

BUSINESS ALERT

CURRENT LEGAL ISSUES FOR THE BUSINESS COMMUNITY

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OVERVIEW OF COMPONENTS OF PURCHASING (OR SELLING) COMMERCIAL REAL ESTATE AND/OR A BUSINESS

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Now that the new year is here, many of our clients are purchasing (or selling) commercial real estate and/or a business. We have received calls from our clients requesting an overview of the components of the transaction.

Please find attached our form of transaction budget, suggesting the components of your transaction.

Please set up an appointment to discuss your transaction and the resulting legal budget.

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Actual resolution of legal issues depends upon many factors including variations of fact and state laws. This article is not intended to provide legal advice on specific subjects but rather to offer insight into legal developments and issues. Consult with legal counsel before taking action on matters covered in this article. Copyright 2006 Harriet B. Alexson. All rights reserved.

BUDGET FOR ACQUISITION OF A BUSINESS

- I. Purchase and Sale: Negotiate terms of acquisition and draft acquisition agreement, e.g. representations and warranties; conduct due diligence, including, but not limited to:
 - (i) review of asset list;
 - (ii) review of lease;
 - (iii) review of reports;
 - (iv) compliance with Bulk Sale Law;
 - (v) compliance with Hart Scott Rodino;
 - (vi) consultant agreement;
 - (vii) covenant not to compete;
 - (viii) holdback agreement;
 - (ix) review escrow instructions;
 - (x) review of industry specific issues (such as transfer of a liquor license);
 - (xi) general regulatory issues.

- II. Organization: Organize entity to acquire business (probably a limited liability company); preparation of operating agreement between members.

Organizational fees and expenses.

- III. Lease. Preparation of Lease Assignment and Consent of Landlord, or Lease Termination.

- IV. Loan: Represent borrower in connection with the loan to finance the acquisition of the business, including, but not limited to, review and approval of loan documents and the issuance of the borrower's counsel's opinion.

BUDGET FOR ACQUISITION OF COMMERCIAL REAL ESTATE

- I. Purchase and Sale: Negotiate terms of acquisition and draft acquisition agreement, e.g. representations and warranties; conduct due diligence, including, but not limited to:
 - (i) review and approval of survey and title matters;
 - (ii) review and approval of leases, rent roll and service contracts;
 - (xii) obtaining appropriate estoppel letters from tenants;
 - (xiii) obtaining title insurance;
 - (xiv) environmental Phase I study;
 - (xv) review report re: physical inspection of premises;
 - (xvi) UCC search;
 - (xvii) preparation of deed; assignment of leases; bill of sale, assignment of contracts;
 - (xviii) property insurance;
 - (xix) certificate of occupancy, licenses and necessary seller approvals;
 - (xx) review and approval of closing report, prorations (rents, taxes, security deposits), closing costs (recording fees, escrow fees).

- II. Organization: Organize entity to acquire property (probably a limited liability company); preparation of operating agreement between members.

Organizational fees and expenses.

- III. Lease. Preparation of lease between owner and tenant.

- IV. Loan: Represent borrower in connection with the loan to finance the acquisition of the property, including, but not limited to, review and approval of loan documents, obtaining any required subordination, non-disturbance and attornment agreement from the tenants and the issuance of the borrower's counsel's opinion.