



NOWLAND LAW

150+ Checklist For Buying a California Business

Nowland Law
Protecting Your Interests In Business Transactions

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Business Acquisition Due Diligence Checklist

A. Organization (Entity)

Determine what type of entity the business has been organized. Is it a Sole Proprietorship, Partnership, Joint Venture, Limited Liability Company, or a Corporation?

- Obtain the company's organizational documents. Usually these will be the Articles of Incorporation. Get as many formation documents as are available including notes of meetings.
- Obtain the company's by-laws and any amendments thereto.
- Obtain all minutes of meetings of the board of directors, shareholder meetings, any executive committees, and any other groups or governing group meetings.
- Obtain the company's organizational chart.
- Obtain a list of the shareholders and number of shares held by each person or entity.
- Obtain a copy of any shareholder or principal buy sell agreement.
- Obtain copies of any and all agreements relating to stock options, voting trusts, warrants, calls, puts, subscription agreements and or convertible securities.
- Check the Secretary of State in the state of incorporation for standing. Also check with the Secretary of State for any other state where the company does business.
- Check status with Secretary of State for past five years.
- Obtain a list of any state, providence, country, or territory, wherein the company does business or owns or leases any real property, maintains employees, or conducts business.
- Obtain a list of all dba's, other names, assumed names, or any other name the company uses for business and obtain the registrations thereof.



B. Financial Information and Filings

Gather all financial information for the company and its business and or business entities. Determine if the financials have been audited by a certified public accountant. If not, consider having a review or audit done to ascertain accuracy. Obtain the following:

- Audited financial statements for three to five years with any and all reports.
- Most recent unaudited statements, with all prior year statements.
- Letters from auditors and replies for the past five years.
- Run a company credit report. Also obtain credit reports of the principals.
- Projections, capital budgets, and any strategic planning information.
- Analyst reports.
- Schedule of all debt and contingent liabilities.
- Schedule of inventory.
- Schedule of accounts receivable.
- Schedule of accounts payable.
- Depreciation and amortization schedules, description of methods, and changes of accounting methods past five years.
- Analysis of fixed and variable expenses.
- Analysis of gross margins.
- Company general ledger.
- A description of the company's internal control procedures.

C. Company Physical Assets

It is important to take inventory of all physical assets of the company. Include all equipment, office furnishings, office equipment, machinery, vehicles, and any and all inventory. Obtain the following:



- A schedule of fixed assets and the locations where each is located.
- Any and all Uniform Commercial Code (UCC) Filings.
- Any and all equipment leases.
- A schedule of purchases and sales of physical assets including all major capital equipment, vehicles, office furnishings, office equipment.

D. Real Property (Real Estate) Owned or Leased

Make a list of any and all real estate locations whether owned, leased, or rented. Obtain the following:

- A schedule of the company's business locations including any warehouse, retail, or storage facilities.
- Copies of any and all leases, deeds, mortgages, promissory notes, title policies, surveys, zoning approvals, variances, and or governmental permits.

E. Intellectual Property

Often times the business valuation is calculated, in part, by the intellectual property owned. This could be merely a trade style, logo, signage, or other symbol, or it could be a registered trademark, copyright, or patent. Obtain the following:

- Schedule of patents. Include any foreign patents and patent applications.
- Schedule of trademarks and trade names. Include any applications. Also research and obtain a schedule of common law trademarks if any.
- Schedule of copyrights.
- Obtain a description of any important technical information and knowledge that is proprietary to the company or any of its employees or principals.
- Obtain a list of any information that could be considered trade secrets including but not limited to customer lists, procedures, know-how, and technical knowledge.
- Obtain a description of any method, methods, or procedures used to protect trade secrets.



- Schedule and copies of all consulting agreements, agreements regarding inventions, licenses, assignments of intellectual property to or from the company.
- Any and all patent clearance documents.
- Schedule and summary of any claims or threatened claims by or against the company regarding use of intellectual property.

F. Employees and Employee Benefits

Employees are a key factor in the valuation of and the ongoing operations of any business and should be considered and analyzed whenever acquisition of the company is considered. Obtain the following:

- List of all employees including position, current salary, salaries and bonuses, and all salaries, bonuses and employee benefits paid or accrued in the past five years.
- Employment agreements, consulting agreements, nondisclosure agreements, non solicitation agreements, noncompetition agreements, and any other agreements between the company and its employees, directors, principals, and stakeholders.
- Employee files.
- Resumes of key employees, directors, principals.
- Personnel handbook, outlining all policies, procedures, and issues related to employment.
- Schedule of policy and schedule of employee benefits, holiday and vacation time, sick leave, and any other employee benefit.
- Schedule of any employee retirement plan, 401(k) plan, administration of plan.
- Schedule of plans and descriptions of qualified and non qualified retirement plans.
- Copies of union collective bargaining agreements.
- List of any and all employee complaints, problems, issues, including sexual harassment, discrimination, wrongful termination, or any other employee complaints or accusations for the past five years.



- List of and description of any labor disputes, arbitration demands, and or grievance procedures currently pending, settled, within the past five years.
- List and description of benefits of all employee health and welfare insurance policies or any self-funded arrangements.
- List of and description of any pending workers' compensation claim or any claim filed in the past five years and the resolution thereof.
- List of and description of any unemployment insurance claim pending or filed in the past five years.
- Copies of any and all stock option and stock purchase plans and a schedule of grants thereunder.

G. Governmental Licenses, Permits, Entitlements, Conditional Use Permits

Most businesses are required to obtain and maintain certain business licenses, operational permits, zoning entitlements, and conditional use permits, authorizing operations. Obtain the following:

- City or county business license.
- Department of Consumer Affairs License (if any).
- Any zoning variance.
- Any conditional use permit.
- Any local, state, or federal government consent agreement.
- Any documentation or correspondence relating to any application, hearing, or any proceedings of any regulatory agency; local, state, federal.

H. Taxes

Payment and adherence to taxation regulation is an important due diligence aspect in acquiring any company. Companies are required to pay taxes on sales, employees, real property, business property, and of course on profits. Obtain the following:

- Federal, state, local, and foreign income tax filings for the past five years.
- State sales tax filings past five years.
- Federal and state employee tax filings past five years.



- Any audit and revenue agency reports past five years.
- Any tax settlement documents past five years.
- Excise tax filings past five years.
- Property tax filings past five years.
- Real property tax filings past five years.
- Any tax liens past five years.

I. Environmental Issues

Environmental issues are becoming increasingly burdensome and relevant in the acquisition analysis. Perform due diligence in the following areas and obtain the following documentation:

- Environmental impact report (if any).
- Hazardous material report.
- Site analysis of hazardous material.
- Waste water discharge report, application, permit.
- Environmental audits, if any, for each real property leased, rented, owned.
- List of hazardous substances used in the company's operations.
- Hazardous material disposal policy and procedure.
- List of environmental permits, licenses, and agreements.
- Copies of any and all correspondence, notices, and filings related to Environmental Protection Agency, state, or local regulatory agencies.
- List and description of any environmental investigations, complaints, or litigation.
- List identifying and describing any known superfund contribution or exposure.
- List describing and identifying any contingent environmental liabilities or continuing indemnification obligations.



- List describing and identifying any carbon emission footprint or obligations.

J. Contracts

Business due diligence requires a complete analysis of each and every material contract executed by the company. Obtain copies of the following:

- List of and schedule of all subsidiary, partnership, or joint venture relationships and obligations, with copies of all related agreements, amendments, exhibits, and schedules.
- Copies of all contracts between the company and any officers, directors, shareholders, or affiliates.
- All loan agreements, bank financing agreements, line of credit agreements, credit card agreements, promissory notes, and any other financial agreement executed by the company.
- All security (collateral) agreements, mortgages, indentures, collateral pledges, or any other asset security agreement.
- Any and all guarantees to which the company is a party.
- Any personal guarantee of a principal or director of the company.
- Any installment sale agreements.
- Any distribution agreements, sales representative agreements, marketing agreements, and supplier agreements.
- Any letters of intent, contracts, and closing transcripts from any mergers, acquisitions, or divestitures within the past five years.
- Any options and stock purchase agreements involving interests in other companies.
- The company's standard quote, purchase order, invoice, and warranty forms and agreements.
- Any and all non disclosure or non competition agreements to which the company is a party.
- Any other material contract.



K. Product or Service Products

A complete list and description of the company's product lines, services, goods, and industry participation, is an important acquisition due diligence issue. Obtain the following:

- List of all existing products or services and products or services under development.
- Copies of all correspondence and reports related to any regulatory approvals or disapprovals of any of the company's products or services.
- Summary and description of any complaint or warranty claims for the past three years.
- Summary and description of results of tests, evaluations, studies, surveys, and other data regarding existing products or services and products and services under development.

L. Customer Information

Analysis of current customers and due diligence of acquiring new customers. Obtain the following:

- A schedule of all customers or the company's largest material customers in terms of gross sales and description of sales over the past two years.
- Any supply or service agreements.
- A description of and or copy of the company's purchasing policies and agreements.
- A description of the company's credit extension policy.
- Schedule of orders or sales pending.
- List and explanation of any major customers lost over that past two years or any major sales decrease in the past two years.
- Surveys, market reports, research reports, or any other relevant research or reports related to company products or services.



- List of and description of all current advertising programs, marketing plans, budgets, and printed marketing materials.
- List of and description of all major competitors.

M. Litigation

Any pending or past litigation should be thoroughly analyzed and vetted. Obtain the following:

- Schedule of all pending litigation if any.
- Description of any and all threatened litigation.
- Copies of insurance policies which may provide coverage as to pending or threatened litigation.
- Documents related to injunctions, consent decrees, or settlements to which the company is a party.
- List any past judgments or unsatisfied judgments.

N. Insurance Coverage

Obtain and analyzed all policies of insurance including general liability, errors and omissions, product liability, property and casualty, workers' compensation, and or any employment or employee coverage. Obtain the following:

- Schedule and copies of the company's general liability insurance.
- Schedule and copies of the company's errors and omissions insurance policy.
- Schedule and copies of the company's product liability insurance policy.
- Schedule and copies of the company's property and casualty insurance policy.
- Schedule and copies of the company's worker's compensation insurance policy.
- Schedule and copies of the company's employee claims insurance policy.
- Schedule and copies of the company's key personnel insurance policy.
- Any other insurance policy.
- A schedule of claims to the company's insurance policies over the past three years.



O. Professionals

Professional providing services to the company should be noted. Obtain the following:

- Schedule of all law firms providing services past five years.
- Schedule of all accounting firms providing services past five years.
- Schedule of all consulting firms providing services past five years.
- Schedule of any other professional firms providing services past five years.

P. Media and Publicity

The company's public image should be analyzed. Obtain the following:

- Copies of all articles written regarding the company in the past three years.
- Copies of any and all press releases regarding the company in the past three years.
- Research any on line articles regarding the company in the past three years.
- Research any on line complaint websites related to any complaint of the company for the past five years.
- Research any and all on line social media websites related to the company currently and for the past five years.

Q. Valuation

Obtain an experienced business valuation appraiser to analyze the sales asking price. Consider the following issues:

- Structure of the deal. Is this an asset transaction, a stock transaction, a merger, or a complete purchase of assets and liabilities?
- Does the purchase price include net asset value, or does "goodwill" make up part of or the entire purchase price.

Note: This due diligence list may not be comprehensive to your specific business purchase or acquisition. Do not rely solely on this list for due diligence. Always consult with an experienced business attorney before entering into any business acquisition or



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sales agreement. For more information, contact Southern California Business Attorney Thomas F. Nowland.