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## Buy/Sell basics: Ensuring your asset purchase agreement limits your liability exposure

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This article, the second in a series, discusses the basics of asset purchase agreements. ([Read part 1 here.](#)) An asset transfer is the most common means of transferring all of a privately owned business. Buyers prefer to buy assets because it limits exposure to the seller's liabilities. But the limited exposure is not automatic. It is the result of a carefully-crafted agreement and properly-handled transaction from start to finish.

A buyer cannot buy part of a dealership by buying some of the assets – they will end up with only the assets. If a buyer can't get part of the business by buying part of the assets, how can it get all of the business by buying substantially all of the assets?

First, a new entity is formed. The new entity will usually be an S corporation or a limited liability company – but it will depend on the circumstances of the buyer. It could be a C corporation or a partnership. The buyer buys the assets of the seller in place and in use, including the fixed assets, inventory, intellectual property, phone numbers, customer lists and records.

The Seller terminates employment of all its employees at the closing so the buyer can then hire some or all of them. The buyer can pick and choose the liabilities they want to assume. However, if the agreement is not drafted properly or if the transaction is handled incorrectly the buyer can become liable for all of the seller's obligations as a successor in interest.

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