



Types of Representations in the Purchase Agreement | Exceptions

There are three categories of representations.

1. Enforceability Representations
 - a. Enforceability representations provide assurances that the parties have the authority to enter into the Purchase Agreement.
 - b. Enforceability representations ensure that a party cannot rescind the Purchase Agreement on a mere technicality (e.g., the signer did not have the authority to bind the party).
 - c. A corporation or limited liability company cannot validly execute and deliver a Purchase Agreement unless
 - i. it validly exists as a legal entity,
 - ii. it has the legal power and authority to enter into the agreement, and
 - iii. all necessary organizational action has been taken to authorize the entity's entering into the agreement.
 - d. For example, an entity will represent that it has taken all necessary action to authorize the execution, deliver and performance of a Purchase Agreement.
 - i. In the case of a corporation, this representation would be correct if the corporation's board of directors had duly adopted a resolution authorizing the corporation to enter into the agreement.
 - ii. In the case of a limited liability company, this representation would be correct if the company's members had duly adopted a resolution authorizing the company to enter into the agreement.
2. Subject Matter Representations
 - a. Subject Matter Representations provide assurances that the parties will receive exactly what was negotiated in the Purchase Agreement.
 - b. Subject Matter Representations are specific to the facts and circumstances of the Purchase Agreement.
 - c. For example, a Purchase Agreement will include representations by the seller that the property to be transferred is not subject to any lien.
3. Due Diligence Representations
 - a. Due Diligence Representations provide assurances that the parties will be able to perform their contractual obligations in the Purchase Agreement.
 - b. A party entering into a Purchase Agreement will normally undertake due diligence, such as reviewing financial statements, patient lists, accounts receivables, etc.
 - c. Due Diligence Representations counteract the principle of caveat emptor (a party is under no obligation to volunteer information that is not required to be disclosed).
 - d. For example, a Purchase Agreement will include representations by the seller that there are no actions, suits or proceedings pending against the dental practice.

Exceptions

There are situations where a party cannot make a representation due to information that is inconsistent with the statements made in the representations. For example, a dental practice is in the process of litigating a malpractice claim during purchase. The seller cannot make a



representation that there are no actions, suits or proceedings pending against the dental practice. This information must be disclosed in the Purchase Agreement to make the representation true. The disclosure may be done by making an exception for the inconsistent facts in the text of the representation. For example, the seller represents that there are no actions, suits or proceedings pending against the dental practice except for the litigation of the malpractice claim.