Acceleration Clause – A clause used in a note and/or security agreement which gives the lender the right to demand payment in full if a certain event occurs such as default or if the ownership of the business changes without the lender's consent; sometimes referred to as a "due on sale" clause.
Acceptance – The act of accepting an offer which results in a binding contract.
Addendum – A written instrument that adds something to a written contract.
Agency Listing – Also known as an "Exclusive Agency Listing". - A written instrument giving the agent the right to sell property for a specified time. However, the owner may sell the property himself/herself to a buyer who was not introduced to the business by the agent without the payment of a commission to the agent.
Agent – One acting under authority of a principal to do the principal's business. The agent must use his or her best efforts and keep the principal fully informed of all material facts.
Allocation – A breakdown of the purchase price usually required when a business is sold. For example, the allocation might contain a breakdown of the inventories, fixtures and equipment, leasehold improvements, goodwill, and any other purchased assets. Generally, value is placed on each component of the allocation and the buyer and seller agree on this breakdown. The IRS requires that such an allocation be a part of the buyer's and seller's tax return when a sale takes place; Form 8594, the "Asset Acquisition Statement", must be filed with the buyer's and seller's tax return for the year in which an applicable asset acquisition takes place.
Amendment – A written instrument that changes something previously agreed to. (This is different than an addendum).
Amortization – 1. A reduction in a debt obligation by periodic payments covering interest, and part of the principal. 2. The writing off or expensing of the cost of intangible assets over a period of time, usually in years. Amortization of intangible assets vs. depreciation of tangible assets- Intangible assets purchased, such as goodwill and covenants-not-to-compete can be written off over 15 years.
APA – Asset purchase agreement
Appreciation – A gain in value due to any cause. Real estate is an asset that often appreciates in value over time.
Arbitration – The submission of a disputed matter for resolution outside the normal judicial system. It is often speedier and less costly than courtroom procedures. An arbitration award can be enforced legally in court. If one or more parties cannot agree on a single arbitrator, they can select arbitrators under the rules of the American Arbitration Association (AAA). Arbitration clauses are often inserted into contracts as the forum to settle disputes arising out of the contract.
Asking Price – The total amount for which a business or an ownership interest is offered for sale.
Asset Sale – This term has two definitions. The proper definition depends on its usage: The means by which a business owner transfers ownership of tangible and intangible assets to another owner without transferring the ownership structure. The sale of a business enterprise at a price based solely upon the value of the tangible assets. A sale of a business in which the buyer acquires only specific assets (and possibly assumes some liabilities). Unlike a stock sale, the buyer obtains the assets usually free and clear of any liabilities of the seller. The buyer also gets the advantage of a "step-up" in basis on the assets purchased based on their allocated fair market values.
Assignment – A transfer in writing of an interest in property or other things of value from one person or entity to another.
Attorney-In-Fact – One who is appointed, in writing, to perform a specific act for and in place of another, e.g. signing documents for someone in their absence.

Base Rent – The minimum rent in a lease which sometimes contains a percentage or provisions for additional rent.
Basket – The dollar amount set forth as the minimum loss that must be suffered by the buyer before the buyer can recover damages under the indemnification provisions. Deductible Basket: Seller is only responsible for damages exceeding the basket amount (e.g., under a deductible basket of $100, if a claim of $150 is made then the seller must pay $50). Dollar-One Basket (Tipping Basket): Seller is responsible for all damages once damages reach the threshold basket amount (e.g., under a dollar-one basket of $100, if a claim of $150 is made then the seller must pay $150).
Bill of Sale – A written agreement by which one person assigns or transfers his or her rights to or interest in goods and personal property to another.
Blue-Sky – An expression sometimes used to label the intangible assets (e.g., goodwill) in the purchase of a business enterprise. That portion of a requested price that cannot be supported through the application of established valuation methodology, and which generates no economic benefit.
Bond – A pledge to pay a sum of money in the event of failure to fulfill obligations; e.g., inflicting damage, or mishandling funds - Usually written by a company for a fee. Also known as a Surety Bond.
Breach of Contract – Failure of a party to a contract to perform any or all of his obligations under the contract. There are four types of breaches:
Broker – One who acts as an agent for another (his/her principal) when negotiating with third parties on behalf of the principal. This arrangement falls under "agency" law applicable in the state in which the principal-agent arrangements arise.
Bulk Sale – A transfer in bulk of all or substantially all of the inventory and fixtures of a business, which is not in the ordinary course of business.
Bulk Sales Act – Laws enacted by the states to protect creditors against secret sales of all or substantially all of a business's goods. It requires certain notices prior to the sale and sets forth ways of voiding the sale (see Uniform Commercial Code). NOTE: No longer required in New Mexico since 7-1-92; however, each state has its own Bulk Sales laws.
Business Broker – A Business Broker is an intermediary dedicated to serving clients and customers who desire to sell or acquire businesses. A business broker is committed to providing professional services in a knowledgeable, ethical, and timely fashion. Typically, a Business Broker provides information and business advice to sellers and buyers, maintains communications between the parties, and coordinates the negotiations and closing processes to complete desired transactions.
Business Trade Name – Company name by which a certain business is known.
C Corporation – A normal corporation for federal income tax purposes. The entity itself pays income taxes. Note that when we sell a business, the net proceeds are taxed at the "C" level, then any distributions to the shareholder(s) pay capital gains taxes on their personal level.
Cancellation Clause – A clause in a lease or other contract stating the condition(s) under which the contract can be canceled or terminated by any of the parties. It may provide for simple notice or possible payment of money to cancel the contract.
Cashier's Check – A check drawn on the bank's own funds. It is often used to close a sale because there is generally no waiting for the check to clear.
Caveat Emptor – "Let the buyer beware."
CBR – Confidential Business Review.
Certified Check – A personal check guaranteed by the bank. The bank holds the necessary funds and will not accept any withdrawals against the certified amount. The bank also will not usually honor a stop

payment on a certified check.
Chattel (U.C.C.) Search – A chattel is an article of personal property, and it includes both animate and inanimate property. U.C.C. stands for the Uniform Commercial Code, which governs the granting of security agreements. A chattel search is a review of the appropriate county and Secretary of State Records regarding any liens against chattels, tax liens, and judgments.
Chattel Mortgage – A mortgage on personal property (not real estate). A mortgage on equipment would be a chattel mortgage.
CIM – Confidential Information Memorandum.
Client – An entity with which a Business Broker has a fiduciary relationship.
Closing – When all the details of the business sale are completed and the money distributed to the seller, seller's agents, creditors, and others.
Closing Documents – The legal documents that are part of a business closing. They might include: a definitive purchase contract, promissory notes, mortgage, security agreements, financing statements, subordination agreements, bill of sale, covenant-not-to-compete, consulting agreements, employment agreements, leases, assignments, escrow agreement, releases, tax clearances, director and shareholder consents, legal opinions, environmental opinions, fairness opinions, and IRS Form 8594 Asset Acquisition Statement.
Closing Statement – A statement which contains the financial settlements between the buyer and seller and the cost each must pay. They may be on one statement, or the buyer and seller may each receive separate ones.
Co-Brokerage – An agreement between two or more Business Brokers for sharing services, responsibility, and compensation on behalf of the client.
Co-Business Broker – A Business Broker who shares services, responsibility, and compensation on behalf of a client.
Co-Mingling – When an agent mixes the funds of a buyer or seller with his/her own in a "trust account." This is against the law in most areas and in most states. Licensed brokers may lose their license because of co-mingling

COE – Close of escrow.
Collar – The ceiling and floor of the price fluctuation on an underlying asset. For example, the price fluctuation where stock is part of the consideration; or, the fluctuation in the amount of trued-up working capital compared to estimated working capital.
Conditional Sales Contract – This is different than a chattel mortgage. Title to the goods, fixtures and equipment, or the business itself is not transferred to the buyer, and remains with the seller, until the terms of the contract have been met. This generally means when all the payments have been made.
Conditions to Closing – Certain obligations that must be fulfilled in order to legally require the other party to close the transaction. Other than conditions to closing relating to corporate approvals and governmental filings and approvals, compliance with a particular condition to closing may be waived by the party that benefits from the condition.
Consideration – Something of value which induces a person to enter into a contract. The promise to do something must be in exchange for some act or thing of value, which is the consideration. This is a necessary element in a contract.
Contingency – A clause in an agreement, contract, escrow, etc. that only makes it binding upon the occurrence of a stated event. For example, the sale of the business is contingent upon the

buyer obtaining financing.
Contract – A voluntary and lawful agreement between two or more parties to do, or not to do, something. Elements of an enforceable contract include: (a) an offer to be bound to do or refrain from doing something, which has been accepted, (b) sufficient consideration, (c) a valid subject matter, (d) legal capacity of the parties and (e) for those contracts to which the Statute of Fraud applies, its requirements must be met.
Conveyance – A transfer of title.
Cooperating Business Brokers – Business Brokers who share their knowledge, expertise, and skills for the benefit of the business brokerage profession, clients, customers, and the public good.
COP – Change of possession
Corporation – An entity created by or under the authority of the laws of a state, composed of individuals united under a common name, and which for certain legal purposes is considered a natural person. Characteristics of a corporation include: (a) continuity of life, (b) centralization of management, (c) limited liability, and (d) free transferability of interest.
Covenant-Not-To-Compete – An agreement made part of a purchase contract, in which the seller promises not to enter into a similar or competing business, for a specified period of time, within a designated area.
Covenants – Negative covenants restrict the seller from taking certain actions prior to the closing without the buyer's prior consent. Negative covenants protect the buyer from the seller taking actions prior to the closing that change the business that the buyer expects to buy at the closing. Affirmative covenants obligate the seller or the buyer to take certain actions prior to the closing.
Creditor – A person to whom a debt is owed by another person who is called the debtor.
Customer – A person to whom a debt is owed by another person who is called the debtor.
DBA – "Doing business as" - an identification of the trade name of the business, which may differ from the legal corporate name. Also known as a "fictitious name."
Demand Note – A promissory note that has no set time period for repayment and can be called due by the holder at any time.
Directors – Those who are elected by the stockholders to manage the affairs of a corporation. Shareholders elect directors; directors elect officers; officers manage the day-to-day affairs of a corporation.