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# LAWYER SECRETS

for  
**BUYING A BUSINESS IN  
QUEENSLAND**

written by  
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## Secret No. 1

### Attach the Financials to the Contract

*If you are using the standard REIQ contract for business sales, it provides that, if you attach the financials to the contract, then the Seller warrants they are correct.*

*If it turns out that the financials are falsified then you may be able to sue the seller for breach of warranty (which is like a breach of contract or breach of promise).*

*This is a lot easier than trying to sue the seller for misleading and deceptive conduct.*

*The act of just attaching them to the contract helps to keep the seller honest.*

## Secret No. 2

### Directors and Shareholders to sign Restraint of Trade

*The contract of sale should include a restraint of trade stopping the seller from competing with you after you buy their business.*

*But! This restraint of trade will **not** stop the directors, shareholders or other key persons from competing with you!*

*You need to have a clause in the contract stating that these other parties will sign a restraint of trade on the terms in the contract also or you may have no protection.*



#### QUICK TIP!

*If you aren't using the REIQ contract of sale you can still incorporate many of these secrets as clauses into your contract.*



#### DID YOU KNOW?

Not all restraints of trade are enforceable. Most lawyers will draft a “cascading clause” which includes a number of alternatives of time and area of restraint if the courts hold that the restraint is not enforceable because it is unreasonable. These clauses need to be drafted properly to work.

## Secret No. 3

### **Make the Contract Conditional Upon Satisfactory Due Diligence**

*After you sign the contract your lawyer will undertake a number of searches to make sure the seller actually owns the business, the lease is registered, the assets of the business aren't subject to finance and other things.*

*You will also receive more financial information about the business for your accountant to review to help make sure the business is viable and will suit your financial situation.*

*It is really important that you insert a clause to state that you have a due diligence period and, if you are not happy with your enquiries, that you can terminate the contract and receive a refund of your deposit.*

*Without this clause you may still be required to purchase the business even if you no longer want to!*



#### QUICK TIP!

*Contracts signed using docusign or other electronic signatures may not be binding on companies!*



#### DID YOU KNOW?

REIQ contracts of sale are conditional on either you obtaining an assignment of the lease for the premises or a new lease – it depends how you complete the contract terms.

## Secret No. 4

### **The Deposit**

- *Don't pay the deposit directly to the seller, it should be kept in either the business broker's trust account or a solicitor's trust account, you may never see that money again if you pay it directly to the seller!*
- *Make sure the deposit is fully refundable. If the contract is conditional upon a number of conditions being met e.g. you obtaining finance then you want the deposit back if your finance is not approved;*
- *try to make the deposit as small as possible, most people have in their minds that it must be 10% but it can be any amount and the smaller the better for the Buyer;*
- *If you default on the contract then, amongst other things, the Seller can keep your deposit.*

## Secret No. 5

### Databases

Databases can be a very important business asset that you are purchasing.

For that reason you need to make sure that database is protected and has not been shared or sold to anyone else.

It is very important that you insert special conditions that, amongst other things:

1. provide undertakings that the database has not been sold or
2. shared with any other person;
3. state that you are provided with all copies of the database;
4. provide the seller and its directors etc will not make contact with anyone on the database after settlement (unless you let them);
5. warrant that the database is up to date and has not been falsified.



### CONTACT US

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**Disclaimer:** This is not legal advice. You should seek your own legal advice for your circumstances. Do not rely on this ebook without consulting a solicitor.

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## Secret No. 6

### Protect yourself

Think about all of the things that are important to you in buying this business.

Are you worried about the staff? insert a clause that allows you to meet the staff prior to the settlement date. That means you will be able to make decisions about who to keep and who to let go.

Do you want a trial period to make sure you are meant for this kind of business? make sure the contract allows you a trial period, try the business on for size before you commit.

Is it a franchised business? make the contract conditional upon all of the requirements of the franchisor being met and you being satisfied with the franchise agreement and your due diligence of the franchisor.