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## Here's How to Avoid Surprises

By Don Ray

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PM

As a financier of dealership purchases, I look at several dealership buy/sell agreements, often called APAs (Asset Purchase Agreements).

After seeing so many of them prepared by various attorneys, it's apparent not all APAs are created equal.

### ADVERTISEMENT

Some attorneys are just more skilled in preparing dealership APAs than others.

I was reminded of this as one of 600 automotive CPAs who attended the 2007 AICPA National Auto Dealership Conference.

As a steering committee member, I can offer speaker suggestions. I suggested that the four hour-long pre-conference session be geared toward buying a dealership.

The committee agreed on the topic of "Mergers and Acquisitions — Due Diligence and Valuation" and invited Robert Bass of Myers & Fuller; Robert Davis of Dixon Hughes; and Sheldon Sandler of Belair Partners to present on this topic.

It was great. Bass and Davis included the sub topic of "Things to Look for in a Good Asset Purchase Agreement." Among them:

#### New-Vehicle Inventory Items

- Determine how internal RO packing is handled for items such as sealants/undercoating or etch/nitrogen to pack the new vehicles.
- Determine the exact allocation method of items such as interest assistance and advertising money.
- Define how dealer transfers-in will be purchased vs. other vehicles.

- Define how in-transit units will be purchased.
- If the seller has multiple stores for the franchises being sold, buyers need to protect themselves from the seller cleaning up their other stores' inventories to the detriment of the store being sold.
- Control the bargain sales of specially allocated units between the time the APA is signed.
- Define demonstrators, company vehicles, prior year models and the specific pricing methodology of each of these vehicles.
- How will the following be handled?
  - Unwinds
  - Disclosable damage
  - Mileage
  - Unperformed PDI

#### Used Vehicle Inventory Items

- Does buyer get to choose which used vehicles are purchased or must buyer take all?
- Define the valuation method to be used.
- How long does the seller have to remove inventory that is not sold?

#### Parts Inventory Items

- Define "parts" and how they are valued.
- How are miscellaneous and jobber parts defined and valued?
- Which parts receive discounts?
- Can all valuation formulas be numerically determined
- Are the manufacturer program names used in the APA to avoid confusion?
- Are discounts applied to all parts eligible for the discount, regardless of whether the seller received the discount or not?
- The physical inventory for parts

- Who is supervising?
- One count or two count?
- Who is paying for it?
- When will it occur?

### Work-in-Process Items

- Pricing should be defined either at actual cost or internal rates.
- Criteria for purchasing should be included
  - Vehicle needs to be present
  - RO needs to be present with customer signature
  - No customer dispute needs to exist
  - Age limit needs to be set

### Fixed-Asset Items

- Generally the average price to change hands is 50 to 75 cents of original cost on the seller's books.
- Will leaseholds transfer?
- Does there need to be a fixed asset valuation?
- A listing of fixed assets needs to be attached to the APA.
- How are missing special tools required to be present during a warranty audit handled?

Those are a lot of things to consider. Next month we'll cover some more.

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