



# Macdonald Sager Manis LLP

*"Lawyers who speak your language."*<sup>TM</sup>



What are some common pitfalls and delays from a legal perspective?

1. Corporate Organization
2. Tenant Issues
3. Share/Asset Deal Components
4. Environmental

# Corporate Organization



- } Corporate Status of Purchaser
  - } Active or shelf company?
- } Pre Incorporation Contracts
  - } Jane Smith for a company to be incorporated without personal liability
  - } Amendment to APS vs. Assignment
- } Not just about incorporating – need company to be organized too
  - } What does this mean?
- } What about other companies involved 3

# Tenant Issues

- Tenant Estoppels/Rent Roll
- Notices of Lease, Postponements and Non-Disturbance Agreements
- Lease Assignments, Amendments and Extensions
- Review Lease Terms
  - Lookout for early termination, purchase/lease options, Rights of First Refusal, Subordination etc.



# Share/Asset Purchase Components

- } Which form to use?
- } What's the difference?
  - } Carving out liabilities and exposure
  - } Representations and Warranties
  - } Tax considerations
- } Beware—repeal of *Bulk Sales Act*
- } What's a realistic time for due diligence?

**OREA** INC. **Agreement of Purchase and Sale**  
Business in Liquidation Under the Bulk Sales Act (Ontario)

This Agreement of Purchase and Sale dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**BUYER**, \_\_\_\_\_, agrees to purchase from

**SELLER**, \_\_\_\_\_, the following

of the assets of the Business known as \_\_\_\_\_ (including the debts, fixtures and inventory of the Business set out in schedule "A" on one now located upon the premises and respected and approved by Buyer)

situated at \_\_\_\_\_ the "Business" together with the lease of the premises, and the trade name and goodwill of the Business (the "Assets").

**PURCHASE PRICE:** Dollars (CAD) \_\_\_\_\_ Dollars

which total Purchase Price includes the amount of \$ \_\_\_\_\_ in respect of inventory of the Business.

**DEPOSIT:** Buyer submits \_\_\_\_\_ Dollars (CAD) \_\_\_\_\_

by negotiable cheque payable to \_\_\_\_\_ "Deposit Holder" to be held in trust pending completion of this Agreement and to be applied toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder with a 24 hours notice of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit on trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

**SCHEDULE(S) A:** \_\_\_\_\_ attached hereto form(s) part of this Agreement.

1. **IRREVOCABILITY:** This Offer shall be irrevocable by \_\_\_\_\_ and \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, after which time, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

3. **NOTICES:** The Seller hereby appoints the listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Unless a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notices being given or received by or for the Seller shall be in writing, in addition to any notices contained herein and in any Schedule hereto, this offer, any counteroffer, notices of acceptance thereof or any notices to be given or received pursuant to this Agreement or any Schedule hereto, shall be deemed given and received when delivered personally or hand delivered to the Addressee by Service provided in the Addressee's address, or when a facsimile number is provided hereto, when transmitted electronically to that facsimile number.

ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the delivery of notices to Seller: (X) \_\_\_\_\_ (the delivery of notices to Buyer)

**INITIALS OF BUYER(S):** \_\_\_\_\_ **INITIALS OF SELLER(S):** \_\_\_\_\_

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# Environmental



- Environmental Condition Precedents
  - Timing, Nature of Property and Standards
- Reliance Letters
- Limitations on liability
- Phase I vs. Phase II

ON BEHALF OF...



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# THANK YOU!

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