

# Can a letter of Intent be BINDING?

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In many instances, the first step in negotiating a commercial transaction is to agree upon the business terms of the transaction in the form of a letter of intent or a term sheet. If not careful, these documents can have a legally binding impact and, therefore, should be reviewed by an attorney prior to being finalized and executed.

Depending on the specific language in a letter of intent, a party could be obligated to negotiate the proposed commercial transaction in good faith and not negotiate with any other parties, even if a better offer arises prior to the execution of the formal agreement. Such an obligation could arise if both parties manifest an intent to be legally bound by the letter of intent, the terms of the agreement are sufficiently definite to be enforced, and consideration has been given. In one instance, a court found that a duty to negotiate in good faith arose from a detailed letter of intent in which a party promised to withdraw a piece of property from the market and only to negotiate with the other party to the letter of intent.

Further, a letter of intent could be interpreted as a binding agreement if the parties indicated their agreement on the essential terms to the transaction and the subject matter thereof. If any of the terms are left open for future negotiation, however, the informal letter of intent should not form the basis of a binding contract.

As a result, it is important to clearly set forth in the letter of intent that there is no obligation to negotiate in good faith and that the letter of intent is not intended to be a binding contract. In most instances, an unsigned term sheet can accomplish the same purpose as a signed letter of intent. To be on the safe side, the unsigned term sheet should still include a provision that there is no obligation to negotiate in good faith and that the term sheet is not a legally binding contract.

The parties may desire that the letter of intent be a legally binding contract. However, the details of most transactions are normally not discussed until the drafting of a full agreement and, therefore, the parties should be careful and only use such legally binding letters of intent if absolutely necessary.

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