

# ZADE ENTERPRISES INC.

## Steps in Buying a Business

Due to the confidential nature of buying and selling businesses, before specific information about any business can be revealed, it is necessary for a potential Purchaser to complete the standard Confidentiality Agreement, the Agency Disclosure Document (as required by the Colorado Real Estate Commission), and a brief financial statement. These documents can be found at our Website: [www.ZADEinc.com](http://www.ZADEinc.com) under the heading Buying a Business. Once qualified, the Purchaser then has access to complete information about the potential acquisition.

In buying a business, the typical sequence of events in making an offer and completing a transaction are as follows:

After a thorough review of the Comprehensive Business Review and a meeting with the Seller, the Purchaser makes an offer through the Broker by specifying the price being offered and terms of acquisition. The Broker then drafts an Asset Purchase Agreement for the Purchaser. The Broker and Purchaser review the draft document together and the Purchaser takes the Asset Purchase Agreement to their advisors for review and approval.

After the review, any necessary changes are incorporated into the Asset Purchase Agreement (also known as Contract to Purchase) and the Purchaser signs the Asset Purchase Agreement. At this time the Purchaser will be required to provide an earnest money check made out to the escrow attorney specified as the agent to Close the transaction. The earnest money check is not deposited until the Sellers have accepted the offer and authorized the Asset Purchase Agreement. The Purchaser will also be required to complete a comprehensive financial statement and authorize a credit report. This financial information will be shared with the Seller.

The Asset Purchase Agreement is then presented to the Sellers, who have the opportunity to have the document reviewed by their advisors. The Sellers may either accept, reject, or counter the offer. Once the Sellers have signed the offer and the authorized Asset Purchase Agreement is returned to the Purchaser, the escrow attorney deposits the earnest money check into an account that is non-interest bearing and the due diligence process is undertaken.

The Purchaser has at least two (2) contingencies in the Asset Purchase Agreement:

(1) The first contingency specifies that the Purchaser has a period of time, usually 21 days, in which to conduct their due diligence. During this time the Purchaser and their advisors may inspect any and all aspects of the business, (including verification of financial information previously shared), in a way that does not unduly interfere with the operation of the business. If on site, most often this process is conducted in the evening or on weekends. Often however, the

information to be reviewed is brought off site. During this due diligence process inspection of the equipment can also be undertaken.

(2) The second contingency relates to obtaining the assignment of leases. It specifies that if the Purchaser is unable to obtain a satisfactory new lease or lease assignment, the offer will be null and void. The Broker is instrumental in facilitating the lease acquisition process.

If during the specified due diligence period, the Purchaser finds any material discrepancies between the information presented and the actual facts, discovers *anything* that does not meet with their approval, or cannot get the leases assigned, they may withdraw their offer in writing, the earnest money will be refunded and the offer will be null and void.

Note that in some cases there may also be a third contingency relating to the financing. Unless the Purchaser has already received a commitment letter from the lender, the Asset Purchase Agreement would specify that the offer is contingent upon securing the necessary funding.

In terms of timing, when outside funding sources with a SBA guaranteed loan are utilized, it usually takes six to eight (6 – 8) weeks from contract signing to Close. The lender will want to review three years of the Seller's tax returns and their most current profit and loss statement and balance sheet. Lenders will also require similar information from the Purchaser. When outside funding is not involved, the timing is somewhat shorter and can most typically be accomplished within thirty (30) days.

Discussion with employees prior to Closing is extremely rare. The goal is to keep the employees unaware of the impending transaction so that they do not experience undue anxiety. Most employees are unnecessarily concerned about being let go once the business is sold. Their main concern is "What's going to happen to me?" In the vast majority of cases, immediately after Closing, the employees are told about the sale in a staff meeting conducted by both the Purchaser and Seller together. At that time it is very important that the Purchaser reassure the employees that their positions are secure, and offers some sort of incentive to keep the staff around long enough to learn that the new owner is not going to make uncomfortable changes that impact their positions.

In terms of conducting interviews with customers, it is even more rare for a Purchaser to be permitted to do so. It is common however, that the Purchaser is given written information on customers (often without specific names) such as length of time with the company, annual sales volume, etc.

Once due diligence is accomplished, the leases are assigned, and the funding contingency is removed the Closing documents are drawn up for review, put in final form and Closing occurs within a few days or when the funding comes in, whichever is sooner. Training and familiarization take place immediately upon Closing (never before Closing) and generally a month of such service is provided without additional compensation, as it is included in the purchase price. If extended training or

consultation is required, the Purchaser and Seller negotiate the compensation for such services.

If the acquisition is an “all cash” sale to the Seller, the escrow attorney will retain a certain amount of funds in escrow (generally about ten (10%) percent), for approximately ninety (90) days, to ensure that the outstanding liabilities have been paid and that the familiarization and training have taken place.

For Additional information contact:        Talee Crowe  
5460 South Quebec Street Suite 300  
Englewood, Colorado 80111  
(303) 694-0424 (303) 770-7383 fax  
[Talee@ZADEinc.com](mailto:Talee@ZADEinc.com)