

ASK A LAWYER

# Letter of intent can be key step in reaching deal

## A way to set terms and timetables

**Q. When entering into a transaction, should you sign a letter of intent?**

Letters of Intent ("LOIs") state the terms of a transaction before a formal contract is signed. They are often viewed as an "agreement to agree," but also serve as an important first step toward consummating a transaction. Non-binding letters of intent give each party the ability to "kick-out," or terminate. They are appropriate when the parties have not reached agreement on all the elements of a deal, or when one of the parties is not fully committed to the transaction and may still be "shopping" the deal. Binding letters of intent obligate the parties to use good-faith efforts to finalize a formal contract. Binding letters of intent are used when one side believes it has secured a favorable deal and will not risk the other party shopping the deal.

A letter of intent will identify the parties, describe the transaction, fix the purchase price, set a closing date, specify conditions to closing and often provide for inspection rights. You should make sure the person executing the letter of intent has the authority to sign the document, as you do not want to proceed to formal contract only to find out you were not dealing with a decision-maker.

Many transactions are subject to conditions such as due diligence and financing. You should carefully define the scope and timetable within which due diligence must be completed and a financing commitment secured.

From the buyer's perspective, the right to terminate at the expiration of due diligence should be broad enough to allow the purchaser to terminate in its sole discretion, for any reason or no reason, regardless of the results of due diligence.

Because letters of intent are often viewed as merely an "agreement to agree," parties should plainly state those provisions they intend to be able to enforce upon a breach. Because breaching a letter of intent may subject a party to monetary and/or equitable damages, each party will likely seek to limit its exposure to damages in the event the letter of intent is breached.

It is imperative to know and understand each party's objective before a letter of intent is prepared and executed. If done properly, a letter of intent can serve as more than simply an expression of the parties' intent to negotiate and consummate a transaction; it can help shepherd the transaction to a successful conclusion.

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