

California Association of Business Brokers

CABBinar

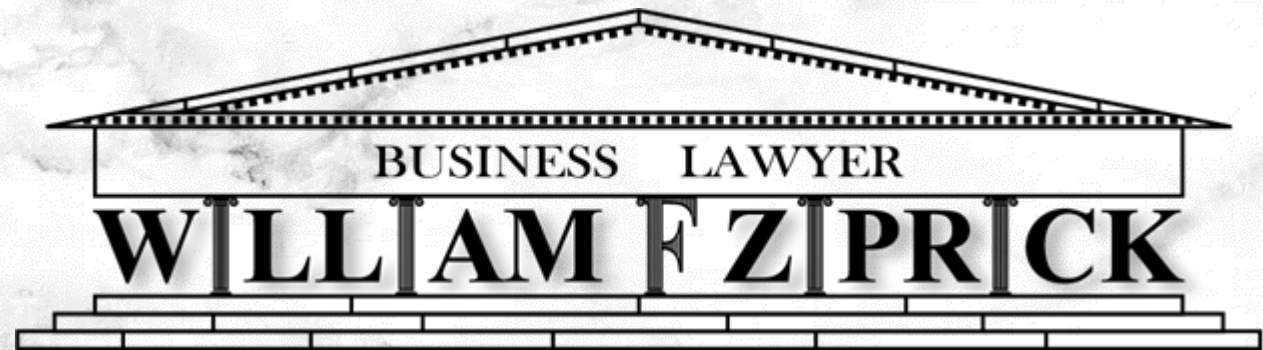
Wednesday, March 18, 2020

12:00 pm – 1:00 pm PST

**“Into the Minds of Business Attorneys:
Exploring Legal Hot Spots (Potential Deal Breakers)
in Asset Purchase Sales”**

Presented By:

Attorney William F. Ziprick



PLEASE NOTE: This presentation is intended for educational purposes only, and nothing in this presentation should be interpreted as legal advice. This information is not intended to substitute for professional legal advice, which takes into account the particular facts and circumstances of a matter. Nothing in the presentation should necessarily be construed as the opinion or position of the Californian Association of Business Brokers.

WEBINAR OVERVIEW:

Experienced pro-deal transactional attorneys constantly are balancing appropriately protecting their client's interest, while striving to assist with successfully closing the sale transaction. There is often a built in tension between those two goals, which must be carefully navigated. In this Webinar, Attorney William Ziprick will discuss with you some of the most challenging issues (*the hot spots*) which constantly arise over the closing of the purchase. He will also discuss various alternatives and creative solutions for resolving these potential deal breakers, with the goal of moving forward toward a successful closing.

1. Indemnification Provisions:

- A. Minimum triggering threshold
- B. Maximum exposure
- C. Integration with insurance
- D. How expansive are the indemnification provisions



2. Representations & Warranties:

A. How long do they survive closing?

B. Seller’s Knowledge:

- i. After due inquiry – constructive knowledge.
- ii. Actual knowledge – limited to who?

C. Compliance with all laws



3. Any Price Contingencies/Earn-Outs (Primarily for Non-SBA Loans):

- Precision is essential – numbers subject to manipulation



4. Guaranties (or Additional Parties to the Sale Agreement & Related Documents):

A. Seller Shareholder/Member

B. Buyer Shareholder/Member, particularly for newly formed entities

C. Release of existing Seller Shareholder/Member Guaranties –
i.e., on leases which are being assigned to the Buyer



5. Purchase Price Allocation:

- A. Significance for income tax and sales tax purposes
- B. Deal with it early in process
- C. Potential significance for deal structure



6. Deal Structure:

- Asset vs. Stock Sale



7. Liquidated Damages – for Breach (Generally for Backing-out without a Covering Contingency):

- The Amount of the Deposit



8. Handling Pre-Closing Warranties after the Closing:

A. Who has financial responsibility?

B. What limits on responsibility/liability?

C. At cost?



9. Pre-Closing Purchase Orders – to be Delivered after Closing:

- Whose liability?



10. Work in Progress – Handled as Inventory? Can Be Significant



11. Hold-Backs in Escrow:

- Clearly defined criteria for what is covered
 - (i) How released
 - (ii) How long
 - (iii) How much in the Hold-Backs



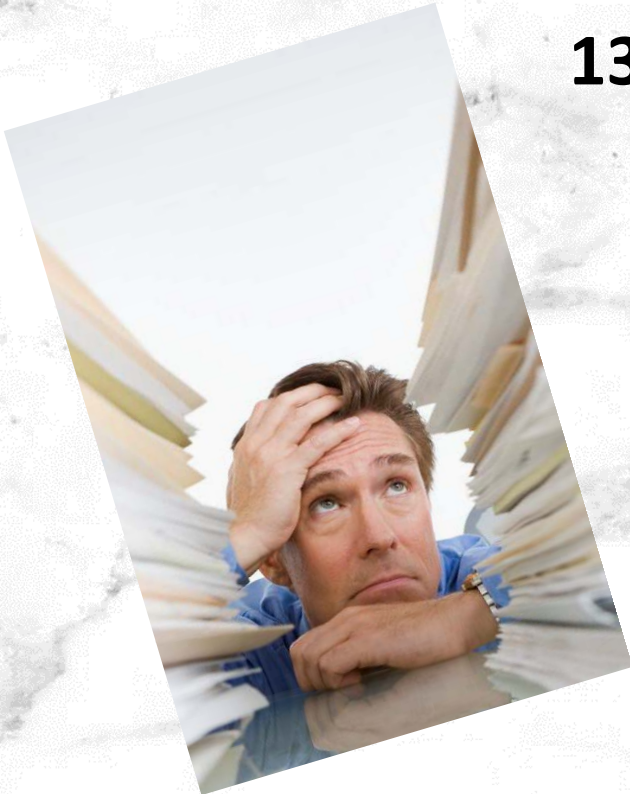
12. Lease Assumptions/Assignments vs. New Lease for Buyer:

- Potential long tail of contingent liability for Seller



13. Due Diligence:

- Confidentiality from customers and employees



14. 3rd Party Approval for Key Contract Assignments



**15. Not Overlooking Employee or Shareholder/Member
Owned Property (when Seller is an Entity)**



16. “Good condition” of Assets vs. “AS IS”



17. Importance and Legal Significance of Contingencies



18. Carve-Outs from Covenant Not to Compete



19. Liability Ramifications of Announcements of Sale



20. Importance of Precise Definitions



21. Dispute Resolution Alternatives





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