

# Legal Update

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## WHY DO I NEED A LETTER OF INTENT?

By Megan E. Hamilton

Parties entering into leases, mergers, acquisitions, and other transactions can save themselves time and money with one simple step at the beginning of the deal process – entering into a well-written letter of intent that both parties sign. A letter of intent typically takes the form of an informal letter from one party to another expressing the intention to enter into a deal based on certain outlined terms. Alternatively, some parties prefer to use a “term sheet” or “memorandum of understanding,” which foregoes the letter format in favor of a simple bulleted list. These documents are generally non-binding and are intended to outline, in basic language, the primary business terms that are essential to the transaction and without which a party would not pursue the transaction. If an issue is material to either party, then it should be included in the letter of intent as it is much more efficient to resolve issues, or if necessary kill the deal, at the early stages than it is to do so once the parties have incurred significant legal and due diligence costs.

Although some may feel that a non-binding agreement is not worth the paper on which it is written, taking the time to prepare and execute a letter of intent is extremely beneficial for a number of reasons. First, it can help ensure that the parties are on the same page with respect to the key business terms of the deal before they spend any additional time negotiating or incurring attorneys’ fees to prepare formal documents. Second, having the letter of intent as a guide for the key business terms helps expedite both the initial preparation, and subsequent negotiation, of the formal documents, saving time and attorneys’ fees. Finally, since letters of intent are typically fairly short, they are economical and efficient to prepare.

Another key benefit of a letter of intent is that, due to its informal and usually non-binding nature, it can be prepared and negotiated with minimal attorney involvement. Nonetheless, having an attorney review the letter of intent is a smart move. Early consultation with an attorney can ensure that the key deal terms are structured properly from the outset so that the parties and attorneys do not have to spend time and money re-negotiating the specifics of those terms after the fact. In addition, an experienced attorney can assist in ensuring that other essential or important terms are included in the letter of intent, including points such as confidentiality and exclusive negotiation periods. Importantly, an attorney can help ensure that a letter of intent that was intended to be non-binding actually remains non-binding despite the inclusion of robust deal terms and execution by all parties. Having an experienced attorney review and prepare the letter of intent helps reduce risk, reduce costs, and structure an efficient and profitable transaction.

We encourage parties to use a letter of intent and to consult with legal counsel at the earliest stages of transactions to provide advice, guidance, and risk assessment.

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