

INSTRUCTIONS FOR G4011, LOI

General Comments

G4011 (LOI) is a flexible document that is intended to outline the commercial terms of an agreement. The LOI has only a small amount of legal content, but refers the parties to the purchase agreement for legal definition. You can easily go from the LOI to a purchase agreement, either the GABB Offer and Agreement to Purchase the Assets of a Business (Purchase Agreement) or an attorney can draft a purchase agreement. Some agents, if the offer is going to be close to the asking price, bypass the LOI and go directly to the Purchase Agreement.

As with any forms, the LOI has limitations. The text is write-protected with blanks to fill in because the LOI has legal references that should not be altered. We have provided space under Special Stipulations where we hope the parties can have some flexibility.

Why use the LOI

- Easy to use
- Easy mentally for someone to sign
- Consolidates the facts into one document
- Causes each party to think through the deal before going to contract – better chance of closing
- Defines the Commercial Terms
- Defines some of the content the Purchase Agreement must have.

Explaining a few sections

First Blanks at top of P1 - The LOI is basically a letter from the Buyer to the Seller. The table at the top of the LOI is intended to have the buyer's name and address similar to the letterhead a person might have. If there is no Buyer Company, leave the line blank or write in NA.

Paragraph 7 – Due Diligence – The parties should have time to investigate each other. You may set the date to be prior to entering into the Purchase Agreement, or set it after entering into the Purchase Agreement and let the Purchase Agreement further define the due diligence.

Paragraph 12 – Definitive Purchase Agreement – You may choose if you wish to use the GABB Purchase Agreement form yourself, have an attorney generate the GABB Purchase Agreement, or have an attorney generate his own purchase agreement. We of course encourage the use of the GABB Purchase Agreement and would like to see other attorneys adopt it. If more attorneys become familiar with the Purchase Agreement, legal costs should be reduced.

Paragraph 13 – Brokers – You will notice a statement regarding the broker's disclosure of third party fees, which says, "Moreover, Broker(s) may receive a commission, rebate, fee or other compensation for assisting in procuring leases, financing, insurance or other services on behalf of Buyer and/or Seller". The Real Estate Commission states that brokers should reveal third party commissions at the LOI, but as a practical matter brokers probably do not know the third party fees at this time. The GABB Asset Purchase Agreement will require more specific definition. If you do not use the GABB Asset Purchase Agreement, you might want to make sure you have properly disclosed any outside fees (if any) you might be receiving, either by disclosing in the Purchase Agreement or by separate notification.