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Avoid the Pitfalls of Letters of Intent

By: Merle R. Ochrach, Esquire

Clients sometimes come to me with a new transaction and often say, “Let’s get a letter of intent put together to tie up the deal.” Sometimes the parties can sketch out broad general terms of the transaction and then work together to complete a more detailed Purchase and Sale Agreement and conclude a successful transaction. Unfortunately, more often than not letters of intent do not work out so smoothly. The following are common problems with letters of intent that should be avoided:

1. Failure to address the letter to the correct owner of the property or business;
2. Failure to have the prospective purchaser sign the letter. It’s not effective and binding if signed by a real estate broker or business broker;
3. Failure to fully and properly identify what is being purchased;
4. Going into so much detail in the letter of intent that you may as well have negotiated the agreement. The costs of the negotiation became extreme and you still need a purchase agreement;
5. Having a nonbinding letter of intent and the seller or buyer then backs out of the deal after you have gone through the time and expense of negotiating the letter of intent with no transaction to show for it;
6. Having a letter of intent that does not cover all of the major issues of the deal, in sufficient detail, to create a formal agreement;
7. Failure to include important contingencies like financing, environmental issues, contracts with key employees;
8. Failure to review with your attorney until after it’s signed. If terms are left out it’s difficult to go back and add major terms.

These issues can lead to disappointment, cost, delay and potential loss of the transaction. The terms of letters of intent need to be carefully considered. There is no cookie cutter form that works for every deal. With proper consideration and terms, we can help you effectively and efficiently achieve the goal you want. Better yet, let’s skip right to the ultimate agreement.

Merle, a long-time partner in Hamburg, Rubin, Mullin, Maxwell & Lupin, lends her expertise and experience to her clients to guide them to closing in the most efficient and trouble free manner possible. Her foresight is to avoid the bumps in the road that can derail a transaction. For more information, please contact Merle Ochrach at 215-661-0400 or MOchrach@HRMML.com.