor trouble -- during the past three years.
- C. Description of current status of all unfair labor practices, complaints, or grievances lodged during the last three years relating to or which could reasonably be expected to have an adverse effect on the Company.
- D. Description of all pending or threatened requests for arbitration, grievance proceedings, labor disputes, strikes, or disturbances relating to or which could reasonably be expected to have an adverse effect on the Company.
- E. Description of recent union negotiations or organization attempts with respect to any employees of the Company.

14. Insurance

- A. List of all insurance policies including policies in effect or recently cancelled, including amendments and riders, giving insurance company, policy number, property or risk covered, appraised value of covered property (where appropriate), extent of coverage, annual premiums, and amount of premiums which are prepaid or unpaid for prior years.
- B. Copies of all policies.
- C. A claims history for the past five years (including product liability claims) and a description of any self-insurance and any retro-premium obligations.
- D. Copies of correspondence from agents regarding adequacy of coverage.

15. Environmental matters
- A. List of facilities or other properties currently or formerly owned, leased, or operated by the Company (including any predecessor of the Company).
- B. General.
- (1) Previous environmental audits, environmental site assessment reports (including but not limited to Phase I and Phase II ESAs), and tests
  - (2) Regulatory notices, complaints, and correspondence
  - (3) Litigation, administrative proceedings, or claims concerning environmental matters
  - (4) Remediation (past and ongoing)
  - (5) Permit applications
  - (6) Condition of neighboring areas, including known or potential liabilities from third-party sites
  - (7) Pollution-control expenditure reports
  - (8) Insurance coverage/environmental insurance policies
  - (9) Environmental Health and Safety Management Practices and Compliance Records
  - (10) Known and Potential Liabilities related to Current Operations of Facilities
  - (11) Product regulation
- C. Real Estate.
- (1) Chain of title (for at least 50 years)
  - (2) History of property's use
  - (3) Visual inspection of land and buildings
- D. Air Quality.
- (1) Air pollution emissions
  - (2) Previous reports, tests
  - (3) Air emissions permits
- E. Groundwater.
- (1) Private wells on property (identify uses)
  - (2) Use as drinking water
  - (3) Previous tests
- F. Wetlands, marshes, streams, or other ecologically sensitive areas.

- G. Solid waste disposal practices (past and present), including list of landfills and disposal sites used.
- H. Hazardous waste.
  - (1) Present and past hazardous materials used, manufactures, stored, transported and disposed
  - (2) RCRA Permits
  - (3) EPA or state listing as site requiring remediation
  - (4) Storage and disposal practices (past and present)
- I. Wastewater.
  - (1) Practices/pretreatment requirements
  - (2) Discharge permits
  - (3) Publicly owned treatment works (POTWs)
- J. Storm-water runoff practices.
  - (1) NPDES Permits
  - (2) No Exposure Certifications
- K. Underground storage tanks.
  - (1) Registration
  - (2) Condition
  - (3) Testing of tanks, lines, and soil
  - (4) Product inventory records
  - (5) Former tanks (records of removal)
- L. Aboveground storage tanks.
- M. Asbestos-containing materials (presence, condition, and remediation).
- N. Oils/PCBs.
- O. Lead paint.
- P. Urea formaldehyde insulation.
- Q. Indoor Air Quality/Vapor Intrusion/Radon
- R. Mold/Water Intrusion

16. Regulatory Matters

- A. All security offering circulars for the past three years, including applications or filings for exemption at the state or federal level by the Company.
- B. All material regulatory correspondence by the Company for the last three years.
- C. All applications and other filings made in connection with mergers and acquisitions proposed and/or consummated during the last five years and any regulatory approval letters and resolutions (including forbearance, waivers, and so forth) regarding such mergers and acquisitions.

17. Intellectual Property

- A. Trademarks and Service Marks ("Mark")
  - (1) List of all unregistered (common law) Marks together with (i) a brief description of the goods or services provided in connection with each Mark, (ii) the date each Mark was first used on the goods or services, and (iii) the geographic territory each Mark has been used on the goods or services.
  - (2) List of all applied-for or registered Marks (state, federal, or foreign trademark) with (i) a brief description of the goods or services registered in connection with each Mark, (ii) the registration or application number for each Mark, (iii) the geographic territory each Mark is pending or registered, and (iv) copies of all applications, certificates of registrations, and any renewal documentation.
  - (3) Documentation confirming ownership and title of each common law, state, U.S., and foreign Mark including copies of any assignment, security agreement, or licensing of rights in whole or part
  - (4) Copies of all U.S. Trademark Trial and Appeal Board proceeding documentation and any foreign equivalent proceeding documentation
  - (5) Sample copies of marketing, promotional, instructional, and packaging materials for each Mark (common law, state, U.S., and foreign)
  - (6) List of all U.S. Customs Service trademark and service mark registrations together with (i) a brief description of the goods or

services used in connection therewith, (ii) the registration number, and (iii) the registration date for each U.S. Customs registration listed

- (7) List of all assertions of common law, state, federal, and foreign trademark and service mark infringement, trade dress infringement, dilution, or unfair competition
- (8) Copies of all availability, clearance, or infringement opinions or reports obtained for each registered and unregistered Mark
- (9) List of all domains registered encompassing a trademark together with (i) domain registration date and (ii) registrar contact information

B. Copyrights

- (1) List of all unregistered copyrights together with (i) a brief description of the work covered, (ii) a copy of the work, and (iii) the corresponding date of creation for each copyright
- (2) List of all U.S. copyright applications and registrations together with (i) a brief description of the work covered thereby, (ii) a copy of the work, (iii) the corresponding date of creation, (iv) the application number, and (v) the application date for each copyright application
- (3) Copies of copyright identification and protection policies
- (4) Copies of all copyright works-made-for-hire and independent contractor agreements
- (5) Copies of all employee agreements and handbooks regarding copyright ownership
- (6) Documentation confirming ownership and title of each copyright including copies of any assignment, security agreement, or licensing of rights in whole or part
- (7) List of all U.S. Customs Service copyright registrations together with (i) a brief description of the work covered thereby, (ii) a copy of the work, (iii) the registration number, and (iv) the registration date for each U.S. Customs registration listed
- (8) List of all assertions of copyright infringement and the status of any negotiations or correspondence concerning such assertions

C. Trade Secrets

- (1) List of U.S. and foreign trade secrets concerning business, scientific, or technical information, know how, or other intellectual property or proprietary products, information, or processes, whether or not enforceable, together with a brief description of the processes or information covered thereby
- (2) Copies of U.S. and foreign licenses concerning trade secrets, business, scientific, or technical information, know how, or other intellectual property or proprietary products, information, or processes, whether or not enforceable, together with a brief description of the processes or information covered thereby
- (3) Copies of all U.S. and foreign assignments concerning trade secrets, business, scientific, or technical information, know how, or other intellectual property or proprietary products, information, or processes, whether or not enforceable, together with a brief description of the processes or information covered thereby
- (4) Copies of confidentiality and non-compete agreements used to identify and protect trade secrets, business, scientific, or technical information, know how, or other intellectual property or proprietary products, information, or processes
- (5) Copies of confidentiality policies and procedures, including physical and electronic security, used to identify and protect trade secrets, business, scientific, or technical information, know how, or other intellectual property or proprietary products, information, or processes
- (6) Copies of employee and independent contractor hiring and exit procedures
- (7) Brief description of all assertions of infringement concerning trade secrets, know-how, or other intellectual property, and the status of any negotiations or correspondence concerning such assertions

D. Patents

- (1) List of all U.S. and foreign patent applications, including provisionals and divisionals, together with (i) a brief description of the invention or design covered thereby, (ii) the corresponding filing dates, (iii) the corresponding filing number, and (iv) all applicable inventor assignments for each application
- (2) List of all issued U.S. and foreign patents together with (i) a brief description of the invention or design covered thereby, (ii) the

corresponding issue dates, (iii) the corresponding patent numbers, (iv) all applicable inventor assignments for each patent, and (v) patent maintenance and annuity fee records

- (3) Copies of all U.S. and foreign prior art and patent availability and infringement search reports and opinions
- (4) List of all recorded and unrecorded inventor assignments for all U.S. and foreign pending and issued patents, including provisionals and divisionals
- (5) Documentation confirming ownership and title of each pending and issued patent including copies of any assignment, security agreement, or licensing of rights in whole or part
- (6) Copies of all U.S. Patent and Trademark Office re-examination proceeding documentation and any foreign equivalent proceeding documentation
- (7) List all International Trade Commission patent registrations together with (i) a brief description of the invention or design covered thereby, (ii) the corresponding registration dates, and (iii) the corresponding patent numbers
- (8) Listing of all assertions of U.S. and foreign patent infringement and the status of any negotiations or correspondence concerning such assertions
- (9) Copies of policies and procedures for identifying patentable inventions and designs and for ensuring applications are timely filed
- (10) Copies of policies, procedures, and agreements for employees, consultants, and officers regarding obligations to assign U.S. and foreign patent rights
- (11) Copies of policies, procedures, and agreements for independent contractors regarding obligations to assign U.S. and foreign patent rights

18. Miscellaneous

- A. Press releases during the last two years.
- B. Articles and other pertinent marketing studies or reports relating to the Company.
- C. Information regarding competitors.

- D. Current brochures and sales materials describing the Company's products and services.
- E. Copies of independent reports prepared by consultants or other third parties within the past five years, including reports of actuaries, appraisers, and marketing or management consultants.



**ATTACHMENT B  
SAMPLE CLOSING CHECKLIST**

ASSET PURCHASE AGREEMENT  
BY AND BETWEEN  
\_\_\_\_\_ ("SELLER");  
and \_\_\_\_\_ ("BUYER")

CLOSING CHECKLIST  
Updated \_\_\_/\_\_\_/20\_\_

Document Name/Description	Doc. ID	Status
<b>Asset Purchase Agreement, Exhibits and Schedules</b>		
Asset Purchase Agreement		
Exhibit A - Bill of Sale and Assignment		
Exhibit B - North Carolina General Warranty Deed		
Exhibit C - Opinion of Seller's Counsel		
Exhibit D - Assumption Agreement		
Exhibit E - Opinion of Buyer's Counsel		
Exhibit F - Consulting and Compensation Agreement		
Schedule 1.1 - Seller's Retail Accounts		
Schedule 1.2 - Franchise, Permits, and Approvals		
Schedule 1.3 - Automobiles and Other Vehicles		
Schedule 1.4 - Purchase Orders		
<b>Other Agreements and Documents</b>		
Bill of Sale and Assignment		
Opinion of Seller's Counsel		

Document Name/Description	Doc. ID	Status
Assumption Agreement		
Opinion of Buyer's Counsel		
Consulting and Compensation Agreement		
Closing Statement		
Certificate of Seller (Reps and Warranties) (12.5)		
Certificate of Seller (Corporate Action) (12.6) - Exhibit A - Copy of Seller's Resolutions		
Certificate of Existence of Seller (12.10)		
Incumbency Certificate of Seller (12.12)		
Certificate of Buyer (Reps and Warranties) (12.4)		
Certificate of Officers of Buyer (Corporate Action) (12.4)		
Certificate of Existence of Buyer (12.6)		
Consent of Directors and Shareholders of Seller approving sale		
<b>Other Deliverables from Seller</b>		
Instructions from Seller to Buyer to transfer funds to including wiring instructions		
Title Certificates for Vehicles (12.3)		
Notice to employees		
Ending Inventory Form		
List of all accounts receivable showing the retail customers' names, addresses, and amounts due as of Closing and whether it is set up for direct deposit (3.8)		

Document Name/Description	Doc. ID	Status
<b>Consents</b>		
Pitney Bowes		
Copiers Plus		
Waste Management		
<b>Payoff - _____ (Lender)</b>		
Payoff and wiring instructions		
UCC Termination		
Cancellation of Deed of Trust		
<b>Real Estate Documents</b>		
Contract of Purchase and Sale		
Deed - Ex. A - Property Description - Ex. B - Permitted Exceptions		
Lien Affidavit		
FIRPTA		
1099		
General Contractor's Release and Waiver of Liens		
<b>Other Items</b>		

**ATTACHMENT C**  
**SAMPLE CONTRACTS SUMMARY**

ASSET PURCHASE AGREEMENT  
BY AND BETWEEN  
\_\_\_\_\_ ("SELLER");  
and \_\_\_\_\_ ("BUYER")

CONTRACTS SUMMARY

Vendor	Start Date	End Date	Payment Details	Assignability	Notes

**ATTACHMENT D  
SAMPLE UCC SUMMARY**

ASSET PURCHASE AGREEMENT  
BY AND BETWEEN

and \_\_\_\_\_ ("SELLER");  
and \_\_\_\_\_ ("BUYER")

UCC SEARCH RESULTS  
North Carolina Secretary of State  
(Search Results through 3/1/2019)

**Debtor Name:** \_\_\_\_\_

Secured Party	Filing Date/ Filing Number	Collateral	Status
ABC, Inc.	1/1/2019 201911111111A	One copy machine with serial number 12345	Active (Expires 1/1/2024)