

Acquiring a Business

What buyers need to know before signing anything — Ament Law Group, P.C.

Buying an existing business is one of the most consequential financial decisions most people will ever make. Done well, it is a shortcut to cash flow, an established customer base, and a proven operation. Done poorly, it is an expensive lesson in hidden liabilities, inflated goodwill, and promises that did not survive the closing table. This guide covers what buyers need to understand before they commit.

The First Decision — Asset Purchase or Stock Purchase

Almost every business acquisition starts with a fundamental choice about structure. The difference has major consequences for liability exposure, taxes, and what you actually own.

Asset Purchase

You buy specific assets of the business — equipment, inventory, customer lists, contracts, intellectual property, goodwill — and leave behind what you do not want. The business entity itself is not transferred. **Advantages for buyers:** You generally do not inherit unknown liabilities of the seller's business. You can step up the tax basis of acquired assets, which improves future depreciation. You pick and choose what you are buying. **Disadvantages:** Contracts, licenses, and leases often require third-party consent to assign. Employees technically need to be rehired. More complex to document than a stock purchase.

Stock / Membership Interest Purchase

You buy the seller's ownership interest in the entity — shares in a corporation, membership interests in an LLC. The business continues operating with the same entity, same contracts, same licenses, same employees — and the same historical liabilities. **Advantages for buyers:** Continuity — contracts and licenses transfer automatically. Simpler to close for ongoing businesses with many counterparty relationships. **Disadvantages:** You inherit the entity's full history, including unknown and contingent liabilities. No step-up in asset basis for federal tax purposes (though some structures can achieve similar results). What you do not know about the company's past becomes your problem.

Most small business acquisitions are structured as asset purchases — buyers generally prefer the liability protection and tax treatment. Sellers often prefer stock sales for tax reasons. The negotiation between these positions is one of the first and most important in any acquisition.

Due Diligence — What You Are Really Buying

Due diligence is the process of verifying that what you are buying is what you think you are buying. It is not optional and it is not a formality. Every business acquisition that ends badly involves inadequate due diligence. The goal is to find the things the seller did not volunteer.

1 Financial Due Diligence

Review at least three years of tax returns, financial statements, and bank statements — and compare them to each other. Sellers frequently present "adjusted" or "normalized" EBITDA figures that add back expenses and present the business more favorably than the underlying financials support. Understand the difference between revenue and cash flow. Look for customer concentration — a business where one customer represents a large portion of revenue is far riskier than it appears. Verify that accounts receivable are collectible and that inventory is not obsolete.

2 Legal Due Diligence

Review all significant contracts — leases, customer agreements, supplier agreements, employment contracts, non-competes, and any agreements that contain change-of-control provisions (which may allow the other party to terminate when the business is sold). Review corporate records for LLC or corporation: minutes, resolutions, operating agreement, and any prior ownership disputes. Check for pending or threatened litigation. Confirm ownership of intellectual property — is the trademark actually registered? Who owns the software the business depends on?

3 Operational Due Diligence

Understand how the business actually runs — not how the seller describes it. Where does revenue come from? How dependent is the business on the seller's personal relationships or skills? Will key employees stay after the sale? Talk to customers and suppliers if possible. Understand the competitive landscape. If you are buying a business in an industry you do not know, hire someone who does.

4 Tax and Liability Due Diligence

Confirm the business is current on payroll taxes — unpaid payroll taxes can become personal liability for a new owner in some circumstances. Check for state tax clearance certificates. Review the business's history of sales tax compliance — particularly for online or multi-state sellers. Understand the environmental history of any real property involved. Environmental remediation liability is real and can be enormous.

Deal Structure — Price, Terms, and Protection

The purchase price is only one component of a business acquisition. How the deal is structured often matters more than the headline number.

Earnouts	Escrow and Holdbacks	Seller Financing
A portion of the purchase price is contingent on the business hitting future performance targets. Earnouts protect buyers from overpaying for projected performance that never materializes. They also create disputes — particularly around how the business is managed during the earnout period. If you agree to an earnout, define the measurement metrics precisely in the agreement.	A portion of the purchase price is held in escrow after closing, released over time or upon satisfaction of conditions. This protects the buyer against claims that arise post-closing — tax liabilities that surface, customer disputes that were known to the seller, or representations that prove to be false. The size and duration of holdbacks is negotiable.	The seller accepts a note for part of the purchase price, paid over time. Seller financing aligns the seller's incentives with the buyer's success — the seller has an ongoing interest in helping the business transition well. It also signals confidence on the seller's part. Buyers should understand that seller-held notes are typically secured by the business assets.

Representations and Warranties — Your Legal Protection

Representations and warranties are the seller's promises about the condition of the business built into the purchase agreement. They are the legal foundation of your protection against discovering post-closing that what you bought was not what you were told.

Common representations include: the seller owns what they are selling, there is no pending litigation that was not disclosed, the financial statements are accurate, there are no undisclosed liabilities, all material contracts have been disclosed, and the business is in compliance with applicable laws.

Representations without survival periods are worthless. A representation that expires at closing gives you no protection for claims that surface six months later. Negotiate meaningful survival periods tied to how long it realistically takes for various types of problems to emerge. Tax claims, environmental claims, and claims involving fraud typically survive longer than operational representations.

Non-Compete Agreements — Protecting What You Paid For

If you are buying a business for its goodwill, customer relationships, and the seller's reputation — and most small business acquisitions involve exactly this — you need a non-compete agreement to prevent the seller from immediately opening a competing business and taking those relationships with them.

A non-compete in a business acquisition context is fundamentally different from an employment non-compete. PA courts are much more willing to enforce acquisition non-competes because there is a clear business asset being protected. However, the agreement must still be reasonable in duration, geographic scope, and the activities it restricts.

Consider: seller non-compete, key employee non-solicitation, and customer non-solicitation as separate provisions. The seller leaving and the seller calling your best customers are different risks requiring different protections.

The Transition — The Most Underestimated Risk

The Business You Buy Is Not the Business You Run

Most small business value is concentrated in relationships — with customers, suppliers, employees, and referral sources. Those relationships exist with the seller, not with the entity. The moment the sale closes, every one of those relationships is at risk. A transition plan that keeps the seller meaningfully involved — introductions to key customers, a defined consulting period, a gradual handoff of relationships — is not optional in most small business acquisitions. It should be built into the purchase agreement, not left to goodwill.

- What is the seller's role post-closing? Is it defined and compensated?
- What do key employees know about the sale, and what incentives do they have to stay?
- Which customer relationships are personal to the seller vs. institutional to the business?
- Are there supplier relationships or favorable terms that depend on the seller's personal guarantees or relationships?
- What happens if the seller is unavailable during the transition — illness, dispute, or simple disengagement?

Before you sign: Business acquisitions move quickly and the pressure to close can cause buyers to skip steps that matter. The time and money spent on proper due diligence and a well-drafted purchase agreement is always less than the cost of discovering a problem after you have signed. Call (724) 733-3500 or visit ament.law before you make an offer.