

LETTER OF INTENT FOR BUSINESS TRANSACTION & GUIDELINES

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Sample Letter of Intent for Business Transaction

1. Overview

Before settling on the final terms of an agreement, negotiating parties may choose to provide a written starting point, setting out a first offer and some general terms. This initial written document is called a letter of intent (sometimes also called a memorandum of agreement or a memorandum of understanding). A letter of intent sets out the basic terms of a proposed transaction, including price, asset description, limitations, and closing conditions.

Some simple transactions may not need a letter of intent. The parties can simply proceed with the creation of their final agreement. In other cases, however, a letter of intent can determine major issues and make clear to the parties why the transaction is a good (or bad) idea. It can allow parties to start negotiations from a consensus point, easing the way for the more formal contract. Moreover, outside investors or other third parties may want to see evidence that an agreement is in the works. This will allow for an early start to the drafting of loan documents or obtaining of necessary approvals.

If you follow the enclosed sample and guidelines, you will have a simple document that sets forth the basic terms of your proposed transaction, limiting misunderstandings and showing mutual commitment to the deal. In every way, this lays the foundation for a focused and productive period of negotiation between the parties, and for a final and satisfying agreement.

2. Dos & Don'ts Checklist

A letter of intent describes a potential agreement between two or more parties. It is not a final agreement and should not sound like one. If the language of the document is too definite, the letter may be treated like a full and complete contract. Your language should show that you are proposing negotiations about a transaction but are not committing to the terms of the deal.
A letter of intent should be short and simple. A lengthy and complicated letter may start to look more like a definitive agreement.
Even if a letter of intent is drafted and signed, it does not guarantee that a final or definitive agreement will be reached. This is true even if both parties fulfill their obligations and work purposefully through negotiations. The letter is simply an agreement to begin the process, and not a promise of the closing of a transaction.
Letters of intent are often non-binding, but should include language that states as much. If you want to make any provisions binding, those provisions should be clearly labeled.
Do not create a letter of intent that includes too many details. Some courts have found letters of intent to be binding in spite of a specific statement to the contrary, if parties provided detailed and specific terms in those documents.



	If any of the following provisions will be in your letter of intent, they should be identified as binding		
	0	Closing date;	
	0	Time frame for due diligence;	
	0	Confidentiality;	
	0	Non-competition; and	
	0	Exclusive dealing.	
	If it's clear that the parties want to make these provisions binding, they will be considered so and will be enforceable when the letter is signed.		
The following types of provisions are usually made non-binding:		ollowing types of provisions are usually made non-binding:	
	0	Identity of the parties;	
	0	Subject matter;	
	0	Purchase price or other compensation;	
	0	Requirements to finalize the letter;	
	0	The final agreement(s);	
	0	Non-customary representations or warranties;	
	0	Covenants; and	
	0	Indemnification terms.	
	If you ignore one of the binding provisions in a letter of intent, you may be required to pay fees and fines. For example, if you breached a clause that prohibited you from publicizing the letter of intent, a court could prevent further disclosure and order you to pay damages to the other party.		
	After signing a letter of intent, do not disclose confidential information relating to the letter or the proposed transaction without the other party's consent.		
	Limit the use of terms like 'intend,' 'desire,' 'would,' or 'may.' Do not use the words 'shall' or 'will' as these tend to imply that a final agreement has been reached.		
	Sign two copies of the letter, one for you and one for the other party.		
	It's a good idea to get your document witnessed or notarized. This will limit later challenges to the validity of a party's signature.		
	If your letter of intent is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.		



3. Letter of Intent for Business Transaction Instructions

The following provision-by-provision instructions will help you understand the terms of your letter of intent.

The numbers and letters below (e.g., Section 1, Section 2(a), etc.) correspond to the provisions in the letter. Please review the entire document before starting your step-by-step process.

- **Introduction.** Identifies the document as a letter of intent. Identify the parties and, if applicable, what type of organization(s) they are. Note that each party is given a name (e.g., "Party A") that will be used throughout the letter.
 - Briefly describe what each Party will do in the proposed transaction. This doesn't have to be a step-by-step summary, but should provide enough information to make it clear the actions each Party will carry out. This section also clarifies that the letter is non-binding in its primary terms.
- **Section 1: Transaction.** Describe the Proposed Transaction. This may be the sale of property or services, a real estate transaction, a joint venture, or some other activity. There is space for you to describe what each Party's responsibilities will be in the Proposed Transaction.
- **Section 2: Consideration.** In most agreements, each party is expected to do something. This obligation may be to perform a service, transfer ownership of property, or pay money. If the Proposed Transaction requires one Party to pay the other a certain amount, enter this amount in the space provided. You can add details about when this payment is due, and how that payment will be made (e.g., cash, promissory notes, etc.). If there is a different kind of exchange, describe it in this space.
- **(Optional) Section 3: Timing.** If the Proposed Transaction involves the purchase or sale of a piece of property, you may want to set a closing date, at which point the property is will be transferred. Enter the date of closing on which the Proposed Transaction will close. If you remove this section, correct the section numbers and the references in the document.
- **Section 4: Contingencies.** A contingency is something that must happen before something else can happen. In this case, the contingencies are the things that must happen before the Parties will become obliged to go through with the Proposed Transaction. More specifically, the following things must occur:
 - 4(a): The Parties sign one or more final agreements. Enter the state's laws you want to govern those agreements.
 - 4(b): Any needed permissions have been received (e.g. government permits, the consent of each Party's board of directors, etc.)
 - 4(c) Each Party has completed its due diligence within a certain time. "Due diligence" means an investigation into any materials or information that may be relevant to the Proposed Transaction. If the Parties are entering into a joint venture, they may each want to investigate each other's business. If the transaction is a sale of assets, it may only be the buyer who is reviewing the other Party's business. Enter the end date by which the Parties must complete their due diligence. This date is called the "Due Diligence Completion Date."



If there are any additional contingencies you want to add, you can feel free to do so here. For example, if the Proposed Transaction is for the sale or purchase of real estate, there may be a requirement that the seller provide evidence of clear title to that property. Make sure to spell out all relevant contingencies so neither Party is taken by surprise during negotiations about the Final Agreements.

- **Section 5: Notice after Completion of Due Diligence.** Each Party must tell the other that it has completed its due diligence and that it is ready to move forward with the Proposed Transaction. Either Party has the option to cancel if the other doesn't give this notice within a certain amount of time.
- (Optional) Section 6: Extension of Time for Closing. If the Proposed Transaction can't be completed after due diligence, the Parties can change the Closing Date to give themselves more time or withdraw from the proposal. If this happens, neither Party has any obligation to the other one.
- **Section 7: Final Agreements.** This is a catchall provision, which promises that (in addition to the specifics to be determined later) the Final Agreements will contain all normal contract language.
- (Optional) Section 8: No Public Disclosures. Before the Closing Date, the Parties can't make public statements about the Proposed Transaction without the other Party's consent. This clause does not prevent either Party from telling its employees or other third parties about the Proposed Transaction if they have to do so to complete it. If you remove this section, correct the section numbers and the references in the document.
- **Section 9: Access to Information.** Each Party is given the right to get information from the other and its employees, and each Party agrees to provide access to this information.
- (Optional) Section 10: Exclusive Dealing. This says that for a certain period of time, the Parties will be the only ones negotiating with each other about the Proposed Transaction. . Enter the amount of time this exclusive period will extend. Note that the period starts on the effective date of the Letter of Intent.
 - You may want to include this provision if you have spent or will spend a lot of time and resources to complete the transaction. Delete this provision if it doesn't suit your arrangement. If you remove this section, correct the section numbers and the references in the document.
- **Section 11: Expenses.** States that each Party will pay for its own costs and expenses, even if the deal falls through or if the costs arise from the termination of the Letter of Intent.
- (Optional) Section 12: Covenant Not To Compete. An optional provision allowing each Party to restrict the other's ability to complete with its business for a certain period of time. Depending on the nature of your business, you may need to modify this time frame or the geographic limits of this provision to avoid legal or enforcement issues. If you remove this section, correct the section numbers and the references in the document
- **Section 13: Non-Binding Letter; Withdrawal.** The Parties agree that except for paragraphs expressly identified as binding, the document is only a proposal of their intention regarding the Proposed Transaction and is non-binding. If you want any of the provisions of your letter to be binding, list those provisions in this section.
 - Because the letter is non-binding, each Party is given the right to withdraw from negotiations (before a certain date) by notifying the other Party in writing. Enter the date by which this notice must be given.



• **Date and Signature of Parties.** Write in the date on which the document is signed. Insert your company's name and the name and title of the person authorized to sign on its behalf. After the "Agreed and accepted" clause, write the other Party's name and the name and title of the person authorized to sign on its behalf.

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Form Sample

LETTER OF INTENT FOR BUSINESS TRANSACTIONS

PERSONAL & CONFIDENTIAL

[Date]
[Name] [Street Address] [City, State, Zip Code]
Re: Letter[subject matter]
Dear:
This non-binding letter of intent (the "Letter of Intent") is made by and between
("Party A") and ("Party B," and together with Party A,
each a "Party" and collectively the "Parties") and sets forth the general terms and
conditions of the Parties agreement to
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"Proposed Transaction"). This letter contains non-binding
between Party A and Party B. U-1
legal obligation

