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Asset Purchase Agreement vs Bill of Sale

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An asset purchase agreement is very much required in the field of corporate law and is mainly used at the time of mergers and acquisitions of companies when they transfer assets and stocks, On the other hand, a Bill of sale is required by common people in day-to-day life. In this article, I had discussed the important clauses that must be there in a Bill of Sale and in Asset Purchase Agreements and also covered their requirements. The difference between both the Agreements is also covered under this article.

Keywords: *bill of sale, property, goods.*

INTRODUCTION

An Asset purchase agreement (APA) is an agreement that helps a buyer and a seller to decide and finalize the terms and conditions that are required to purchase or sell a company's assets. In this agreement, it is not mandatory that the buyer have to purchase all the assets of the company, while the buyer through the APA agreement can exclude the assets that are not required. A buyer in an APA will normally prefer to buy the assets or acquire stocks of a business, while the seller will prefer to sell the shares. This is because an asset purchase agreement enables a buyer to identify and pick the assets which will be useful to them, with

that they can also choose those liabilities they wish to take over.¹ In an asset purchase agreement, the assets that are transferred include: In Asset Purchase agreements Plant and machinery are transferred. These are the type of specific assets that an acquiring company buys, in this, they choose a type of plant and machinery that will be beneficial for them in the future and are required for production. APA also includes goodwill it is an intangible asset that can be seen on the balance sheet when a merger and acquisition are completed between two companies. When a company buys another company's assets and the money that is paid beyond the net value of the target's identifiable assets. It is the premium that is paid when a business is acquired. It also includes stock acquisition, instead of purchasing specific assets and liabilities of a company the acquirer company purchases the ownership stake in the entire business. Sometimes through APA premises are also been acquired. In this, the acquirer company buys the premises of another company, which means the land and buildings where it conducts its business. Through this company makes investments for the growth of the property over time.

ADVANTAGES OF APA

- The buyer can choose the particular assets that he wants to purchase and the liabilities which he wishes to take.
- The seller also gets a choice to decide the fair market value of the assets.
- The acquirer and the seller mutually can decide, specify and organize the process of the transaction.
- The ownership and licenses of the specific assets get transferred, this protects both parties from legal complications.

¹ 'Asset Purchase Agreement' (*Divestopedia*, 28 November 2013)

<<https://www.divestopedia.com/definition/893/asset-purchase-agreement-apa>> accessed 05 February 2022

- On a fair market value assets can be sold and both parties can avoid unnecessary expenses and focus on the serious assets to buy or to sell. This APA also helps to secure the legal rights of both parties.²

DISADVANTAGES OF ASSET PURCHASE AGREEMENT

As the asset purchase agreement has benefits they also have some drawbacks:

- The company acquiring the assets may have to go through the process of restructuring the assets and liability process, which can become expensive.
- The Contracts need to be reviewed and renewed with the employers and employment agreements need to be renegotiated with the key employees.
- The buyer may not be able to get the permits and licenses until they are reapplied by the acquirer. Another issue may occur that the assets may not be retitled.
- If an asset is sold below the price of MV Market value, then it may result in the insufficiency of capital for the buyer.

ESSENTIAL OF AN ASSET PURCHASE AGREEMENT

Transfer of assets: Specific assets and liabilities are to be mentioned, with other terms and conditions that the seller agrees to sell to the buyer. The license and Permission are also to be transferred.

Purchase Price: A detailed structure regarding the payment shall be constructed. It should mention when and how payment of different assets is to be fulfilled. The payable amount shall be predetermined by the parties and also the mode of payment.

² 'Asset Purchase Agreement' (*Contracts Counsel*) <<https://www.contractsounsel.com/t/us/asset-purchase-agreement>> accessed 05 February 2022

Representation and Warranties: These are statements that the buyer and the seller confirm to each other and believe to be true until the date of closing. Breach of these triggers the right to seek compensation.

Conduct before the closing of the agreement: During the period from the date of agreement to the date of closing, the seller will carry forward his business in the same way as earlier. He shall pay all his debt and taxes and perform his obligations.

Closing: During the closing of the agreement all notices, documents, and certificates of the assets and other instruments that are going to be delivered shall be given to the purchaser. Though the transfer of licenses and permits of some assets may take place on and after post-closing.

Post-closing obligations: After the agreement gets closed, the seller shall agree that he or his affiliates, associates, or directors will not directly or indirectly engage in any of the following activities:

- The business of the purchaser
- The use or disclosure of client or intellectual property database and any other confidential information of the property or asset that the seller has sold to the purchaser.

Indemnification: Seller agrees to indemnify the purchaser on instances such as losses, penalties, suits, etc. The Producers and conditions for the indemnification shall be mutually discussed between both parties in good faith and written down in the agreement.

- The indemnified party must notify the indemnifying party about the amount and details of the good or assets.
- The indemnified party must notify the indemnifying party about any third-party claim.

Termination: There are some grounds on which the agreement may also get terminated before closing.

- With mutual consent of the purchaser and seller.
- By the purchaser by giving notice to the seller if there has been a breach of representation and warranties and vice versa.
- By purchaser, in the event, the seller becomes insolvent or bankrupt.³

An asset purchase agreement ensures that the party gets the highest value for the sale of the assets or purchase of the assets. This agreement between the seller and the purchaser for sale and purchase of assets is done before the selling and purchasing of the assets and by reviewing the terms and conditions in the agreement the parties can derive maximum benefits and can also change it with mutual consent before execution of the agreement.

BILL OF SALE

A bill of sale is a document that has all the details of a sale of goods in writing. This document is made when the actual owner transfers possession of the goods to the new owner. This bill is legal evidence to show that the purchaser had paid the consideration and the seller has transferred his rights attached to the goods. This bill is used when the title of a property or asset has been transferred from one party to another party. The Bill of sale has become common law since the middle ages. The use of this law was commonly done in the shipping industry and by the common people when they started to sell personal goods and this bill of sale became a popular form of consumer credit.⁴

IMPORTANCE OF BILL OF SALE

A Bill of Sale is a legal document that keeps the record and shows the details of a transaction. It contains the record and information regarding sales of goods or property from one party to another. It acts as an agreement between seller and buyer and is a complete sell and purchase transaction evidence. It is valid in any court of law and is legally enforceable by both parties if any disputes occur. The bill of sale is usually given by the seller which shows that the seller

³ 'The 6 most important element of Asset Purchase Agreement' (*Trembly Law Firm*) <<https://tremblylaw.com/6-important-elements-asset-purchase-agreement/>> accessed 06 February 2022

⁴ Adam Hayes, 'Bill of Sale' (*Investopedia*, 03 July 2019) <<https://www.investopedia.com/terms/b/bill-of-sale.asp>> accessed 06 February 2022

had sold the goods and the purchaser had given consideration for that sale. It secures the transaction of property or any selling items and prevents misunderstandings between the seller and the buyer. A Bill of Sale may be simple or complex, depending on the type of transaction.

KINDS OF BILL OF SALE

There are two kinds of Bill of sale 'Absolute Bill' & the ' Conditional Bill'⁵ Absolute Bill is to represents a total transfer of any personal assets or goods which come under the umbrella of contract and sales of goods law. Absolute bill refers to an absolute transfer of property when the property is transferred from the seller to the buyer without any condition restriction part payment for payment due. An absolute bill of sale has predetermined details and form of payment like one party is ready to give \$10,000 in cash and \$30,000 in check. An example of an absolute bill is when someone buys an electronic gadget from an electronic showroom and the shopkeeper provides you with a bill. That proves that you have considered that electronic gadget. On the other hand. A conditional bill of sale does represent any transfer or assignment of personal assets to a person by way of security/surety/condition, conditions for payment of money. The conditional bill of sale creates security in favor of the guarantee of the bill whereby the guarantee is given the right of a seizure by giving the right to a security interest. In this, the transfer of ownership depends on certain conditions, for example, if a buyer purchases something from a seller on a condition that, the buyer will partly pay the money in 12 months, then the buyer will have possession of the item till he makes the payment according to the condition, but if he fails to pay then the seller will take back the possession of the item. The buyer will get full ownership when he fulfills the condition and pays the full amount of that item to the seller.

INFORMATION THAT A BILL OF SALE INCLUDES

- Date of purchase;

⁵ Hitesh Bhasin, 'Kinds of Bill of Sale' (*Marketing91*, 25 October 2021) <<https://www.marketing91.com/bill-of-sale/>> accessed 07 February 2022

- Name and address of the seller and the buyer;
- Amount paid for the transfer of the ownership;
- Description of the asset being transferred;
- Guarantee that item is free from all claims and offsets;
- Representation or warranties;
- Signature of the seller, of the buyer, and a notary public.

DIFFERENCE BETWEEN A ASSET PURCHASE AGREEMENT AND A BILL OF SALE

An asset purchase agreement is between the buyer and seller about the assets that the seller will sell to the buyer and the buyer specifies the assets that he will buy and the liabilities that he will take. An asset purchase agreement is executed before the sale to get confirmation from both parties. Bill of sale is a legal document and evidence that shows a transaction is completed between the buyer and the seller and there is a transfer of ownership of the property or asset that the buyer brought from the seller. The seller confirms that he has no right over the property, this document is given by the seller after the sale of the property or asset is completed and there is no due from the buyer. The asset purchase agreement contains many terms and conditions and it's complicated. The asset purchase agreement includes the name of the parties in full detail, details of the specific assets that the buyer wants to buy from the seller, closing date, post-closing obligations, termination clauses, indemnification clauses, etc. On the other hand, the bill of sale is not so complex. It is a simple receipt or a document that the seller provides the buyer after the sale is completed. It includes the name of the parties, description of the assets, a declaration from the seller that he has no right over the property that is being sold and the buyer had paid the full consideration, signature of both the parties. In an Asset purchase agreement, the buyer can make part payments for the asset that he bought. But the Bill of sale document will only be released by the seller when the buyer completes the full payment. The asset purchase agreements can be terminated by any of the parties. The bill of sale cannot be terminated as it is itself proof of execution of a sale. The asset purchase agreement is a contract that contemplates the future sale of goods between the buyer and the seller. The bill of sale is used during or after the exchange of goods to transfer

ownership of the goods from the seller to the buyer. It focuses more on identifying the exact goods the buyer is receiving and promising that the seller has the title to the goods and the rights to transfer the title to the buyer. Asset purchase agreements are used when big companies acquire assets from other companies. On the other hand, a bill of sale is given when there is an exchange of small personal items, goods, or things.

CONCLUSION

Asset purchase agreement and bill of sale are moreover the same but then also there is a lot of difference. Bill of sale is only a simple document that shows that a transaction has been done between buyer and seller of specific goods and like APA it does not contain a detailed description of the assets or property that are transferred and also liabilities are not transferred through bill of sale. Asset purchase agreements are more complex than a Bill of sale and it keeps the parties more secure in the sense of legal terms. In the modern world, the Bill of Sale is used by regular buyers and sellers and used mostly in the transfer of goods, on the other hand, to transfer any assets or Property Company or firm uses Asset purchase agreements. So we can say that a Bill of Sale is a simple transfer of goods documents while Asset purchase agreements are tight, complex, and secure written agreements to transfer assets, and both must be well-drafted for the protection of the parties.