Letter of Intent Checklist

	Proposal	Points for discussion
Price and payment structure	The buyer will likely offer less than the asking price, which can become a point of later negotiation. The buyer also will propose how much will be paid in cash at closing and what kind of financing is necessary.	Discuss the price and payment proposal with your accountant and attorney before discussing with the buyer because how the payment is structured will have tax implications.
Purchase structure	The vast majority of small business sales are “asset sales” but a few are “entity sales.” The buyer will propose one or the other, likely based on the structure stated in your sale listing.	Discuss with your accountant and attorney the ramifications of either structure for your sale and tax situation.
Price allocation	The buyer may or may not describe a proposed approach for allocating the price to IRS-defined categories, but be prepared for this important topic, as it significantly affects how sale proceeds are taxed. The IRS requires the seller and the buyer to agree upon the allocation.	Obtain your accountant’s advice before discussing or accepting proposals on how the sale price can be allocated. An Asset Acquisition Statement is required on closing day. You’ll want firm agreement on this point in advance to avoid a closing delay.
Purchase exclusions or additions	Proposed exclusions or additions to your sale offering can significantly affect sale proceeds and how they’re taxed. They can also affect the liabilities retained by the seller after the sale closes.	Obtain advice from your attorney or accountant before agreeing to any proposed variances.
Due diligence	Most buyers who are purchasing only the assets of a small business can complete due diligence in less than a month. Businesses with real property or extensive physical assets, or those selling as entity sales that transfer business assets and liabilities, often take longer. The buyer’s letter of intent may define a proposed due diligence timeframe.	Be sure the letter of intent states a reasonable due diligence period and that it stipulates that no information obtained during this investigation will be shared beyond the buyer’s purchase advisors without your express permission.
Warranties and representations	Whether in the proposal or not, at closing you’ll need to guarantee that facts you’ve presented about your business condition are accurate.	Be sure your attorney reviews the *warranties and representations* clause, however, because you’ll want to warrant accuracy to the best of your knowledge, but you don’t want to warrant completeness, since there may be conditions of which you honestly aren’t aware.

Seller's future involvement	The buyer's proposal may stipulate your after sale transition-period or ongoing involvement with the business. It may also require you to sign a *covenant not to compete* with the business for a period of time after the sale.	Work with your attorney or broker to review the timeframe for future involvement, as well as the timeframe constraints and geographic area defined by the non-competition proposal.
Additional stipulations	Expect the buyer's proposal to state: Whether you're required to run the business as usual during the closing period (or whether the buyer asks for major agreements/purchases to be put on hold). That the offer is nonbinding. Cancellation options. An exclusivity agreement that prevents you from considering competing offers during the due-diligence period.	