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Arent Fox

The Closing Day



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Disclaimer

This presentation is provided for informational purposes only and is not intended as legal advice. Dealers should contact their lawyers and professional advisors for details about federal, state, or local laws.

The Long Road to the Closing Day – Steps Along the Way



Business Terms Negotiated



Transaction Documents Negotiated



Due Dilligence



Pre-Closing



Closing Day



Goals on Closing Day



A close-up photograph of a hand holding a silver pen, poised to write on a calendar grid. The calendar is open to a page showing dates, with one date circled. The image is angled, showing the top-left corner of the calendar page. The background is a solid white color.

Getting Affairs in Order!

- Be Prepared
 - DMS Systems ready to be turn key well in advance!
 - Parts Count completed and adjusted prior to closing time
 - Special Tools Investment up to Manufacturer Specifications
 - Detailed schedule of Assets Purchased/Acquired Ready to be rolled over to schedules
 - Review of all leases and contracts assumed
 - For contracts and leases not assumed – double check any assets or other items tied to those contracts (Such as Service Equipment, Leaseholds, Signage and other items)

Getting Affairs in Order!

– continued

- Agreement on additions/subtractions for inventory
- Fleet Account Administration
- Any perks carryover to seller agreed to prior to closing
- Honda/Acura Factory Audit Reports
- Banking relationships fully established
- Indirect retail agreements in place...be aware of any covenants





Do Negotiations Start at the Closing Table?

- Valuations of New Vehicles and designation of Vehicles completed and agreed to prior to closing
- Valuations and selection of Used Vehicles completed prior to closing date
- Agreement and assignment of any incentive programs in place prior to closing date
- Adjustments to Goodwill Valuation in agreement prior to closing
- Don't have signage taken down and placed up during the closing process!!
- Staffing issues taken care of prior to closing
 - Announcement to staff
 - Changes in positions if any

Accounting Transition

- Opening Balance Sheet preparation
- Closing Balance Sheet preparation
- Collection of Accounts Receivable and other mail for a period of time
- Floorplan, Incentive, and other reconciliations
- Handling of Deals in Process
- Handling of Work in Process



A close-up photograph of a hand holding a silver pen, writing on a calendar grid. The calendar is open to a page showing dates from the 1st to the 31st. The hand is positioned over the 24th, which is circled. The background is slightly blurred, showing a desk and a keyboard.

Accounting Transition – continued

- Running of Seller's DMS System for a period of time to wind down operations
 - Termination costs
 - Data storage and protection
- Assignment of Parts Return Allowance
- Agreement on Operating Agreement under dealer license until final approval or State Certificate
- Bank financing packages completed
- Sales Tax Closing Certificates



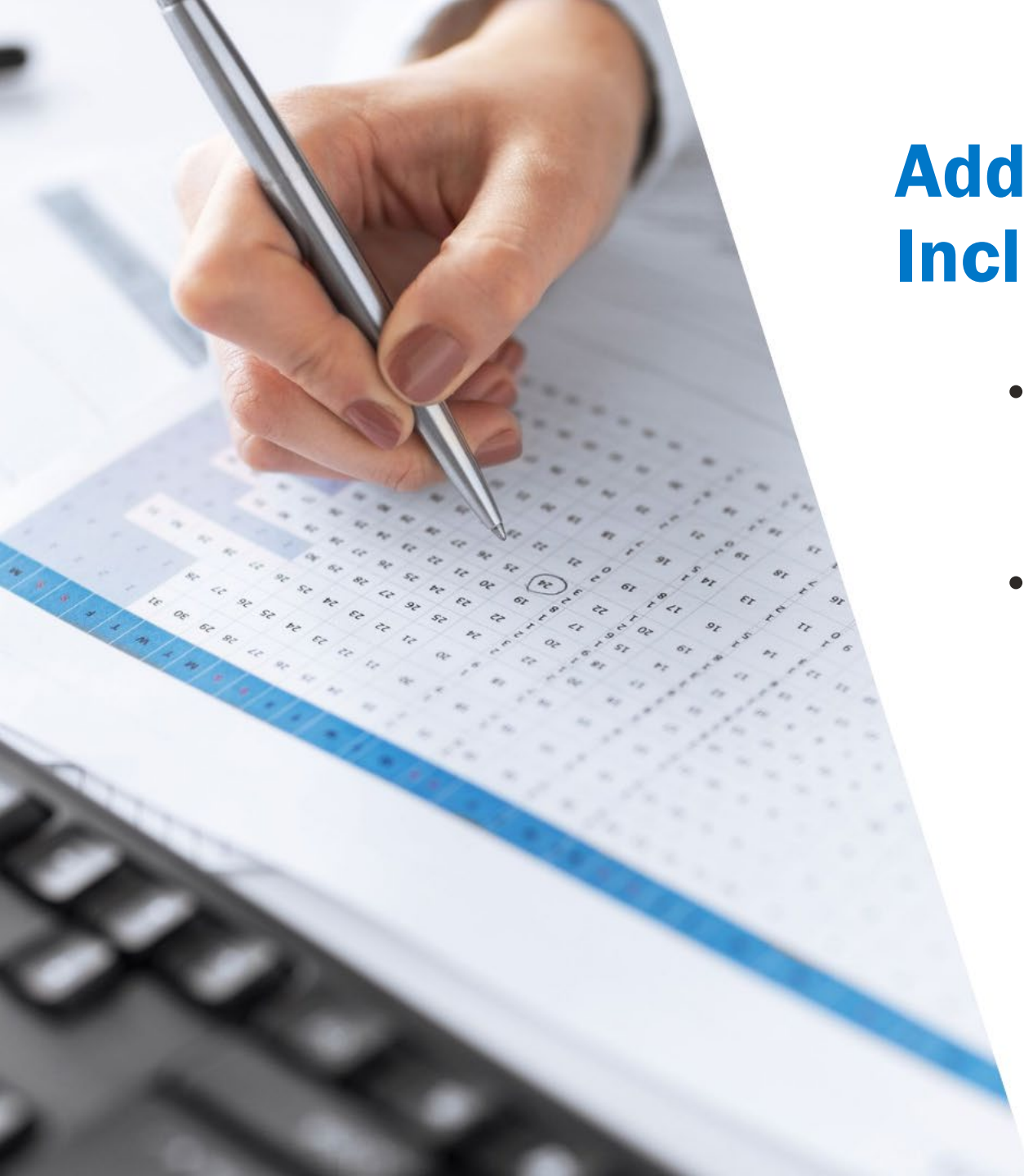
Preparing For The Closing Day

- The more you prepare, the smoother your closing will go.
- Start preparation by reviewing all of the transaction documents to determine closing deliverables.
- You should know these documents backwards and forwards.

Closing Checklist Basics

- What are the deliverables?
- Who is responsible for what?



A close-up photograph of a hand holding a silver pen, writing on a calendar. The calendar is open to a page showing dates, with the number '24' circled. The background is slightly blurred, showing a laptop keyboard.

Additional Information To Include On The Closing Checklist

- What documents need 'wet' signatures vs. docs that can be electronically signed/signed in counterparts?
- Any third-party consents/deliverables?
 - Lease assignment?
 - Sublease?
 - Manufacturer docs?
 - Guarantee?

Closing Checklist Sample – Real Estate

REAL ESTATE PURCHASE		
Dated _____	BOTH	17. Contract of Sale
	BUYER	18.. Assignment and Assumption of Contract of Sale
	SELLER	19.. Lease Termination Agreement
	SELLER	20.. Special Warranty Deed
	SELLER	21. Assignment of Certificates and Permits
	SELLER	22. Real Property Bill of Sale
	SELLER	23. FIRPTA Certificate
	SELLER	24. Seller Certificate re: Representations and Warranties
	BUYER	25. Buyer Certificate re: Representations and Warranties
	TITLE CO.	26. Settlement Statement
	SELLER	27. 1099-S
	SELLER	28. Satisfaction of Mortgage
	TITLE CO.	29. Marked Title Commitment
	BUYER	20. Survey

Closing Checklist Sample – Multiple Payoffs Required

Document	Responsible Party	Status
Termination of Floorplan/Confirmation of Swap	Seller/Buyer	
[BANK1] Payoff	Seller	
[BANK2] UCC.	Seller	Waived
[BANK3] UCC	Seller	
[BANK4] UCC.	Seller	

Closing Checklist Sample – State Specific Deliverables

Document	Responsible Party	Status
11. Real Estate Sales Agreement for _____	Done	Done
12. Bargain and Sale Deed with Covenants Against Grantor's Acts	Seller	
13. Affidavit of Title	Seller	
14. FIRPTA	Seller	
15. Promissory Note	Seller, Buyer	
16. Closing Statement	Seller, Buyer	
17. Assignment of RESA to _____	Buyer	
18. ATTD (New Jersey)	Seller	
19. Seller's Company Resolution	Seller	
20. Buyer's Company Resolution	Buyer	
21. Title Commitment Docs		
a. Notice of Settlement pursuant to N.J.S.A. 46:26A-11	Seller	
a. Proof of cancellation of mortgage made by _____ to _____ (amount \$_____).	Seller	

Closing Deliverables

- Does your client have all of his/her deliverables ready?
- Does the other side have their deliverables?
- Have these conversations early and often.
- Have plan in place if deliverable isn't ready by closing. Can you still close?



Coordinating The Closing





Coordinating The Closing

- Know who is doing what.
- Have these conversations early and often.
- Get everyone's buy-in and approval of the documents, including the closing statement.
- Remember – everyone has the same goal:
TO CLOSE THE DEAL.

What Do You Do When Hiccups Occur On The Closing Day?



Dealing With Closing Hiccups

- Know your documents backwards and forwards.
- Do your best to spot issues ahead of time. Examples:
 - Changes in loaner car programs that prohibit assignments of loaner car leases when your agreement requires assignments.
 - Changes to the tax code or other regulatory changes.
 - Inventory shortages and high demand product.
 - Unresolved due diligence issues.



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Planning For The Post-Closing Environment

- Are there any issues that can't be dealt with at the closing?
- How will those be handled?
 - Post-closing agreements?
 - Escrows?

Sample Clause For Post-Closing Adjustments

5. Post-Closing Adjustments: If after the Closing of the APA or the Real Estate Sale Agreement dated _____ as amended from time to time (the “RESA”), the Parties discover any errors in adjustments and apportionments or additional information becomes available which would render the closing prorations inaccurate, the same shall be corrected as soon after their discovery as possible. The provision of this Section 5 shall survive the Closing except that no adjustment shall be made later than eighteen (18) months after Closing unless prior to such date the Party seeking the adjustment shall have delivered a written notice to the other Party specifying the nature and basis for such claim. In the event that such claim is valid, the Party against whom the claim is sought shall have ten (10) days in which to remit any adjustment due.





Sample Clause Concerning Post-Closing Environmental Remediation

UST Removal: Notwithstanding anything in Section _____ of the APA to the contrary, Seller shall not be responsible for removing the USTs or any other remediation identified in the environmental investigation report from _____ previously provided to the Seller.



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Please contact us with any questions.

**Thank you for
your time!**