

M&A Nugget: A Purchaser's Representation and Warranties

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The seller's representations and warranties in the agreement for the purchase and sale of a business usually comprise many pages. For a seller, however, it is important to include several representations and warranties by the purchaser, including that: 1) the transaction has been properly authorized by the purchaser's governing body; 2) the purchaser is not party to any litigation that could adversely impact the transaction; 3) the purchaser is in good standing under the laws of the State in which it is organized; and 4) the purchaser is not insolvent, or a party to a bankruptcy proceeding. So, even though the seller's representations and warranties in an agreement far outnumber the purchaser's, it is important to the seller that the warranties listed above be included. The failure of any one of those warranties could prevent the transaction from going forward or from being successful