Legal Toolkit & Guide: *Buying a Restaurant*

A Beginners Step-by-Step Guide for Restauranteurs, Business Owners, Beginners, and Non-Lawyers

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NOTICE TO READER: The information in this article is a brief summary for informational purposes only. It is not meant to be legal advice. If you require information or advice as it relates to your individual circumstances you are advised to consult with a lawyer.

Download Links:
Purchase and Sale Agreement:
- USA
- Canada
- United Kingdom

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READ THIS PAGE BEFORE YOU BUY:

Be sure to read this page to find out what's included and what's not included.

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What's Included in this Guide

This guide takes you through the basic legal steps and issues of purchasing a restaurant and explains various issues in basic non-legal language. General tips are given on what you should do to ensure the purchase process runs smoothly. It also explains the basics of what you will usually find in a basic purchase and sale agreement for a restaurant business. Since most sample documents for the purchase of a business do not deal specifically with the purchase of a restaurant, this guide also includes some sample text provisions specifically for restaurants that you should make sure are included in the purchase and sale agreement.

What's Not Included in this Guide

This guide does NOT include a template purchase and sale agreement. Instead, we recommend that if you are just looking for a fill-in form to create a purchase and sale agreement, click on the Download Links at the top of this page for a third-party website that will allow you to quickly generate a purchase and sale agreement. However, since most templates that you will find are not specific for the purchase of a restaurant, you will find it useful to have this guide to help explain to you various terms and how to customize a general purchase and sale agreement to include terms that are unique to the purchase of a restaurant business.

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1. Introduction

Congratulations on your decision to purchase a restaurant. Purchasing a restaurant can be an exciting experience. But, if it is not done properly, it can also be a difficult and expensive experience.

Often times the legal issues regarding the purchase of a restaurant can be confusing and difficult to understand.

This purpose of this guide is to provide some general tips about the legal steps you should take to ensure that the purchase is completed in a way that provides you with some basic legal protections.

Although this guide has lots of information, this guide does not replace legal advice that you would obtain by consulting and retaining a lawyer to represent you. Even if you are going to hire a lawyer, you should still find the information in this guide useful when discussing the legal issues of your transaction with your lawyer.

2. Six Keys to a Successful Restaurant Purchase Transaction

In general, the keys to making a purchase transaction successful are:

(i) examining the operations of the restaurant to understand exactly what you are buying and to identify the particular issues and any problems of the restaurant;

(ii) ensuring that all obligations of the parties, promises made, and representations and warranties made by the seller to the purchaser are written down in a written legal document;

(iii) obtaining professional assistance where required;

(iv) allowing sufficient time to do research and to allow the professionals to complete their job;

(v) obtaining adequate financing to complete the purchase and to operate the restaurant; and

(vi) understanding the character traits of being an entrepreneur.

3. Obtaining Professional Assistance

To ensure that all issues are addressed you will need to consult with several professional advisors as soon as you make the decision to buy a restaurant. Depending on your particular circumstances, experience, knowledge, and comfort level, the following will be helpful to you including:

1) lawyer (a business lawyer),
2) real estate agent (familiar with businesses),
3) accountant,
4) bank manager,
5) insurance broker (for commercial businesses), and
6) anyone who can be of assistance such as a business evaluator, consultant, or other professionals familiar with the restaurant industry.

Each of these professionals serves a different role and offers his or her professional expertise, experience, and contacts. The purpose of these professionals is to inform you, assist you, and advise you.

It is important to contact the appropriate professionals as soon as possible so that there is sufficient time to properly analyze your particular situation, prepare an appropriate strategy for you, conduct necessary searches, resolve any issues or unexpected problems, advise you, negotiate with various parties (including third parties such as landlords, creditors, lien holders, etc.), ensure sufficient financing is available, and prepare and complete the necessary documentation to complete the purchase or sale. In addition, it is important that there be sufficient time for the various professionals to consult with each other.

4. Allowing Sufficient Time

Although both purchaser and seller are usually anxious to complete the transaction, it is important that sufficient time be allocated to properly do the work necessary to successfully complete the transaction. In order to do a proper and complete job it is recommend that the minimum amount of time required to complete a straightforward transaction is approximately six to eight weeks. Some transaction may require less time and complicated transactions may require more time.

The date when the actual purchase is to take place and legal ownership is passed on to the purchaser (e.g.: when you get the keys and you have pay for the purchase price) is usually referred to as the “Closing Date”. In theory, on the closing date, all issues are to be completed (or “closed”) – however, as a practical matter, some issues have to be dealt with well before the Closing Date (e.g.: the financing if you are getting a bank loan), but some issues may not be resolved until after the Closing Date (e.g.: the seller may have agreed to accept payment of the purchase price by way of monthly payments for the next 3 years).

5. Financing

It is imperative that you obtain adequate financing. Often potential purchasers fail to properly plan for financial requirements involved in the purchase or that they will incur shortly after the purchase including:

(i) Amount to pay for a deposit;

(ii) Amount for payment of the portion of the purchase price that is payable on the Closing Date;

(iii) Amount for payment of any monthly payments if the purchase price is to be paid over a period of time after the Closing Date;

(iv) fees for professional advisors including: lawyers, accountants, and other professional advisors;

(v) operating line of credit for day to day operations;

(vi) funds for payment of new or additional equipment or furniture that may be required soon after the Closing Date;

(vii) operating expenses (e.g.: cost of food, wine, advertising, employee salaries, rent, personal living expenses).

If you do not have enough cash on hand to satisfy the purchase price on the Closing Date, you may wish to ask the seller to accept payment terms (e.g.: payment over a specified period such as a certain amount of money each month for 3 years after the Closing Date, usually with interest) – if the seller agrees to accept such payment terms, you will need to document the financing by way of a separate loan document called a Promissory Note (this is sometimes commonly known as an "IOU").

6. Do Your Research / Due Diligence

It is important that you learn as much as you can about the restaurant as soon as possible and prior to the Closing Date. You want to do this so that you can deal with any issues upfront in a written agreement before you complete the purchase.

For example, well before the Closing Date (and preferably before you even sign a Purchase and Sale Agreement or Letter of Intent), you should:

- Personally examine all the equipment to make sure it is in working order.
- Make a note of anything that requires repairs or replacement.
- Find out if the equipment is under warranty.
- Examine the purchase records for the equipment – you want to know if the seller has proper documents that show to your satisfaction that the seller actually owns of the equipment (Please note that in most jurisdictions there is no actual registry system maintained by the government where you can confirm whether or not someone actually owns a particular asset; as such it is important to look at all the documents that seller provides to you and that you make an assessment whether or not you are satisfied or have concerns with

the documents the seller is presenting to you regarding who actually owns the assets).

- Visit the restaurant during various hours (morning, lunch, dinner) and on various days (during week and during weekend) to observe the type of customers and the level of business.

- Examine all the books and records of the business (e.g.: accounting records, tax returns, supplier contracts).

- Make a list of all the items that are included in the purchase (e.g.: list of equipment, furniture, software/hardware, phone numbers, internet website, business name, etc.). Where possible the list should include brief description, make, model, and serial number. You may also wish to take a digital photo of the various items included on the list.

- Obtain information about any employees (pay level, seniority, any outstanding issues with current or past employees). You should also determine whether you wish the employees to their employment with the restaurant after the Closing Date.

- Obtain information about any existing problems or potential problems that the seller is aware of (e.g.: any disputes or lawsuits from suppliers or customers). See also Section 23 below with a list of some online resources to assist you in this regard. You may also wish to consult with a lawyer or a paralegal to assist you with certain searches of government and court records to determine whether any lawsuits or judgments against the seller or liens against any of the assets being purchase exist and to ensure that the seller is not bankrupt.

- Examine the lease for the premises where the restaurant is located. In particular you want to review the terms of the lease, determine the rent amounts, time remaining on the lease term (e.g.: when does the lease expire) and whether you can extend the date of lease term after it expires. You may also wish to ask to speak directly with the landlord to determine if the landlord has had any issues with the seller and whether the lease is in good standing or whether there are any rent arrears or whether any equipment such as air condition systems and washrooms need repairs.

- Confirm with the zoning department of the municipality where the restaurant that the premises is zoned to permit a restaurant to be operated. You may also wish to check with the building department to enquire whether there are any building orders issued by the municipality against the restaurant. Some municipalities also have periodic health department inspections. You may want to check with the health department to ensure that there are no outstanding issues regarding the restaurant.

- Assess the inventory that the restaurant requires to operate. Assess the current suppliers that are being used and whether you continue to use them or whether you will be changing suppliers.

7. Will that Be “Assets” or “Shares” ?

Generally, there are two ways to proceed to legally purchase a business.

1. **Asset Purchase:** One can purchase the assets of the business from the seller. An “asset” refers to what you actually buying – for example, the equipment, furniture, books & records, and also other items such as the name of the business and any logos, the right to the telephone number, and internet domain name, supplier lists, supplier contracts, rights in the lease for the location, and anything else related to the business. Generally, in an asset purchase, you will set up a new corporation that will be the purchaser, or you can use an existing corporation that you already have. You can also purchase the assets directly into your personal name, although it is not usually recommend for a restaurant. An asset purchase can be used if the seller is an individual, partnership, or corporation. If the seller is an individual or a partnership, then you will proceed by way of an asset purchase.

2. **Sale Purchase:** If the seller is a corporation, you may be able to proceed using a method referred to as share purchase. In a share purchase, you do not actually buy the particular assets, but instead

you will be buying the shares of the seller's company. At the end of the transaction, the idea is that you will own the shares of the company that owns the assets.

There are advantages and disadvantages as to whether to buy the restaurant using an asset purchase or as a share purchase. Which method is the best for your particular situation requires consideration of several factors including legal, accounting/tax, and insurance issues and as such determining which method is best for your particular circumstances is beyond the scope of this article. However, in general from a legal perspective, a purchaser will prefer an "asset purchase" using a new corporation. However, there are circumstances where a share purchase will be preferred or will need to be used as the method of purchase. You will need to examine the particulars of the situation to determine which method is best.

8. Identify What You Are Buying and What's Being Excluded

It is important to know exactly what you are buying and not buying from the seller. Assets included in a purchase typically include the following:

- Equipment
- Inventory
- Contracts
- books & records
- trademarks and business names
- leasehold interest
- goodwill
- any other assets

If you are purchasing by way of an asset purchase you will need to make a list of the assets that you are purchasing. In a sale purchase, although you are not directly purchasing the assets, you will still want to identify and make a list of the assets owned by the selling company.

Where possible the list should include as appropriate to the asset type:

- brief description of the asset
- for equipment: make, model, and serial number
- for inventory and small items (e.g.: food, cutlery): quantity on hand
- optionally: the amount of the purchase price that is assigned to that particular item (you may wish to speak with your accountant for this issue)

Where practical, you may also wish to take a digital photo of the various items included on the list.

If the restaurant has any artwork or other decorative items, they also need to be identified as they are assets. It is not uncommon to show up after the Closing Date only to discover that certain assets that you thought were included have been suddenly removed by the seller prior to the Closing Date. As such, it is important to have the list of assets that you can refer to in the even there is a dispute whether certain assets are included or not.

In many cases, you may also wish to acquire the right to carry on using the existing name of the restaurant, and graphic logos, or other slogans or other trademarks used in the business. These are generally referred to as trademarks and business names and are considered assets.

Typically, in a purchase, whether by way of asset purchase or sale purchase, certain assets will be excluded or removed from the restaurant prior to the completion of the sale. These may include cash in the bank and certain items that the seller may not wish to be sold. In addition there may be certain assets that are actually obligations that you may not want to assume (e.g.: you may not want to continue with the cable-TV service provider currently being used in the restaurant). You will need to identify these excluded assets/obligations so that you do not find out later on that certain assets are no longer present after you complete purchase or that certain assets your acquired that you did not want to be included.

9. Get it in Writing: Purchase and Sale Agreement

The main agreement used in the purchase of a restaurant is called a "Purchase and Sale Agreement". This document will be the key document from which the transaction will flow.

The general rule to follow when buying a restaurant (or any business) is to ensure that all obligations of the parties, promises made, and representations and warranties made by the seller to the purchaser are written down in a written document. Do not simply rely on verbal promises made by the seller – you will run the risk that the seller will deny or dispute any verbal promises and you will have a very difficult time to prove the seller made such promises or even if the seller admits to making such promises, the seller will likely dispute the details. As such, the best thing to do is to ensure anything that is important to you should be made in writing in a written agreement.

Generally, the Purchase and Sale agreement should include provisions regarding:

1. For asset purchase: List of Assets being sold. In share purchase: list of assets and a representation that that the seller owns the assets
2. List of excluded assets and excluded obligations
3. Purchase Price
4. Payment terms (deposit amount if any, payment of balance and how it is to be paid and when it is to be paid)
5. Closing Date. This is the date when you will acquire legal ownership of the assets or the shares.
6. Representations & Warranties – statements and promises made by the seller to the purchaser
7. Special agreements by Seller – e.g.: Non-competition, non-solicitation, confidentiality, indemnity
8. Conditions (see section below *Special Issues: Conditions Precedent*)

By having everything in writing, you will have a written document that you can refer to in the event a problem develops afterwards.

It is very important to understand that once you sign a Purchase and Sale Agreement, you are signing a legally binding contract that can be enforced against you in a court of law. Unless the agreement contains "conditions" (see below) that permit you to cancel the agreement, and except in other limited circumstances that may occur, you will be required to complete the purchase and you will not be able to change your mind. As such, if you are worried about signing an agreement at this time, but would like to still proceed forward with negotiations, as an alternative to the Purchase and Sale Agreement, you can sign a different type of document called a "Letter of Intent".

10. Get it in Writing Alternative: The Letter of Intent

Essentially the Letter of Intent contains the same information as a Purchase and Sale Agreement, with the exception that the Letter of Intent (if written properly) is a non-binding document, or in other words, you can walk away and call off the deal if something is not right or if you change your mind. The advantage of using a Letter of Intent is that if you want to get some expert advice but are in a hurry to have something in writing with the seller, you can proceed using a Letter of Intent and then bring the Letter of Intent to a lawyer for review and subsequent preparation of the Purchase and Sale Agreement (based on the Letter of Intent).

It is very important that a Letter of Intent specifically have words that clearly say something like "this Letter of Intent is intended not to be binding on the purchaser and seller" – if the Letter of Intent does not include these words, you run the risk that the Letter of Intent will be binding against you (in such a case the Letter of Intent will be viewed as being a Purchase and Sale Agreement despite what is the title of the document).

Although there are clearly advantages to having an agreement not be binding, there is a downside risk – you run the risk that the seller may also be talking with other potential buyers while talking with you and you may discover that the seller sells to another buyer. In order to protect you from the seller not acting in good faith, you may wish to have some obligations in the Letter of Intent be binding and other not binding. In particular it is preferable that the seller have the obligation to negotiate in good faith, and to have the seller agree that it will not negotiate with anyone else. Sample wording that gives this type of protection is as follows:

> "**This Letter of Intent is intended not to be binding on the purchaser and seller with the exception that: (a) each party agrees to negotiate in good faith to prepare a formal Purchase of Sale Agreement with additional terms a and conditions, and (b) the seller agrees not to have any discussions or negotiations with any other potential purchaser of the business.**"

11. Special Issues: Licenses

Some municipalities require a license to operate a business within the town/city. You should check with the city hall to ask about whether a business license is required to operate the restaurant.

If the restaurant sells wine, beer, or liquor, you need to check with your local government to determine if a license or permit is required to sell/serve alcohol. If you do not have experience in the restaurant business in the jurisdiction, you can start by asking the seller to provide you with a copy of the liquor license for the restaurant.

12. Special Issues: Representations and Warranties

A representation and warranty is a statement that is made by the seller regarding a certain fact or issue.

For example, the seller may make a representation and warranty to you that the equipment in the restaurant is in "good working order". Although it is good advice that you check out all the equipment first hand, it is not always practical to check everything properly and thoroughly. In order to protect the purchaser, the Agreement will contain a list of representations and warranties made by the seller. In the event that after the Closing Date you discover that the seller's made a false statement, (called a "misrepresentation"), you will be able to point to the particular provision in the Agreement requiring the seller to fix the defect or compensate you for damages.

Typically, representations and warranties will cover such items as:

(a) Equipment: all the equipment in the restaurant is in good working order, except for normal wear and tear.

(b) Liquor License: the Seller has a valid liquor license for the restaurant in good standing.

(c) Lease: the Seller has a lease for the premises of the restaurant that is in good standing with the landlord and the premises is zoned to permit the operation of the restaurant.

(d) Lawsuits, etc.: there are no lawsuits or judgments or orders issued against the Seller nor is the seller aware of any facts that may lead to a lawsuit against the Seller.

Additional representations for Asset Purchase:

(a) Ownership: the Seller is the beneficial and legal owner with marketable title of all of the assets being purchased by the Purchaser, free and clear of all liens and encumbrances, and on the Closing Date, the Purchaser shall become the legal and beneficial owner of the assets being purchased.

Additional representations for Sale Purchase:

(a) Ownership of Shares: the Seller is the beneficial and legal owner with marketable title of all of the shares being purchased by the Purchaser, free and clear of all liens and encumbrances, and on the Closing Date, the Purchaser shall become the legal and beneficial owner of the shares being purchased.

(b) Ownership of Assets: the corporation is the beneficial and legal owner with marketable title of all of the assets being purchased by the Purchaser, free and clear of all liens and encumbrances, and on the Closing Date, the Purchaser shall become the legal and beneficial owner of the assets being purchased.

If the Seller makes any statement to you regarding the business you should include it here. For example, if the seller shows you a financial statement claiming the restaurant enjoys a certain level of sales each day and you intend to rely on that sales figure, you should include it as a representation and warranty.

13. Special Issues: Covenants

A "covenant" is an action that the Seller agrees to perform. For example, the Seller may agree that it keep the restaurant freshly stocked right up to the Closing Date. Or the Seller may agree to repair a piece of equipment prior to the Closing Date. Any agreement the Seller makes to you where the Seller agrees to do something (or agrees specifically not to do something) should be put in writing.

See below "Special Issues: Indemnity" for a special covenant that you may wish to include in a Purchase and Sale Agreement.

14. Special Issues: Conditions Precedent

Usually when you initially agree to purchase a restaurant, certain issues are not fully resolved. For example, you may need to check with your bank to see if they will agree to provide you a loan to pay for the purchase price. However, a bank may refuse to consider your loan application unless you first provide them with a signed Purchase and Sale Agreement. In order to resolve this issue, you can include certain provisions in an Agreement of Purchase of Sale called "conditions".

Essentially a condition means that before the transaction can proceed something first has to be satisfied. For example, a condition might be that the completion of the purchase is conditional upon the purchaser receiving approval from the purchaser's bank to provide financing to enable to the purchaser to complete the purchase transaction. If the purchaser's bank declines the loan request, generally, the purchaser can then cancel the transaction on the basis that the condition was not satisfied. If the bank approves the financing, the condition will be satisfied and the transaction will proceed forward (subject to any other conditions in the agreement). In addition, sometimes if a condition is not satisfied (e.g.: the bank turns down the purchaser's loan request), the purchaser may be able to obtain financing elsewhere and want to ignore (or "waive") the condition and still proceed forward.

Often times, when a condition is inserted into a Purchase and Sale Agreement it is not clear which of the purchaser or seller can rely on the condition to cancel the transaction. For example, if the purchaser's bank turns down the purchaser's loan application, can the seller take advantage of the situation to get out of the deal and claim that since the condition was not met therefore the deal is cancelled? To avoid this possibility and in order to avoid confusion, it is important to ensure that whenever an agreement includes a condition for the benefit of the purchaser, the condition should also include wording that says something along the lines of:

> "This condition is inserted into the agreement for the exclusive benefit of the Purchaser only and that the Purchaser in its sole discretion can waive the condition in whole or part at any time."
>
> *-- (Note: You should insert the above text as part of the text of each condition inserted in the Agreement.)*

Typical conditions precedent that a purchaser may include a restaurant purchase include:

(a) Financing: On or before the closing date, Purchaser being able to obtain financing to satisfy the purchase price and operate the business after the closing date. This condition is inserted into the agreement for the exclusive benefit of the Purchaser only and that the Purchaser in its sole discretion can waive the condition in whole or part at any time.

(b) Liquor License and Permits: On or before the closing date, the Seller transferring to the Purchaser the liquor license and the Purchaser either obtaining or transferring any other permits required to operate the restaurant. This condition is inserted into the agreement for the exclusive benefit of the Purchaser only and that the Purchaser in its sole discretion can waive the condition in whole or part at any time.

(c) Telephone etc.: On or before the closing date, the Seller transferring to the Purchaser the telephone numbers and internet domain name used by the restaurant. This condition is inserted into the agreement for the exclusive benefit of the Purchaser only and that the Purchaser in its sole discretion can waive the condition in whole or part at any time.

(d) Lease: On or before the closing date, the Landlord assigning the Lease to the Purchaser and making changes to the Lease as the Purchaser considers necessary in its sole discretion. This condition is inserted into the agreement for the exclusive benefit of the Purchaser only and that the Purchaser in its sole discretion can waive the condition in whole or part at any time.

(e) Lawsuits, etc.: On or before the closing date, that there are no lawsuits or judgments or orders against the Seller. This condition is inserted into the agreement for the exclusive benefit of the Purchaser only and that the Purchaser in its sole discretion can waive the condition in whole or part at any time.

(f) Liens, etc.: On or before the closing date, that there are no liens or encumbrances registered against the assets being purchased or against the seller. This condition is inserted into the agreement for the exclusive benefit of the Purchaser only and that the Purchaser in its sole discretion can waive the condition in whole or part at any time.

(g) Employees continuing: On or before the closing date, certain employees identified in the agreement have agreed to continue their employment with the Purchaser after the closing date. This condition is inserted into the agreement for the exclusive benefit of the Purchaser only and that the Purchaser in its sole discretion can waive the condition in whole or part at any time.
-- (Note: Be sure to insert the names of the people that you wish to hire.)

(h) Employees not continuing: On or before the closing date, those employees whose employment will not be continued after the closing date, as indicated by the Purchaser, shall have provided to the Purchaser their written resignation, or for those employees for which a written resignation has not been provided, the Seller shall have terminated the employment of such employees, and where required under the law, the Seller shall have paid to those employees any amounts required to be paid upon termination of employment. This condition is inserted into the agreement for the exclusive benefit of the Purchaser only and that the Purchaser in its sole discretion can waive the condition in whole or part at any time.

-- (*Note: Be sure to insert the names of the people that you do not wish to hire. If you do not include this condition, in some jurisdictions, the Purchaser may be held liable for wrongful dismissal of the employee and may be required to pay termination pay to the employee for failing to continue their employment after the closing date.)*

(i) Taxes: On or before the closing date, that all taxes regarding the assets and seller have been paid. This condition is inserted into the agreement for the exclusive benefit of the Purchaser only and that the Purchaser in its sole discretion can waive the condition in whole or part at any time.

(j) Obligations, Representations, etc.: On or before the closing date, that all of the covenants and obligations of the Seller contained in this Agreement are completed, and all the representations, warranties and promises made by the Seller to the Purchaser in this Agreement are true as of the closing date of the purchase and sale transaction. This condition is inserted into the agreement for the exclusive benefit of the Purchaser only and that the Purchaser in its sole discretion can waive the condition in whole or part at any time.

(k) Subject to Approval: Within 10 days of the date of this Agreement, that this Agreement has been approved by the purchaser's lawyer. This condition is inserted into the agreement for the exclusive benefit of the Purchaser only and that the Purchaser in its sole discretion can waive the condition in whole or part at any time.

Depending upon the facts of your situation, some of the above conditions may not be necessary or you may require additional conditions.

At the beginning of each condition text, a time period in which the condition has to be satisfied is specified ("On or before the closing of the transaction …"). Alternative wording that may be used to specify a specific number of days is: "Within 10 days of the date of this Agreement …" (usually, it is the Seller that asks for a specified number of days).

15. Special Issues: Non-Compete / Non-Solicitation / Confidentiality

Since the seller has knowledge of the restaurant you are buying and also has general knowledge about operating a restaurant, there is a risk that the seller might open a competing restaurant nearby. As such, a purchaser often wants to restrict the seller from (i) opening/operating a competing restaurant nearby, (ii) hiring away the existing employees, or directly contacting any known customers in an attempt to have them follow the seller to a new location.

In order to protect the purchaser, the purchaser usually will require the seller to agree to the following restrictions:

(i) Non-compete: not compete with the purchaser for a specified period of time (e.g.: 1 year) within a certain distance from the restaurant being purchased (e.g.: within 5 miles of the restaurant).

(ii) Non-Solicitation: Not solicit any of the employees or the customers of the restaurant. However, even if a seller agrees to this, if an employee leaves entirely on their own, or a customer on their follows the seller to a new restaurant, the purchaser will not be able to prevent this from occurring.

(iii) Confidentiality: Keep confidential everything they know about the restaurant. However, this cannot prevent the seller from using general information that is readily available (e.g.: names of food suppliers and other restaurant related suppliers)

16. Special Issues: Indemnity

One has to prepare for the situation that after the purchase is completed, unexpected problems may arise that you wish to seek compensation from the seller.

For example, a food supplier may claim that it is owed money from the seller and since you are now the new owner, the supplier is demanding that you pay the outstanding money or you will be sued in court. Someone may show up claiming they were an employee but you were never made aware of such a situation. A phone bill may arrive a month after the Closing Date and you discover that the seller did not pay the phone bill.

The best way to protect yourself it to ensure you thoroughly research the business to try and discover any potential problems before the Closing Date. However, there is a practical limit to how much research/due diligence you can do prior to the Closing Date. In this regard, usually a provision is included in the Purchase and Sale Agreement that states that in the event the representations, warranties, or promises are not true as stated in the Purchase and Sale Agreement, the seller agrees it will compensate the buyer from any damages incurred by the buyer.

Sample wording of an indemnity that the purchase should include in the Agreement is:

> "The seller agrees to indemnify and save harmless the purchaser from and against any and all actions, proceedings, claims, demands, obligations or liabilities (including liabilities, claims and demands for incomes, sales, business or other taxes) against the seller up to the closing of purchase and sale transaction or arising from the breach of any covenant, representation or warranty in the Agreement and this covenant for indemnity shall survive the closing of the purchase and sale transaction."

In a Purchase and Sale Agreement, a provision regarding indemnity can be included as part of the Covenants section (see above) or as a separate provision on its own.

17. What Can I Expect From the Seller ?

Sellers are generally not as concerned as a purchaser with respect to the well-being of a restaurant after the completion of a transaction. As a result, a seller sometimes puts pressure on a purchaser to complete a transaction as soon as possible and to ignore any potential problems that have been raised by you (or your professional advisors). Therefore, as a purchaser it is important to be aware of undue influence from the seller and to carefully consider the advice from your professional advisors.

18. Being an Entrepreneur

If you are planning to purchase and operate a restaurant for the first time you should study the character traits of being an entrepreneur to ensure that you have a good understanding of being an owner/manager. A good place to start is the business section of your local bookstore. In section 23 below there is a list of various online resources to assist you in operating a restaurant.

19. Where to Easily and Quickly Get a Customized Purchase and Sale Agreement or Letter of Intent Online

Now that you have a basic understanding of the legal issues of buying a restaurant, you are ready to prepare a Purchase and Sale Agreement (or Letter of Intent).

You can obtain a Purchase and Sale Agreement online from a third-party source such as LawDepot (see links below) – simply fill in certain information regarding the particulars of your transaction and a sample agreement will be automatically provided to you. In order to complete the form, use the information and samples in this guide to help you. See below for step-by-step guide on filling out the LawDepot form for use in buying a restaurant. You will be required to purchase the completed document before you can use it.

Alternatively, if you do not feel comfortable using an online source, your lawyer can prepare the Purchase and Sale Agreement for you.

20. Creating the Agreement / Letter of Intent

To prepare a Purchase and Sale Agreement (or Letter of Intent) legal document, consult with your attorney/lawyer or obtain one online at LawDepot by clicking below on your country to get started:

Purchase and Sale Agreement (or Letter of Intent):
- USA
- Canada
- United Kingdom

Once you are at LawDepot, follow these steps and cross-reference to sections in this Guide:

Section in online form:	See Guide Section #:	Additional Notes:
Governing Law		Select your jurisdiction. Usually this is the state/province where the restaurant is located.
Transaction Type	7	Select Assets or Shares.
Output Format	9 , 10	Select whether you are going to proceed at this time by Purchase and Sale Agreement or by Letter of Intent.
Business Information		Enter information about the business that is being sold. Under “Business Name”, enter the name of the restaurant – usually this is a corporation name. However, if there is no corporation and the restaurant is owned by an individual, enter the individual’s legal name here. Operating Name: if the restaurant operates under a name that is different from the “Business Name” then enter it

Section in online form:	See Guide Section #:	Additional Notes:
		here. Under "Business Description" enter: "**a restaurant**"
Seller Information		This section only appears if you selected "Shares" above as the Transaction Type. Enter the name of the owner of the shares being sold to you. This is the shareholder (usually an individual) of the company that owns the restaurant.
Purchaser Information		Enter the name of the purchaser. If you are buying the assets/shares individually in your personal name, enter your legal name. If you are buying using a corporation that you already have enter the name of the corporation here. If you plan to buy in the name of a new corporation, but you have not yet created the corporation, you can enter the following: "***John Smith*** **in trust for a corporation to be incorporated without personal liability**" and select "corporation" for Type of Party. [Replace "*John Smith*" with your own name]. (you may wish to incorporate first so that you can enter the corporation name here instead, see the links in section 23 below to incorporate)

Section in online form:	See Guide Section #:	Additional Notes:
Assets and Purchase Price (for Asset Purchase)	8	Check all the boxes that apply; and then enter the amount that you are paying for each asset. "Goodwill" is generally always purchased unless you have a specific reason to exclude it. You may need to consult with your accountant to determine the dollar amount to assign (or "allocate") to each asset category. If you do not know the amount to allocate for each asset category, select the appropriate categories of assets that you are buying but leave the amount boxes for each item blank, and then select the "Other Assets" box and then under the description enter "all assets" and under the amount box specify the full purchase price. If you assembled a list of equipment and other assets, enter it as an "Other Asset" and under the description enter "See attached Schedule". When you print out the final document, be sure to attach the list to the document. If there are any assets that do not come under the categories listed and is not included on your list, select the "Other Assets" box and enter an description and amount in the boxes show. Under "Excluded Assets" select all that apply. If there are any other excluded assets, select "Other excluded assets" and enter a description.

Section in online form:	See Guide Section #:	Additional Notes:
Shares and Purchase Price (for Share Purchase)		Unless you are buying less than 100% of the seller's company, select the "Aggregate Purchase Price" method and enter in the full purchase amount you are paying.
Taxes and Totals		Enter the information as indicated.
Payment Terms		Specify a closing date if known at this time. If the seller will want a deposit from you, specify it here and when it is payable. Usually with a Letter of Intent, no deposit is made. For payment options, choose one of the available options: 1. Lump Sum Payment – choose this option if you are paying the full amount (less any deposit) on the Closing Date 2. Lump Sum plus Promissory Note – choose this option if you are paying a portion on the Closing Date and a portion over time 3. Promissory Note – use this option if you are going to be paying the balance of the purchase price over time.
Specific Clauses and Warranties to Include	15	Select the applicable provisions.

Section in online form:	See Guide Section #:	Additional Notes:
Representations, Warranties	12	Promises made by the Seller/Purchaser will survive the Close by… usually a 2 year period is chosen. The Purchaser/Seller will confirm its representations with:… usually select "Officer Certificate" Number of additional promises made by the Seller/Purchaser… you will need to select from the menu a sufficient number to add in additional promises then enter in the text into the box. Refer to section 12 above for sample Representations and Warranties.
Conditions Precedent	14	Number of conditions to be performed by the Seller … you will need to select from the menu a sufficient number to add in additional promises then enter in the text into the box. Refer to section 14 above for sample Conditions Precedent.
Employees		Follow instructions on screen.
Assumed Liabilities		Generally, the purchaser should not assume any liabilities of the seller.
Mediation / Arbitration		This section specifies how disputes should be handled. Generally, the option of "mediation before arbitration" will satisfy the needs of a purchaser.

Section in online form:	See Guide Section #:	Additional Notes:
Additional Clauses	13, 14	Enter any covenants in this section. See section 13 above for sample text. Enter the Indemnity provision in this section. See section 14 above for sample text. Enter in any other provision into the agreement that you want to be included.
Signing Details		Generally, it is recommended that witnesses be required (select Yes for this box). The "execution date" refers to the date that you will be signing the agreement. Unless you know the date you will be signing the document, select "Unsure" and you will be able to handwrite in the date when you sign the document.

Additional instructions: When preparing a document using an online system, be sure to review the completed document Read through to make sure it makes sense and reflect your intention as you understand the transaction.

If you created a "Letter of Intent" please review the document to ensure it contains wording similar to the wording described in section 10 above.

21. What's the Next Steps

Once you have created your Purchase and Sale Agreement (or Letter of Intent), you need to:

- review the agreement to make sure it is complete

- have the agreement dated and signed by each party to the agreement (also have a witness sign at the same time).

It is recommended that 2 original documents be signed by each party. Each party should receive a signed original.

If you signed a Letter of Intent. You should proceed as soon as possible to work out any outstanding issues. Once you are ready, you can prepare a Purchase and Sale Agreement containing the final terms.

Once you have the Purchase and Sale Agreement signed you need to complete various task prior to the Closing Date:

- **Purchaser:** If the purchaser is going to be a corporation and you need to incorporate, be sure that you have incorporated the new company prior to the Closing Date. Do not wait until the last minute. You can find several online services that will allow you to incorporate a new company online.

- **Banking:** complete any requirements of your bank to ensure you have the necessary funds ready that are required to be paid on the Closing Date. You will need to open a new bank account and also arrange for credit card and line of credit, and merchant services for processing of credit cards at the restaurant.

- **Liquor License:** ensure that you have filed any necessary documents to transfer or obtain a new liquor license and that everything is in order for you to continue sale and serving of alcohol starting on the Closing Date.

- **Business Permits:** ensure that you have filed any necessary documents to transfer or obtain any business permit required for you to commence operations after the Closing Date.

- **Insurance:** ensure that you have made arrangements to have proper business insurance in place effective on the Closing Date. Discuss with your insurance advisor the amounts of coverage and types of coverage you should obtain.

- **Telephone / Internet: (for asset purchases):** make arrangements to transfer the telephone numbers and domain names.
- **Supply Contracts:** Make sure suppliers are contacted to ensure any supply contracts being cancelled are cancelled and any that are continuing are continuing.
- **Due Diligence Searches:** (see section 6 above for more information). Conduct any necessary searches that you consider appropriate under the circumstances to ensure that there are no liens, lawsuits, judgments, or bankruptcy against the seller. If you are proceeding by way of share purchase, you will have to do searches against both the restaurant business and against the shareholder. You can do some limited searches on your own using services such as Equifax and Dun & Bradstreet (see links in section 23 Other Resources below). You may also need to consult with a lawyer or paralegal to assist you in conducting other searches or dealing with any issues that arise based on the search results obtained.
- **Municipal Issues:** Conduct searches at the local city hall regarding the zoning department, building department and health department (see section 6 above for more information).
- **Conditions:** Check each of the conditions in the Purchase and Sale Agreement to make sure there is nothing that has not been properly met and if something is incomplete, assess whether to waive the condition or cancel the transaction, or negotiate an acceptable solution with the seller.
- **Representations and Warranties:** Check each of the representations and warranties in the Purchase and Sale Agreement to make sure there is nothing that has not been properly met and if something is incomplete, assess whether it can be waived representation/warranty or cancel the transaction, or negotiate an acceptable solution with the seller.
- **Covenants:** Check each of the covenants in the Purchase and Sale Agreement to make sure there is nothing that has not been completed and if something is incomplete, assess whether it can be

waived or cancel the transaction, or negotiate an acceptable solution with the seller.

- **Employees:** Finalize any issues regarding employees who will be continuing or leaving.
- **Lease:** Finalize with the landlord the transfer/assignment of the Lease for the premises where the restaurant is located.
- **Arrange for continuation of inventory:** Determine how any excess inventory will be handled on the Closing Date (usually the Purchaser will pay additional money to the Seller for any remaining inventory to ensure there is sufficient inventory on the Closing Date).
- **Announcements:** Prepare any announcements or new advertising that you plan to use.

On the Closing Date, you should attend at the restaurant to make sure all the assets that you are expecting to purchase are still present on site. If you are satisfied and there are no unresolved issues, pay over any money that is payable to the seller. Exchange keys.

If you are proceeding by way of share purchase, the seller should provide to you the corporate records for the corporation.

22. Conclusion

Purchasing a restaurant can be exciting. Just remember these points:

- Start as soon as possible
- Get it in writing
- Do your due diligence
- Consult with professionals
- Complete any steps required to be done prior to the Closing Date

23. Useful Resources Online

Downloadable Legal Forms:

- Promissory Note: • USA • Canada • UK
- Purchase and Sale Agreement: • USA • Canada • UK
- Lease Assignment: • USA • Canada
- Catering Agreement: • USA • Canada • UK

Credit Reports:

- Equifax: • USA • Canada
- Dun & Bradstreet: • USA • Canada

Incorporation online:

- Incorporate a new business: • USA • Canada

Restaurant Associations:

- National Restaurant Association
- Canadian Restaurant and Foodservices Association
- International Hotel & Restaurant Association

Books and Other Resources:

- Restaurant Management Toolkit
  Restaurant management forms, restaurant software, business plan templates, marketing and promotions for restaurants, cafes and hotels.
- Restaurant Marketing Secrets
  Step by step local store marketing methods for restaurant owners and managers. Designed to help increase guest counts and restaurant profits. A must-have for restaurants in today's economy.
- How To Start A Restaurant Following A Profitable System
  Step-by-step secret profitable system shows you exactly how to start and manage a successful restaurant business.
- How To Improve Restaurant Dining Room Service