

Checklist - Sale of a Business

Checklist of Matters to be Considered in Drafting an Agreement for the Sale of a Business of a Sole Proprietorship

- 1. Identification of parties.**
 - A. Names.
 - B. Addresses.
 - C. Character of each party.
 - a. Sole proprietorship.
 - b. Professional practitioner.
- 2. Recitals.**
 - A. Business or profession conducted by seller.
 - B. Desire of seller to sell and buyer to buy.
 - C. Desire of seller to retire.
- 3. Assets subject to agreement.**
 - A. Business building and other real property.
 - B. Good will; use of firm name or customer lists.
 - C. Stock in trade.
 - D. Equipment, furniture, and fixtures.
 - E. Patents, copyrights, trademarks, and trade names.
 - F. Cash on hand and on deposit.
 - G. Insurance policies.
 - H. Notes and accounts receivable, securities for debts, and outstanding contracts.
 - I. Other assets.
 - J. Valuation of assets sold.
- 4. Nature of consideration.**
 - A. Payment of money.
 - B. Assumption of debts and liabilities.
 - C. Other consideration.
- 5. Allocation of purchase price to various assets sold.**
- 6. Time and manner of payment.**
 - A. All cash on closing.
 - B. Part payment on signing and balance on closing.
 - C. Deposit held in escrow until closing.
 - D. Installment payments.
 - E. Mortgage or other collateral security.
 - F. Forfeiture of deposit for default in paying purchase price.
 - G. Other methods of payment.
 - H. Personal guaranty of payment by buyer.
- 7. Closing.**
 - A. Delivery of instruments of transfer.
 - B. Payment of purchase price.
 - C. Acquisition of necessary rulings and approvals.

- D. Conduct of business until closing.
 - E. Date of closing.
 - F. Inspection of assets sold.
- 8. Inspection of books, records, and premises.**
- A. Furnishing of customer list.
 - B. Furnishing of supplier list.
- 9. Representations by seller.**
- A. Title to property and assets.
 - B. Authority to enter into agreement.
 - C. Accuracy and completeness of books and records.
 - D. All outstanding liens, contracts, judgments, and other obligations disclosed.
 - E. Absence of labor disputes.
 - F. Validity of patents, copyrights, trademarks, and trade names.
 - G. Compliance with all laws affecting business.
 - H. Survival of representations.
- 10. Indemnification of buyer.**
- 11. Assumption by buyer of lease --** lessor's consent to assignment of lease.
- 12. Assumption by buyer of outstanding contracts --** Disavowal of contracts not listed by seller.
- 13. Assumption by buyer of seller's collective bargaining agreement.**
- 14. Payment of broker's commission.**
- 15. Compliance with U.C.C. Article 6 or other bulk transfer provisions.**
- 16. Instruction of buyer by seller in operation of business — Employment of seller as executive of buyer.**
- 17. Covenant not to compete.**
- A. Territory.
 - B. Duration.
- 18. Responsibility for obtaining necessary approvals and making necessary filings.**
- A. Tax rulings.
 - B. Antitrust rulings.
 - C. Similar approvals.
- 19. Payment of sales or use taxes imposed on transfer of assets.**
- 20. Payment of other taxes.**
- 21. Transfer of tax identification numbers.**
- 22. Insurance.**

23. **Contingencies.**
 - A. On buyer's obtaining license or permit.
 - B. On buyer's continuation as franchisee.
24. **Execution of bill of sale to transfer personal properties.**
25. **Transfer of titles of motor vehicles.**
26. **Execution of warranty deed to transfer real properties.**
27. **Risk of loss.**
28. **Remedies on default.**
29. **Assignability of rights under agreement.**
30. **Modification of agreement.**
31. **Arbitration of disputes.**
32. **Manner of giving notice.**
33. **Binding effect of agreement on successors and assigns.**
34. **Governing law.**
35. **Date of execution.**
36. **Signatures.**

**Checklist of Matters to be Considered in Drafting an Agreement
for the Sale of a Business of a Sole Partnership**

1. **Names and addresses of parties to agreement.**
2. **Character of each party.**
 - A. Partnership.
 - B. Joint venture.
3. **Recitals.**
 - A. Name of partnership and business or profession conducted by it.
 - B. Desire of seller to sell and buyer to buy.
 - C. Desire to terminate and dissolve partnership after sale.
4. **Identification of basic partnership agreement.**
 - A. Date of agreement.
 - B. Parties to agreement.
 - C. Name of partnership.
5. **Description of assets being sold.**
 - A. Real or personal property.

- B. Business name.
 - C. Capital interest of partnership.
 - D. Goodwill.
 - E. Customer list.
 - F. Stock in trade.
 - G. Patents, copyrights, trademarks, and trade names.
 - H. Cash on hand and on deposit.
 - I. Insurance policies.
 - J. Notes and accounts receivable, securities for debts, and outstanding contracts.
 - K. Other assets.
- 6. Nature of consideration.**
- A. Payment of money.
 - B. Assumption of debts and liabilities.
 - C. Other consideration.
- 7. Allocation of purchase price to various assets sold.**
- 8. Time and manner of payment.**
- A. All cash on closing.
 - B. Part payment on signing and balance on closing.
 - C. Deposit held in escrow until closing.
 - D. Installment payments.
 - E. Mortgage or other collateral security.
 - F. Forfeiture of deposit for default in paying purchase price.
 - G. Other methods of payment.
- 9. Closing.**
- A. Delivery of instruments of transfer.
 - B. Payment of purchase price.
 - C. Acquisition of necessary rulings and approvals.
 - D. Conduct of business until closing.
 - E. Date of closing.
- 10. Inspections of books, records, and premises.**
- 11. Representations by seller.**
- A. Title to property and assets in partnership.
 - B. Partnership validly organized and in existence.
 - C. Authorization of sale by partners.
 - D. Accuracy and completeness of books and records.
 - E. All outstanding liens, contracts, and other obligations disclosed.
 - F. Absence of labor disputes.
 - G. Validity of patents, copyrights, trademarks, and trade names.
 - H. Compliance with all laws affecting business.
- 12. Reservations by seller.**
- 13. Indemnification of buyer by seller and partners.**
- A. Against liabilities not expressly assumed.

- B. Against damages resulting from breach.
- 14. Representations by buyer.**
 - A. Authority to enter into agreement.
 - B. Corporation validly organized and in good standing.
 - C. Authorization of agreement by directors and shareholders.
- 15. Obligations and liabilities assumed by buyer.**
 - A. Of all or specified liabilities.
 - B. Of labor agreements.
- 16. Payment of broker's commission**
- 17. Compliance with bulk transfers laws.**
- 18. Covenant not to compete.**
 - A. Territory.
 - B. Duration.
- 19. Payment of taxes.**
- 20. Insurance.**
- 21. Contingencies.**
 - A. On buyer's obtaining license.
 - B. On buyer's continuance as franchisee.
- 22. Risk of loss.**
- 23. Remedies on default.**
- 24. Assignability of rights.**
- 25. Modification of agreement.**
- 26. Effect of sale on status of partnership.**
- 27. Distribution of proceeds of sale.**
- 28. Notice to customers, clients, or public.**
- 29. Arbitration of disputes.**
- 30. Manner of giving notice.**
- 31. Binding effect of agreement on successors and assigns.**
- 32. Governing law.**
- 33. Date of execution and Signatures.**

Checklist of Matters to be Considered in Drafting an Agreement for the Sale of a Business of A Corporation

- 1. Identification of parties.**
 - A. Names.
 - B. Addresses.
 - C. State or states of incorporation of parties.
- 2. Characterization of transaction.**
 - A. Assets sale.
 - B. Stock sale.
 - C. Merger.
 - D. Consolidation.
- 3. Citation of qualifying Internal Revenue Code provision of tax-free reorganization.**
- 4. Recitals.**
 - A. Business conducted by seller.
 - B. Desire of seller to sell and buyer to buy.
 - C. Authorized stock of seller or buyer or both.
 - D. Approval of transaction by directors of seller or buyer or both.
 - E. Approval of transaction by shareholders of seller or buyer or both.
- 5. Assets subject to agreement.**
 - A. Securities.
 - B. Real property.
 - C. Good will.
 - D. Equipment and other personalty.
 - E. Patents, copyrights, trademarks, and trade names.
- 6. Effect of agreement on subsidiaries, if any.**
- 7. Amount of consideration.**
 - A. Single sum.
 - B. Aggregate of separate sums allocated to various properties and assets.
- 8. Nature of consideration.**
 - A. Cash.
 - B. Stock.
 - C. Assumption of debts and liabilities.
- 9. Time and manner of payment.**
 - A. Transfer of all cash, stock, or other consideration at closing.
 - B. Installment payments.
 - C. Security for payment.
- 10. Conditions precedent to obligations of parties.**
 - A. Consent of shareholders and/or directors.
 - B. Tax ruling that transaction is tax-free reorganization or that other favorable tax results obtain.

- C. Antitrust ruling that transaction not violation of § 7 of Clayton Act (15 USCA §18).
 - D. Securities registration.
 - E. Approval by counsel or accountants or both.
 - F. Other requisite approvals and findings.
 - G. Compliance with terms of agreement.
- 11. Clearance receipts for contributions and payments by seller.**
- A. Taxes.
 - B. Unemployment insurance.
 - C. Others.
- 12. Merger or consolidation.**
- A. Name and location of surviving or consolidated corporation.
 - B. Powers and purposes.
 - C. Capital structure; exchange of shares of non-surviving corporation or constituent corporations for shares of surviving or consolidated corporation.
 - D. Transfer of assets and liabilities of non-surviving corporation or constituent corporations to surviving or consolidated corporation.
 - E. Directors and officers of surviving or consolidated corporation.
 - F. Citation of statutory authorization for merger or consolidation.
 - G. Submission of merger or consolidation agreement to shareholders of each corporation, on proper notice.
 - H. Effective date of merger or consolidation.
- 13. Assumption of employee benefit plans and stock options.**
- 14. Covenant against declaration of dividends or changes in stock ownership.**
- 15. Closing.**
- A. Payment of consideration.
 - B. Delivery of instruments of transfer.
 - C. Delivery of certificates required by statute.
 - D. Acquisition of necessary approvals and rulings.
 - E. Adjustments in purchase price on closing.
 - F. Conduct of business until closing.
 - G. Date of closing.
- 16. Inspection of books, records, and premises.**
- 17. Representations and warranties by seller.**
- A. Corporate ownership of assets.
 - B. Corporation validly organized and in good standing.
 - C. Authorization of sale by directors and shareholders.
 - D. Accuracy and completeness of financial statements.
 - E. All outstanding liens, contracts, and other obligations disclosed.
 - F. Absence of subsidiaries.
 - G. Absence of labor trouble.

- H. Validity of patents, copyrights, trademarks, and trade names.
 - I. Care and preservation of property and assets.
 - J. Compliance with all laws affecting business.
- 18. Indemnification of buyer by seller and shareholders.**
- A. Against liabilities not expressly assumed.
 - B. Against damages resulting from breach of warranty.
- 19. Representations by buyer.**
- A. Corporation validly organized and in good standing.
 - B. Authorization of acquisition by directors and by shareholders.
 - C. Capital structure; validity of stock issue to be used in acquisition.
- 20. Assumption by buyer of all or specified liabilities.**
- 21. Assumption by buyer of seller's collective bargaining agreement.**
- 22. Payment of broker's commission.**
- 23. Compliance with U.C.C. Article 6 or other bulk transfer provisions.**
- 24. Covenants not to compete.**
- A. By all shareholders of seller.
 - B. By principal shareholders of seller.
- 25. License to buyer to use seller's firm or trade name.**
- 26. Employment of seller's personnel by buyer.**
- A. Of one or more of seller's directors or officers.
 - B. Of one or more of seller's shareholders.
 - C. Of seller's employees.
- 27. Resignation of seller's directors and officers.**
- 28. Retention of stock by seller as security for purchase price — Resale of stock on buyer's default.**
- A. Risk of loss.
 - B. Assignability of rights under agreement.
 - C. Modification of agreement.
 - D. Remedies on default.
- 29. Arbitration or mediation of disputes.**
- 30. Manner of giving notice.**
- 31. Binding effect of agreement on successors and assigns.**
- 32. Governing law.**
- 33. Date of execution.**

34. Signatures.
35. Corporate seal or seals.
36. Acknowledgments.