BVC

08

LEGAL

Legal Essentials for Buyers

Contracts, entity structures, and protections every buyer must understand — LOIs, purchase agreements, non-competes, and where deals go legally wrong.

FREE BUYER'S GUIDE

From the makers of the free AI valuation toolkit at businessvaluationcalculator.com

What's Inside

01 **Your Legal Team & When to Hire It**
The M&A attorney question, answered

02 **Asset vs. Stock Purchase**
The single biggest legal decision in your deal

03 **The LOI**
Binding enough to matter, light enough to move

04 **The Purchase Agreement**
Reps, warranties, indemnity, and escrow

05 **The Protection Package**
Non-competes, training, and key contracts

06 **Entity Setup & Closing Mechanics**
Your side of the table

07 **Post-Closing Legal Life**
Surviving obligations and first-year compliance

08 **Legal Checklist**
LOI through 12 months post-close

CHAPTER 1

Your Legal Team & When to Hire It

The most expensive legal mistake buyers make is hiring the wrong kind of lawyer — or the right kind too late. You want a transactional attorney who closes small business acquisitions monthly, not a generalist, not a litigator, not your friend who does wills. The difference shows up in speed, in market-standard terms, and in problems anticipated rather than litigated.

$7.5-20K	LOI stage	$0
typical attorney cost for a main street acquisition	when your attorney should first read something	what most attorneys charge for an intro call — interview 3

Timing: engage before you sign the LOI, not after. The LOI sets the deal's skeleton — price, structure, exclusivity — and a 30-minute attorney review at that stage prevents the classic trap of 'agreeing' to terms in the LOI that cost real money to unwind in the purchase agreement.

PRO TIP

Interview questions that sort attorneys fast

How many business acquisitions did you close last year? Asset or stock, typically? Who drafts — you or the other side, and do you prefer it? What's your flat-fee or cap for a deal my size? Anyone answering 'it depends' to all four is a generalist in a nice suit.

CHAPTER 2

Asset vs. Stock Purchase

In an asset purchase you buy the business's assets — equipment, name, customer lists, goodwill — into your own new entity, leaving the seller's legal entity and most of its history behind. In a stock purchase you buy the entity itself, history included. Main street deals overwhelmingly close as asset purchases, and for good reason:

Asset purchase (buyer's default)

- Historical liabilities generally stay with the seller
- You get a stepped-up tax basis — depreciate what you paid
- Cherry-pick which contracts and assets you take
- Cleaner story for your SBA lender
- New entity, fresh start on compliance

When stock deals happen anyway

- Licenses/contracts that cannot be reassigned (some govt work)
- Fleet retitling or permit transfer is prohibitively painful
- Seller demands it for capital-gains treatment (price it!)
- Franchise agreements that only transfer via entity
- You inherit ALL history — diligence stakes double

RED FLAG

Successor liability is not zero

Even in asset deals, some liabilities can follow the business: certain taxes, environmental issues, and occasionally product/warranty claims. Your attorney will use bulk-sale notices, tax clearance certificates, and indemnity language to fence this. This paragraph is why you hire the specialist.

CHAPTER 3

The LOI

The Letter of Intent is mostly non-binding — deliberately. Its job is to lock the skeleton (price, structure, timeline) and grant you the one binding term that matters most: exclusivity. During exclusivity, the seller cannot shop your deal while you spend real money on diligence.

LOI term	Binding?	What to get right
Price & structure	No	Headline + note/earnout skeleton, working capital treatment
Exclusivity	YES	45-60 days; auto-extends if seller delays documents
Confidentiality	YES	Mutual; survives if the deal dies
Diligence access	No	Broad language: 'all books, records, and personnel'
Timeline	No	Target close date keeps everyone honest
Break-up terms	Avoid	Resist any fee for walking during diligence

PRO TIP

Keep the LOI to 2-3 pages

Every additional LOI page is a negotiation happening before you have diligence leverage. Lock price, structure, exclusivity, and timeline. Fight everything else later, armed with findings. Long LOIs favor the party with more information — which, pre-diligence, is never you.

CHAPTER 4

The Purchase Agreement

The Asset Purchase Agreement (APA) is where every diligence finding becomes enforceable language. Four mechanisms carry most of the protection:

1. **Representations & warranties**
   The seller's sworn statements: financials accurate, taxes paid, no undisclosed litigation, equipment works. If a rep is false, you have a claim. Diligence findings become specific reps.

2. **Indemnification**
   Who pays when a rep breaks. Negotiate survival period (12-24 months typical), a cap (often 10-20% of price), and a basket (small-claims deductible).

3. **Escrow / holdback**
   5-10% of price parked with a third party for 12-18 months — indemnity with teeth. Far easier to not release money than to claw it back.

4. **Closing conditions**
   The deal only closes if: financing funds, lease assigns, licenses transfer, key contracts consent, no material adverse change. Each condition is a free exit if reality breaks.

REAL NUMBERS

Escrow sizing intuition

On a $1.2M deal: a $90K escrow (7.5%) held 18 months costs the seller nothing if their reps were true — which is exactly the point. Sellers who fight hard against any escrow are making a statement about their own reps. Note it.

CHAPTER 5

The Protection Package

Beyond the APA core, four side agreements protect what you actually bought — the earnings stream and the relationships behind it:

- Non-compete: 3-5 years, defined geography/scope, signed by the individual owner (not just the entity)
- Non-solicit: seller cannot poach employees or customers — sometimes more enforceable than the non-compete itself
- Training/consulting agreement: duration, hours per week, compensation, and what happens if seller quits early — all in writing
- Key employee agreements: retention bonuses and (where enforceable) non-solicits for the 2-3 critical people
- Lease assignment: signed BY THE LANDLORD before close, with your renewal options preserved
- IP assignment: business name, phone numbers, domain, social accounts, Google Business profile — listed and transferred explicitly

RED FLAG

The Google profile that walked away

Buyers have closed deals and discovered the Google Business profile — with 300 reviews and half the lead flow — was attached to the seller's personal account, which they kept. Digital assets are business assets. List every login, every account, every profile in an APA schedule, transferred at close.

CHAPTER 6

Entity Setup & Closing Mechanics

Your side of the table needs building too — early, because banks and licenses move slowly:

1. **Form the acquiring entity**
   Usually a single-member LLC (ask your CPA about S-corp election). Form it when the LOI signs — EIN, operating agreement, bank account all take time.
2. **Licenses & qualifications**
   Contractor boards, health permits, liquor licenses: start transfer/qualification paperwork the week the LOI signs, not the week before close.
3. **Insurance placement**
   General liability, workers comp, auto, and the life insurance your SBA lender requires — bound effective at closing, not after.
4. **The closing itself**
   Usually a signature-and-wire day, not a room. Funds flow: lender + your equity → escrow agent → payoffs and seller. Your attorney runs a closing checklist; read it.
5. **Day-of transfers**
   Bank signatories, payroll admin, software admin rights, utilities, vehicle titles, digital accounts — a checklist your attorney and you own jointly.

PRO TIP

The pre-close walk-through

The morning of closing (or the day before), walk the business like a home buyer: equipment present and running, inventory at represented levels, nothing material removed. 'Bring-down' language in the APA makes the seller re-certify all reps as of closing day — your walk-through is its real-world check.

CHAPTER 7

Post-Closing Legal Life

The legal work does not end at the wire transfer. Your first year carries surviving obligations and a compliance reset:

- [x] Diarize rep & warranty survival deadlines — claims must be made in the window
- [x] Escrow release date calendared, with a findings review 30 days prior
- [x] Seller note payments (or standby terms) administered exactly as written
- [x] Earnout/forgivable-note metrics tracked monthly with clean records — disputes are about records
- [x] New entity compliance: annual report, registered agent, state filings
- [x] Sales tax, payroll tax accounts re-registered under your entity
- [x] Employee paperwork refreshed: I-9s, handbooks, at-will acknowledgments
- [x] Contract renewals inventoried — customer contracts assigned at close will renew under your name
- [x] Insurance audit at month 11 (workers comp premiums true-up on actual payroll)

WATCH OUT

Track the earnout like a lawsuit

If any part of the price is contingent (earnout, forgivable note), keep monthly documentation as if you expect a dispute — because if the metric lands within 5% of the threshold, you will have one. Contemporaneous records win those conversations; reconstructed ones lose them.

CHAPTER 8

Legal Checklist

- ☑ M&A attorney interviewed and engaged before LOI signature
- ☑ LOI: 2-3 pages, binding exclusivity (45-60 days), attorney-reviewed
- ☑ Asset vs. stock decision made deliberately with attorney + CPA
- ☑ Acquiring LLC formed; EIN and bank account opened
- ☑ License transfers initiated at LOI stage
- ☑ APA: reps & warranties reflect actual diligence findings
- ☑ Indemnity: survival period, cap, and basket negotiated
- ☑ Escrow/holdback: 5-10% for 12-18 months
- ☑ Non-compete + non-solicit signed by the individual
- ☑ Training agreement: duration, hours, comp — in writing
- ☑ Lease assignment signed by landlord pre-close
- ☑ Digital assets schedule: every account, login, and profile
- ☑ Insurance bound effective at close (incl. SBA life policy)
- ☑ Closing checklist reviewed; pre-close walk-through done
- ☑ Post-close calendar: escrow, rep survival, filings, true-ups

BVC

Ready to Analyze a Real Deal?

Put this guide to work. Upload any CIM or financial statement and get an institutional-grade valuation, risk analysis, and deal recommendation in under five minutes — free.

Start Your Free Analysis

businessvaluationcalculator.com

- ✓ Market Opportunity Analyzer
- ✓ Forecast Analyzer + Excel Model
- ✓ Buyer Readiness Assessment