

# Legal Connections



POWERED BY THE COLUMBUS BAR ASSOCIATION

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*"Planning on buying a business? Connect with a Columbus Bar attorney to ensure a smooth transition and productive negotiations."*

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## WHAT YOU DON'T KNOW (BUT NEED TO) BEFORE BUYING A BUSINESS

**B**uying a business is the biggest purchase many people make during their lives, and it often has long-term implications for their entire family. That's why it is important to not go into the process blind. Here are some things you need to know as you begin the journey.



**BRADLEY MILLER,**  
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for the transaction and a seller exclusivity provision. While having some flexibility is important, the more terms that you and the seller can agree to up front, the less negotiating that will need to happen later.

### 3. Proper due diligence is important. Due diligence is the research that you do into

the business. Many buyers look at the business' financials and its operation, make their offer and then call it a day. However, that pre-deal due diligence is just the beginning. Skeletons can be hiding in various places, many of which you won't have access to until after an LOI has been signed. As the buyer you don't want surprises, so the more you know about the business before getting the keys the better. You also can't just rely on the statements from the seller without doing your own research. The time and cost to fix a problem later will far outweigh the time and cost of conducting proper due diligence.

**1. There are two types of sales: asset sales and stock/interest sales.** In an asset sale, you are just buying the assets of the business. You can pick and choose what you want and leave what you don't. In a stock/interest sale, you are buying the entire company, warts and all. While a buyer often prefers an asset sale, there are various factors that go into deciding which type of sale structure is going to be best.

**2. A good letter of intent can make the deal go more smoothly.** A good LOI will list out all the issues that are important to you as the buyer. This may include a description of exactly what is being purchased, the purchase price and payment terms, timing considerations

**PURCHASING A BUSINESS**

According to small business owners, the most challenging parts of purchasing a business are:

- finding the right business
- understanding how much the business should be valued at

Source: BizBuySell, 2018

**4. You as the buyer can be held responsible for certain liabilities of the seller.** Even if you are just buying the assets of the business and are expressly not taking its liabilities, you can still end up on the hook for certain liabilities. If the seller has outstanding

employee withholding or sales tax, or unresolved unemployment or workers' comp issues, for instance, these can be imputed to you as the buyer. Proper due diligence will find potential issues like these so you can have the seller resolve them before the closing.

**5. Despite everyone's best efforts, the transaction will take longer than you think.** Deals take time. Putting together and negotiating all the necessary documents takes time. Proper due diligence takes time. Remember, you are dealing with other people and third parties like banks, and they all have their own timeframes for doing things. I usually tell my clients that it will probably take twice as long to close the deal as they think or as was agreed to in the LOI. It might take less time, but nobody is upset when the deal gets closed early. ■

**EDUCATION & EVENTS**

Looking for CLE classes? For a full listing or to register, call 614-221-4112 or enroll online at [www.cbalaw.org](http://www.cbalaw.org).

Join us on June 19 for a CLE on the new Electronic Notary Law (S.B. 263)! Register now at [cbalaw.org](http://cbalaw.org)

## NEW NOTARY LAW POTENTIALLY BRINGING CHANGES TO COMMISSION PROCESS

If you haven't gotten your notary commission, now is a good time to do so since the Secretary of State is considering some rule changes to the current notary public application process.

Under the current rules, the traditional new notary application requires the individual to submit an application, take a one-hour long class, submit to a background check and successfully pass the notary public test. The proposed rule changes would require

new applicants to do all of the above, but the class would be three hours long and the application would need to be submitted to the Secretary of State electronically.

Currently, new attorney notary applicants do not need to take a class or a test to become a notary public. The only requirement is submitting an application, along with an \$80 application fee, and then the attorney will have a lifetime commission. Under the proposed rules, attorneys who

want to obtain their notary commission will have to take a three-hour education course prior to receiving their commission (although they will not have to take a test or submit to a background check). It will still be a lifetime commission.

The new notary law has not passed yet, so this content may be subject to change. It will be open for comments until May 15. If you are interested in becoming a notary public (attorneys and the general public), the Columbus

Bar Association recommends that you do so before July 31 to ensure that the proposed rule changes do not apply to you.

You can learn more about the process to become a notary under the current rules at [cbalaw.org/notary](http://cbalaw.org/notary). ■

**PROBATE**  
LAW INSTITUTE

May 15, 2019 • 9:00am-4:45pm @ the CBA

### Do recent probate changes impact your business?

Not just for attorneys, Probate Law Institute will explain how to handle unique real estate, business interests and tax issues in probate court; elder exploitation and abuse; and the ethics of cross-border lawyering. 6.5 CLE hours, with 1.5 Prof. Conduct.

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