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Avoid Legal Minefields When Acquiring Another Company

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Entrepreneurship Through Acquisition (ETA) can expose you to legal liability and/or being injured by others' unlawful acts. Here are the traps to avoid.

Imagine the deal has closed, you are several weeks into transition, and you discover the sellers inflated their revenue through fraudulent transactions. As reported by Acquiring Minds, a consultancy and podcast centered on business acquisitions, that is exactly what happened to Jason Jackson. He thought he had just bought a profitable dental care practice only to discover his business was being investigated (https://acquiringminds.co/articles/jason-jackson-futaleufu-partners) for Medicaid fraud.

Or, instead imagine you have identified your dream target. The numbers make sense; the business is of personal interest to you; and your investors are open. You hustle, you put out fires, you simply MAKE THE DEAL HAPPEN. Well done, right? Maybe. Sometimes the zeal to close deals can blind entrepreneurs to catastrophic legal consequences.

Entrepreneurship Through Acquisition (ETA) can expose you to legal liability and/or being injured by others' unlawful acts. Avoiding these crises requires careful attention to detail and top-notch legal advice. This article discusses nine legal implications of ETA that you (and your legal counsel) must keep track of.

Regulated Sectors: Diligence Must Go Beyond the Data Room

Jason Jackson's story is a stark reminder: In healthcare and other regulated industries, ordinary diligence isn't enough. In healthcare specifically, you're stepping into a thicket that can include HIPAA, False Claims Act (FCA), Stark Law, Anti-Kickback Statute, state corporate-practice rules, payer contracts, and constantly shifting state review regimes. Other heavily regulated sectors include energy, telecommunications, and transportation. Build your diligence plan to mirror the intensity of the regulatory regime: Audit billing, sample charts, verify credentialing, and scrub referral arrangements before you own the problem. Also remember that whatever the industry, when you acquire real property, you also acquire the environmental liability. Be sure your due diligence and indemnification clauses account for this stark reality.

Structure and Successor Liability

Many ETA buyers choose asset purchases to avoid historical liabilities (product liability and other torts, contractual obligations, and tax liability, for example). This is a good rule. But it's not absolute. Private-equity-style or roll-up structures sometimes trigger "de facto merger" scrutiny even when you think you bought "assets only," especially if ownership/management continuity is high or if the buyer continues the seller's product lines, workforce, or brand without meaningful interruption. Draft the purchase agreement—and operate the business post-close—so the deal looks like what you say it is. Also, always remember that employee wages, salaries, and benefits are liabilities that do not go away. Even extensive lawyering cannot relieve the incoming board of responsibility for accrued salary or unpaid benefits.

Other best practices to keep in mind regarding successor liability:

- Make the assumption schedule precise; exclude what you don't intend to take.
- Align public messaging with asset-deal reality (avoid "merger" language if it isn't one).
- Re-paper licenses, permits, and payer contracts where required; don't rely on "implied" portability.
- Be sure you obtain tax clearances and escrow for known tax exposures.

(sales/payroll/unemployment). An alternative to escrow is holding back payment until due diligence matters are resolved—an alternative option that can lower your potential need to seek legal intervention.

Representations, Warranties, Indemnities

In ETA-sized deals, the representation and warranty (R&W) suite is your first line of defense against surprises like revenue manipulation, off-books liabilities, or compliance gaps.

Make sure you negotiate robust financial-statement representations, a firm "no undisclosed liabilities" rep, and detailed compliance reps tailored to the business (e.g., health-care billing, privacy, wage-and-hour).

Also make sure you define knowledge qualifiers precisely (whose knowledge and actual vs. constructive, for example) and set thoughtful survival periods (e.g., 12–18 months for general reps, through the statute of limitations for taxes and employee benefits, and longer for privacy or regulatory reps if the risk profile warrants). Finally, include a clean fraud carve-out making clear that claims based on seller fraud are not limited by caps (or baskets) or survival, and define "fraud" and the responsible parties with care so you preserve full recourse if you uncover intentional deceit.

Finally, closely consider R&W insurance: in lower-middle-market deals it can shift recovery risk to an insurer, extend survival, and support a "low-escrow" deal—while typically preserving recourse for seller fraud. Still, be mindful of exclusions and underwriting diligence; thin diligence = thin coverage. Fraud claims may still leave you pursuing the seller personally.

Antitrust and Roll-ups: Small Deals Still Get Big Attention

The 2023 Merger Guidelines and subsequent agency initiatives put serial acquisitions/roll-ups under close scrutiny, even when individual deals fall below reporting thresholds. If your ETA plan involves acquisitions across a local or niche market (dental clinics, HVAC, specialty B2B services), expect more questions about cumulative effects on customers and labor. Keep a running "acquisition history" memo and competitive analysis. And watch HSR thresholds (https://www.ftc.gov/enforcement/competition-matters/2025/02/new-hsr-thresholds-filing-fees-2025) : the 2025 minimum "size of transaction" threshold is $126.4 million.

What this means in practice:

- Include antitrust reps and conditions; build room in the timeline for potential second requests or state AG queries.
- Train the team on gun-jumping (no pre-close control of pricing/customers).
- For serial acquirers, memorialize pro-competitive rationales (quality, expansion capacity, failing firm considerations).

Non-Competes, Trade Secrets, and Retention

The FTC's rule to ban most non-competes has been enjoined, and litigation continues. For ETA buyers, assume enforceability is uncertain and plan for alternatives: strong confidentiality, IP assignment, non-solicitation, training-repayment where lawful, and meaningful equity/bonus retention plans. Do a state-by-state check; some jurisdictions already restrict non-competes heavily.

Raising Equity

If you compensate a person for introducing investors, transaction-based compensation is the SEC's hallmark of broker-dealer activity. Paying unregistered "finders" (including yourself) can create rescission rights and regulatory exposure for you, not just the finder. There is no adopted federal finders' exemption, and recent SEC settlements repeatedly target sales activity + success fees. Use registered broker dealers, or keep any unregistered introductions scrupulously within non-compensated or flat-fee/non-success-based boundaries vetted by counsel.

Also confirm your offering path (Reg D 506(b) vs. 506(c)), investor accreditation, bad-actor checks, and advertising rules before you circulate a deck.

Wearing Two Hats: Deal Sponsor vs. Post-Close Fiduciary

ETA entrepreneurs often originate the deal and then serve as CEO. That creates legal and ethical tension. Be aware of the following issues:

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- Conflicts of interest. If you or your sponsor vehicle receive a promote, origination fee, or success bonus, disclose it clearly to investors. Use an independent board member or special committee for material related-party decisions post-close.
- Management equity & vesting. As a baseline, expect time-based vesting (3–4 years, 1-year cliff), with double-trigger acceleration on change-of-control/termination without cause and good-leaver/bad-leaver definitions. Tie any performance vesting to auditable metrics to avoid disputes.
- Duties shift. As CEO, your fiduciary duties run to the company and stockholders as a whole; keep investor side-letters and board minutes clean and consistent.

Voluntary Self-Disclosure: A Real Safe Harbor, if You Act Fast

DOJ's M&A Safe Harbor encourages acquirers to self-disclose discovered misconduct within a defined window (generally six months from closing, with remediation deadlines) to earn a presumption of declination. This can be a powerful tool if diligence or early post-close audits uncover issues—especially in export controls, sanctions, or healthcare billing. Bake an escalation and outside-counsel pathway into your post-close plan so you can actually use the safe harbor's benefits if needed. If you uncover material misconduct, evaluate applicable timelines immediately.

Final thought

A single article can cover only a fraction of ETA legal implications. Therefore, be sure to engage experienced counsel early (ideally at LOI) and empower them to stress-test diligence, structure, and documents, and to translate risk into practical terms and protective covenants. Always remember that "making the deal happen" is only half the job. ETA success is ultimately a governance and compliance exercise wrapped around a business thesis—and it rises or falls with the caliber of your legal team. If you are tempted to cut corners or skimp on legal advice, remember that designing your deal for legal durability buys far more than a P&L—It buys the option to grow.

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