



## Letter of Intent – Binding or Non-Binding

The primary reason for a Letter of Intent (sometimes referred to as a “Letter or Understanding” or “Memorandum of Understanding” or “Agreement in Principal”), is to get the “ball rolling” and provides some measure of commitment between the parties. It is often used to state in writing the price, terms and understandings of the transaction.

A letter of intent is usually intended to be non-binding. However, a letter of intent may be determined to be binding under certain circumstances.

- If a letter of intent is non-binding, it must clearly state that it is “non-binding”.
- The letter of intent should be as brief as possible. It's better to include just enough details to cover the basics.
- Verbiage such as, “agree to bargain”, “make every reasonable effort”, “proceed in good faith” may be determined to create a binding agreement.
- If the letter of intent includes a Confidentiality Clause/Agreement, it may be ruled as binding. A Confidentiality Agreement, separate from the Letter of Intent, should be executed between the parties.

Careful drafting is critical to prevent a non-binding letter of intent from becoming binding. Often, as business brokers, we may be called upon to provide a letter of intent for our buyers and sellers. And, many business brokers prefer letters of intent, particularly in states that require all agreements, for third parties, to be drafted by an attorney. These business brokers may erroneously think that they can draft a letter of intent, since its “non-binding” and not be in violation of “practicing law without a license”. However, it might be a good idea to speak with an attorney about the practice of business brokers drafting letters of intent. “An ounce of prevention is worth a pound of cure”.

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