

FedEx Purchase Agreements- More Than Just Legal Mumbo- jumbo

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Often, when I first speak with prospective FedEx contractors, they are chomping at the bit to get started. They have learned about the industry and are excited about the opportunity to own a part of the booming logistics industry. This excitement often causes them to gloss over the purchase agreement in favor of moving forward quickly, viewing the purchase agreement as merely an obstacle to moving forward with the deal. However, failure to give the purchase agreement the attention it is due can yield complicated and expensive outcomes.

The purchase agreement is more than just legal jargon and is the pivotal document dictating any verbal agreement the parties have reached and governs when the parties can terminate the deal, when the buyer gets their deposit back, and what the obligations of the seller between the execution of the purchase agreement and closing and after the sale. Outside the FedEx industry, businesses will often sign the purchase agreement and close on the same day. However, in the FedEx industry, because the sale depends on FedEx approval, the parties sign the purchase agreement and close weeks, if not months, later. This process, which is colloquially referred to as a “sign and delayed close,” leaves a lot of room for issues to arise between the time the parties sign the purchase agreement and closing, including, among other things:

- Seller failing to keep up the business in the ordinary course, leading to the buyer not getting what they were expecting on the closing date;
- A buyer failing to obtain or maintain financing;
- Physical assets falling into disrepair or becoming nonoperational;
- Employees leaving and the seller failing to hire new ones; and
- Seller improperly disposing of assets.

Additionally, given the need to move forward quickly to start the process of getting FedEx approval, buyers are typically performing due diligence between signing the purchase agreement and closing, which can lead to buyers discovering unsavory details about the seller’s business that make them want to terminate the contract. While these are all real risks of “sign and delayed close” deals, they are palatable risks as long as the parties have a firm understanding of the risk they are each taking on, and the seller’s obligations between signing and close and the purchase agreement contains contingencies and reasonable outs for the buyer. Without proper protections in the purchase agreement, a buyer may have no choice but to move forward with an unexpectedly unsavory deal or risk losing their deposit.

The moral of the story is: Don’t gloss over the purchase agreement! It governs the entire transaction, including what the buyer is entitled to between signing and closing and when the parties will go their separate ways.

