WHAT DOES A TRANSACTIONAL LAWYER DO?

- How can you best prepare for your job as a summer associate?
- What resources should you be familiar with?
- Where can you go for help?
CCH Intelliconnect
And in print KF 1477 L44 2007

Bloomberg Law
And in print KF810 Z9 F67 2008
Transactional Forms Manuals

Jurisdiction specific
California legal forms

Subject specific
Assignment

Find a form for a covenant not to compete to be included in the contract for the sale of a business. Would this form comply with California law? Why or why not?
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SALE OF BUSINESS (See also LIQUIDATION)—Cont.

Noncompetition agreements—Cont.

Partnership interests and assets, sale to corporation . . .  15.5201[bb]

Preliminary determinations checklist . . .  17.110

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Partnership interests and assets, sale to corporation

Allocation of purchase price to assets

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covenants not to compete sale of business

Not a good search. Too broad. Use Advanced Search

Overview (15)

Cases | View all 4,914

H & R Block Tax Services, Inc. v. Circle A Enterprises, Inc.
Supreme Court of Nebraska. | March 04, 2005 | 269 Neb. 411 | 693 N.W.2d 548

B U S I N E S S  O R G A N I Z A T I O N S - Franchises and Dealerships. Franchise agreement was analogous to sale of business, in determining enforceability of covenant not to compete.

...The question presented is whether the covenant not to compete in the franchise agreement between Kelsey and H & R Block is more similar to a covenant not to compete concerning the sale of a business or one entered into in the context of an employer-employee relationship...

...Holding: On its own motion to remove matter from the docket of the Court of Appeals, the Supreme Court, Stephan, J., held that: 7(1) as the franchise agreement was analogous to a sale of a business, rather than to an employment contract, for purposes of determining the enforceability of covenant not to compete, 8(2) one-year duration of covenant not to compete and geographic limitation of 45 miles from city where franchise was located...

Fogle v. Shah
Court of Appeals of Indiana, Fourth District. | June 19, 1989 | 539 N.E.2d 500 | 1989 WL 67436

Sellers of a business sued buyer, alleging that buyer materially breached the stock purchase and pledge agreements. Buyer filed a counterclaim to enforce covenant not to compete ancillary to the sale of the business. The Montgomery Circuit Court, Thomas K. Milligan, J., granted a...
Search in Witkin

Search for: (competit/s clause or covenant or agreement) and (sale/s business)

Summary of California Law, Tenth Edition | 1 WITSUM Ch. I, § 583

(1) Statutory Provision. Any person who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within a specified geographic area in which the business so sold has been carried on, so long as the buyer, or any person deriving title to the goodwill from the buyer, carries on a like business...

...a. Contracts Not To Compete. 4. Exceptions. aa. [§ 583] Sale of Goodwill of Business. (1) Statutory Provision. Any person who sells the goodwill of...

...1950) 95 C.A.2d 644, 645, 213 P.2d 500 [agreement violated by seller's lease to person with knowledge that latter would compete]; Harrison v. Cook (1963) 213 C.A.2d 527, 528, 29...

2. b. [§ 192] Consideration of Covenant Not To Compete.

Summary of California Law, Tenth Edition | 11 WITSUM Ch. XVI, § 192

(1) Speculation About Value of Noncompetition Covenant Is Improper. In re Marriage of Czapor (1991) 232 C.A.3d 1308, 285 C.R. 479, infra, §201, presented a question of first impression in California: whether the hypothetical value of a covenant not to compete, given by a managing spouse to effectuate the sale of a community business, may be...

...B. Valuation. 1. In General. b. [§ 192] Consideration of Covenant Not To Compete. (1) Speculation About Value of Noncompetition Covenant Is Improper. In...

...first impression in California: whether the hypothetical value of a covenant not to compete, given by a managing spouse to effectuate the sale of a community business, may be considered in valuing the community property interest in the business. The trial judge reduced the value of the parties’ community...

3. b. [§ 661] Illustrations.

Summary of California Law, Tenth Edition | 12 WITSUM Ch. XVII, § 661

(1) Sale of Similar Goods. In Hildebrand v. Stonecrest Corp. (1959) 174 C.A.2d 158, 344 P.2d 378, defendant lessor leased premises in its shopping center to plaintiff lessee for a pharmacy, and covenanted not to lease any other space in the area for a store selling drugs, medicines, or cosmetics. Defendant market, operating under a lease from...

...LIABILITIES OF LANDLORDS AND TENANTS G. Competing Use. 1. Express Covenant Against Competition. b. [§ 661] Illustrations. (1) Sale of Similar Goods. In...
California Secondary Sources

Texts & Treatises
- All California Texts & Treatises
  - California Civil Practice
  - California Jurisprudence
  - Miller & Starr California Real Estate
  - Rutter Group Practice Guides & Other Publications
  - Witkin's California Materials

Law Reviews & Journals
- All California Law Reviews & Journals
  - California Law Review
  - Stanford Law Review
  - UCLA Law Review

Forms
- California Real Estate Forms (Miller & Starr)
- California Transactions Forms
- Rutter Group-California Practice Guide: Civil Procedure Before Trial Forms
- Westlaw eforms: California State & Federal Courts & Agencies
- West's California Code Forms with Commentaries

Jury Instructions
- California Civil Jury Instructions (BAJI)
- California Jury Instructions-Criminal
- Judicial Council of California Civil Jury Instructions
- Judicial Council of California Criminal Jury Instructions
California Transactions Forms: Business Transactions
II. Applicable Statutory Law
A. California Bulk Sales Law
B. Fraudulent Transfers
C. Successor Liability Statutes
D. Transfers of Alcoholic Beverage Licenses

III. Tax Aspects
A. Income Tax
B. Sales Tax
C. Real Property Tax
D. Documentary Transfer Tax

IV. Checklists
§ 3:59. Transaction management checklist
§ 3:60. Buyer’s checklist
§ 3:60.10. Buyer’s checklist for compliance with California Bulk Sales Law
§ 3:61. Due diligence checklist
§ 3:62. Seller’s checklist
§ 3:62.10. Checklist for drafting an agreement for sale of business
§ 3:62.20. Closing checklist

V. Forms
A. Bulk Sales Forms
B. Other Notices
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D. Documents Effecting Transfer
E. Other Forms

Bibliography
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§ 3:59. Transaction management checklist

California Transactions Forms Business Transactions
Database updated March 2014

Alan S. Guterman

Chapter 3. Buying and Selling a Business

Terrence P. Cullen

IV. Checklists

Summary

§ 3:59. Transaction management checklist

I. Preliminary Stage

☐ Ascertain the parties’ motivations for making the sale and purchase: [description]
☐ Review the parties’ valuation of the business to be sold or purchased and examine whether additional consideration needs to be given to this matter.
☐ Review the terms of any proposed broker or finder agreement.
☐ Consider whether a confidentiality agreement is required to protect the parties and their trade secrets during preliminary negotiations.
☐ Consider the appropriate form for the business sale-asset sale, ownership interest sale, merger, etc.
☐ Consider the tax aspects of the transaction.
☐ Consider alternative means of payment of the purchase price, such as allocation of price to covenants not to compete or consulting agreements.
☐ Consider the applicability of federal and state securities laws to the transaction and determine what will be required for compliance.
☐ Set up files for proposed the transaction.

II. Due Diligence Investigation of Seller’s Business
§ 3.92. Non-competition agreement

California Transactions Forms Business Transactions

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Alan S. Guterman
Chapter 3. Buying and Selling a Business

Terrence P. Cullen

V. Forms
E. Other Forms

Summary

§ 3.92. Non-competition agreement

THIS NON-COMPETITION AGREEMENT (the "Agreement") is made as of the Effective Date (as defined below) by and between [name of parent of acquiring entity], a [name of state] corporation ("Parent"), and the undersigned stockholder or optionholder ("Stakeholder") in [name of seller], a California corporation ("Seller").

WHEREAS, concurrently with the execution of this Agreement, [name of acquiring entity], a [name of state] corporation and a wholly owned subsidiary of Parent ("Buyer") and Seller are entering into an Asset Purchase Agreement dated as of [date of asset purchase agreement] (the "Purchase Agreement") pursuant to which Buyer has agreed to purchase certain of the assets (the "Assets") of Seller (the "Purchase"). The Closing Date (as defined in the Purchase Agreement) shall be the "Effective Date" of this Agreement.

WHEREAS, in connection with the Purchase, Seller shall receive significant consideration in exchange for the sale of Assets pursuant to the terms of the Purchase Agreement, and it is anticipated that Stakeholder will become an employee of Parent as of the Effective Date.

WHEREAS, as a condition to the Purchase, and to preserve the value of the Assets being acquired by Buyer after the Purchase, the
50 State Surveys on Westlaw

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Non-Compete Agreements

50 STATE STATUTORY SURVEYS: EMPLOYMENT: PRIVATE EMPLOYMENT

Thomson Reuters October 2013

Some employment contracts include provisions or covenants which purport to restrict the right of the employee, after leaving employment, to compete with the employer. A contract may provide, for example, that the employee shall not work for, or engage in, a business in competition with the employer for a period of two years after the employment ceases.

Non-compete provisions run counter to the general preference of the law for unrestricted competition, and therefore they are often the subject of special attention from courts and legislatures. This survey lists statutes addressing the legality and enforceability of covenants-not-to-compete and also includes statutes declaring a contract void if it poses an unreasonable restraint on trade.


The attached table organizes the content into the following subtopics:
- Non-Compete Agreements Allowed
- Requirements for Valid Non-Compete Agreement
- Enforcement of Non-Compete Agreement
- Specific Time and Geographical Limitations for Non-Compete Agreement

Alabama
AL ST RPC Rule 5.6 Restrictions on Right to Practice
Non-Compete Agreements
50 STATE STATUTORY SURVEYS (Approx. 5 pages)

California
CA BUS & PROF § 16600 Void contracts
CA BUS & PROF § 16601 Sale of goodwill of business or ownership interest in or operating assets of business entity or division or subsidiary thereof; agreement not to compete
CA BUS & PROF § 16602 Partners; dissolution or dissociation; agreement not to compete
CA BUS & PROF § 16602.3 Non-compete agreement upon dissolution or sale of limited liability company
CA PUB CONT § 10411 Conflict of interest; retired, dismissed, separated or former state employees; time prohibition
CA PUB CONT § 10517 Retired or former employees of University of California; prohibited actions
CA PUB CONT § 10832 Retired, dismissed, separated or formerly employed persons of the California State University; prohibitions; exemption

Colorado
CO ST § 8-2-113 Unlawful to intimidate worker—agreement not to compete

Connecticut
CT ST § 31-50a Non-compete agreements: Security Guards
CT ST § 31-50b Non-compete agreements: Broadcast employees

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Drafting Guides & Overviews

Our team of attorney analysts and editors have worked at many of the top U.S. law firms. They have created easy to read overviews of key drafting concepts, agreements and clauses.

View all of our transactional law resources, including example agreements and legal treatises, on the Transactional Law Resources page.

**DRAFTING GUIDES**

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**TRANSACTION CHECKLISTS & TIMELINES**

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- Merger & Amalgamation Agreements
- Mortgage Loan Purchase Agreements
- Multiple Class Plans
- Mutual Fund Plans & Agreements of Distribution
- Non-Competition Agreements
- Non-Solicitation Agreements
- Notes & Debentures
- Notices of Guaranteed Delivery
- Offers to Exchange

Non-Competition Agreements

Governing Law

California

Keywords

sale w/3 business
1. Employment and Non Competition Agreement (04/02/2001)

"Employer under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Employer. 11. TERMINATION UPON SALE OF BUSINESS. Notwithstanding anything to the contrary the Employer may terminate this Agreement upon twenty one (21) says notice to the Employee"

Party: Interactive Pictures Corporation; Steven Hicks
Governing Law: California
Document Types: Employment Agreements; Non-Competition Agreements
Document Subtypes: Executive Employment Agreements; Non-Competition Agreements (Employment)
Transaction Types: Employment Arrangements & Benefits


"key encrypted with a private key a privately held mathematical key corresponding to the public key to identify the owner of the private key and verify the integrity of the electronic data. 14 CERTIFICATE BUSINESS means the sale of Certificates by a Certification Authority acting in its capacity as a Certification"

Party: Digital Certificates International Inc; RSA Data Security Inc
Governing Law: California
Document Types: Non-Competition Agreements; Non-Solicitation Agreements
Document Subtypes: Non-Solicitation Agreements (Employment); Non-Competition Agreements (Employment)
Transaction Types: Employment Arrangements & Benefits
Bloomberg BNA
Covenants Not to Compete:
A State by State Survey

Description
This respected and authoritative three-volume treatise delivers the information practitioners need to analyze, draft, and confidently litigate covenants not to compete and other restrictive covenants in the employment, partnership, franchise, license, and sale-of-business contexts. Courts all across the United States have resolved a number of questions of first impression that have a substantial and direct bearing on the enforceability of covenants not to compete in the nation today. Covenants Not to Compete: A State-by-State Survey discusses these decisions and identifies issues with significant splits of authority across the states, including whether the mere leasing of property to a competitor violates the terms of a noncompete clause where the clause fails to include language specifically prohibiting such action. Additional Topics at the end of relevant chapters address hundreds of make-or-break issues, including: Context characterization: service agreement versus employment context; Effect of dissolution of employer Grace periods to cure breach not presumed; Effect of entering into covenant in individual capacity. This treatise also addresses questions of first impression concerning new state statutes that limit the enforceability of covenants not to compete executed by employees in the broadcasting industries, and contains expanded analysis of covenant-protectible interests in both actual and potential customer relationships. Other topics discussed in detail include effect of abandonment of a particular line of business, as well as the effect of abandonment of customers; judicial modifiability, restrictions involving physicians and other health care professionals; and much more.

Date Format
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California

1. Is There A State Statute Of General Application That Governs The Enforceability Of Covenants Not To Compete?

Yes. California Business and Professions Code Sections 16600, 16601, 16602, and 16602.5 govern the enforceability of covenants not to compete. The latter three sections were amended in 2002 to permit buyers and sellers of any business entity to enter into valid noncompetition agreements. See 1 Cal. Sess. Law Serv. 658, ch. 179, sec. 1–3 (2002) (AB 601) (amending the Business and Professions Code). Prior law did not extend to general partnerships, limited partnerships, limited liability partnerships, or limited liability companies. SENATE RULES COMMITTEE FLOOR ANALYSIS OF AB 601, at 2 (June 20, 2002) available at <http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_0601-0650/ab_601_cfa_20020620_162444_sen_floor.html>. As amended, the statute uses the term “business entity” to refer to the business or interest being sold, and defines the term to expressly include the aforementioned partnerships and LLCs. Id. at 2–3. The legislative goal was to place all California business entities on par by allowing buyers and sellers of any business entity to enter into valid noncompetition agreements. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 601, at 1 (June 27, 2002) available at <http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_0601-0650/ab_601_cfa_20020627_183212_asm_floor.html>. The sponsor of the legislation also noted that

while current Section 16601 allows noncompetition covenants to be enforced in equity transactions (stock sales) and in asset transactions (sale of substantially all of the assets and related goodwill), current Sections 16602 (dealing with general partnerships) and 16602.5 (dealing with limited liability companies) allow noncompetition covenants to be enforced only when there is an equity transaction (the dissolution of the partnership, a partner’s dissociation from the partnership, or a partner’s or member’s sale of their equity interest in the business

entity). Further, those statutes are silent as to noncompetition agreements involving the sale of assets of a limited partnership or a limited liability partnership.
Other Commercial Databases

- CCH IntelliConnect
- Bloomberg BNA
- RIA Checkpoint
- CEB
CCH IntelligConnect Databases by Topic:

- Advertising
- Antitrust & Trade Regulation
- Banking
- Bankruptcy
- Commodities and Derivatives
- Computer & Internet
- Consumer Financial Services
- Corporate Governance
- Corporations & Business Organizations
- Energy and Natural Resources
- Exchanges & SRO's
- Federal Securities Regulation
- Franchising and Distribution
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  - Structuring Venture Capital, Private Equity and Entrepreneurial Transactions - Levin
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CCH IntelliConnect:
Mergers, Acquisitions, and Buyouts
by Ginsburg & Levin
Court Approves AA-US Airways Merger; Defers Ruling on CEO’s Severance

American Airlines clears a significant hurdle in its bid to become the world’s largest airline as the U.S. Bankruptcy Court for the Southern District of New York approves the proposed $11 billion merger of the Chapter 11 debtor with US Airways. However, the court does not issue an order relating to the proposed $19.8 million severance payment for American’s chief executive officer. More >

Sixth Circuit Affirms Stockbroker’s Liability in Reverse Merger

The U.S. Court of Appeals for the Sixth Circuit concludes that a lower court properly granted summary judgment to the Securities and Exchange Commission on its claims that stockbroker Aaron Tsai committed registration and disclosure violations in connection with a “reverse merger” involving a shell company. More >

From the Editors

• NEW ‘MY FOLDERS’ TOOL: Access at the top of this home page. To learn more, take a quick tour.
• BNA’s Financial Reform Center is now available
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Getting Started

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Hofstra Law School