

Idaho State Bar – Real Property Section

CLE: Transfers and Conveyances of Real Estate Interests in the Context of an Asset Sale

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A. Introduction

B. Overview

1. Ways in which real estate is involved in an asset transaction

- (a) Asset transaction involving leasehold interests (assignment of leases)
- (b) Real property transfer including assets of business (e.g., personal property, fixtures, name of business)
- (c) Asset transaction involving conveyance of real estate

2. Timing

Real Property Purchase & Sale Structure	Asset Purchase & Sale Structure
Due diligence performed upon execution of the PSA <ul style="list-style-type: none">• Due diligence period• Due diligence materials disclosed once PSA executed• Buyer conducts inspections, investigations	Due diligence performed prior to signing PSA <ul style="list-style-type: none">• Non-disclosure agreements• Prepare disclosure schedules as exhibits to PSA

3. Distinguish between asset transfer and stock purchase

- If seller owns real property in a stock purchase, property remains in name of same entity
- If seller leases real property in stock purchase, might trigger assignment provisions in lease

C. Recent trends

- 1. Rep and warranty insurance
- 2. ERISA language

D. Questions/Answers