

May 14, 2025

## WHAT ARE DISCLOSURE SCHEDULES?

Disclosure schedules are attached to purchase agreements to supplement and qualify the representations and warranties made in the agreement. They disclose exceptions and are essential components in **M&A transactions**. In the video below, Johnston Allison Hord corporate attorney **Jaylyn Powell** explains what disclosure schedules are and how they affect **business transactions**.

Audio

Transcript

Hi, my name is Jaylen Powell and I'm an associate attorney here at Johnson Allison Hord and a member of the **Corporate Practice Group**. Today we're going to be discussing disclosure schedules.

### What are Disclosure Schedules?

A key component to all M&A deals is a strong asset or stock purchase agreement, as needed, and the disclosure schedules. Disclosure schedules are attached to the purchase agreement to supplement qualify and disclose exceptions to representations and warranties made within the purchase agreement. Although it is the due diligence process that largely acts as the opportunity for the buyer to obtain information about the inner workings of the seller's business, the disclosure schedules officially highlight key aspects of the business in a legally binding way. Therefore, having a strongly prepared and thorough disclosure schedule is of the utmost importance in all transactions.

### Explained

Disclosures made or admitted by a seller in disclosure schedules have legal and practical consequences for both the seller and the buyer. From a seller's perspective, failure to disclose material information to the buyer could result in money damages or worse, and from a buyer's perspective, these schedules can alert buyers to potential red flags about the business and give the buyer an opportunity to negotiate additional protections and concessions. Further, the disclosure schedules help to carve out key exceptions for a seller such as excluded assets or contracts.

### Examples

A disclosure schedule could be used to supplement a representation addressing material contracts of the seller by listing all material contracts that require notice to a third party prior to a change of control or the assignment of a certain contract. Alternatively, a disclosure schedule could be used to explain any potential environmental issues or permits that would be needed to properly run the acquired business.

A purchase agreement might warrant that except as disclosed within the disclosure schedules seller does not have any pending or threatened lawsuits against such seller and that there are no facts or circumstances that could give rise to a potential action against the seller. Thus, if there were any events that seller is aware about that may give rise to a potential lawsuit such as a breach of contract claim from one of its customers or suppliers, then those facts would need to be added to the disclosure schedules so the buyer is provided vital details about the operations and potential risks that may arise post closing.

### **Importance**

Disclosure schedules matter because they supplement and provide exceptions to the representations and warranties which themselves are linked to potential liability to the parties. As another example, the seller could warrant in the purchase agreement that it did not have any outstanding tax liability except as provided in a certain disclosure schedule. If the seller then properly lists any outstanding tax liabilities on the disclosure schedule, the seller would not be in breach of the warranty. If, however, the seller did not include that caveat to the warranty or included the caveat but failed to properly list all outstanding tax liabilities within the disclosure schedules, then the seller could be in breach of the warranty. Disclosure schedules are thus a powerful tool to protect a seller but only if properly utilized. From a buyer's perspective, disclosure schedules give the buyer a level of detail about the seller's business that cannot practically be included within the purchase agreement. Moreover, as discussed earlier, disclosure schedules give buyers grounds for recourse in the event that a seller omits or misrepresents information in connection with representations and warranties.

### **Pitfalls & Considerations**

Many clients have the understandable misapprehension that information disclosed during due diligence does not need to also be included within the disclosure schedules, or that they do not need to provide duplicative information that the buyer already has access to. This is not the case. These schedules provide the crucial and final written record of key disclosed information. Accordingly, preparing these schedules can be time consuming and detail intensive but vitally important. Common mistakes include providing incomplete or outdated information, failing to coordinate with appropriate employees or others that could have relevant information, failing to understand the full scope of the representation or warranty, or simply overlooking responsive information. To avoid these pitfalls, it is helpful to work with experienced counsel in order to understand the purpose scope and implications of disclosure schedules and properly prepare them.

### **JAH Can Help**

The **attorneys at Johnston Allison Hord** are available to counsel you on all aspects of your merger, acquisition, sale, or disposition including the preparation of disclosure schedules. Our **corporate attorneys** specialize in navigating the details with precision and tackling other complications surrounding M&A deals so that you don't have to.

---

*Please note that the above JAH article does not constitute legal advice nor does it create an attorney-client relationship. Should you be in need of legal services regarding a particular matter, please reach out directly to one of our attorneys. [Click here for our full website disclaimer.](#)*