The Acquisition of a Mobile/Modular Home Park or an RV Park Through a Share Purchase

R. Mike Mullin, CPA, CGA
Commercial Real Estate and Commercial Mortgage Specialist
Pemberton Holmes Ltd. & Select Mortgage Corporation
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As with the purchase of virtually all assets owned by a corporation, modular and mobile home parks or RV Parks can be bought using one of two methods: an Asset Purchase or a Share Purchase. An Asset Purchase is when you buy select assets from the corporation, but not the corporation itself. In contrast, a Share Purchase is when you actually buy the corporation and everything in it.

As a Chartered Professional Accountant and a commercial realtor® focused on mobile/modular home parks, I am asked about these two options many times, so I have decided to express my personal preference and explain why. As a Purchaser, I would definitely prefer a Share Purchase and the following explains not only why, but how I normally structure Contracts of Purchase and Sale to overcome virtually all of the possible pitfalls of a Share Purchase.

Please note that this information is provided solely for discussion purposes only and that each park and purchaser have specific individual financial fact patterns, needs, wants etc. Further, all investors should seek competent professional assistance before ever making any/all real estate investment decisions.

Advantages of a Share Purchase

1. **Lower Price:** Many park owner(s) would have major tax savings available to them by selling their corporate shares. As virtually all Sellers have their desired bottom-line net proceeds pre-calculated, any extra tax costs for an asset sale are normally added, either all or in part, to their required net proceeds for a share sale and passed onto the Buyer(s).

2. **No Property Transfer Tax Paid on Share Purchase:** Corporate shares are considered financial instruments, therefore they are not subject to BC's Property Transfer Tax. Further, as the legal owner of a park, the corporation, does not change at Land Titles, there is no Property Tax Payable at all. For example, with a park selling for $5,000,000, a share purchase would result in savings of $98,000 by not paying the Property Taxes. Further, the PTT savings for a park selling for $10,000,000 total $198,000, definitely not chunk change.

3. **No Provincial Sales Tax Paid on Taxable Equipment:** If taxable assets are purchased, Buyers are required to self-remit PST ranging from 7% to 12% of their purchase prices. Again, with a share purchase, there is no change of ownership of the assets, so no PST is payable.

4. **Assumption of Corporate Shareholder Loan(s)**: With any share purchase, as part of the Contract of Purchase and Sale, there is an agreement regarding how the assets and liabilities will be dealt with. Many times, Tax Paid Shareholder Loan(s) remain on the Balance Sheet after the purchase and are bought by the new Shareholders. In future, the loans can be paid out to the new shareholders TAX FREE, as these balances were created with the former shareholders' tax paid money.

5. **Assumption of Retained Earnings and the RDTOH:** After the assets and liabilities are dealt with by the Seller(s) per the above agreement, any remaining retained earnings are also assumed by the Buyer(s) and are eligible to be paid out to the new shareholders as dividends. Further, the Buyer(s) may also assume any balance in the notational Refundable Dividend Tax on Hand (RDTOH) account of the corporation. Whenever the corporation pays out a dividend that is taxable in the individual taxpayer's hands, a tax credit is then available to the corporation to reduce its taxes payable. Again, please consult with your tax professional to see if these losses are available for use.

6. **Assumption of Non-Capital Corporate Losses:** Although unusual, if a corporate park owner has any unused non-capital losses, these are also assumed by the Buyer(s) and may be used to decrease future taxable income of the corporation. These losses will only be available if the corporation carries on a same or similar business with a reasonable expectation of profit. Please consult with your tax professional to see if these losses are available for use.

7. **No Public Notification of Sale:** This is a rarely considered advantage, but, as there are no Land Title changes, there is no public record of the Purchase and Sale.

Mitigation Procedures to Protect the Share Purchaser(s)

As with any choice, pros and cons exist for each alternative and Share Purchases vs Asset Purchases are no different. The following is a list of the major objections to a Share Purchase and the recommended steps to take to truly mitigate, if not eliminate, the risks.

1. **Assumption of Outstanding Corporate Liabilities:** The Buyer(s) of shares assumes all the liabilities of the corporation, known and potential. A purchase provision allows for the Buyer's lawyer to hold an agreed amount of the purchase proceeds, the holdback, in his/her trust account for an agreed period of time, normally up to one year. During this time, the Buyer's lawyer contacts and confirms that there are no outstanding statutory or other corporate liabilities such as employee withholdings, corporate income taxes, WCB etc. If there are, the money held in trust is used to pay them, with any balance remaining at the end of the agreed period being paid out the Seller's/Sellers' lawyer to finalize the transaction.

2. **Assumption of Potential Future Corporate Liabilities:** Although operating a mobile home park is basic, without much risk of potential lawsuits and litigation arising from the period before the change of ownership, this risk still exists. Therefore, legal indemnification is provided by the Seller(s) to the Buyer(s) for an agreed period of time, normally up to seven (7) years. As for environmental issues, BC's Environmental Management Act, brought into force on July 8, 2004, has rules that may allow for a park owner's recourse on former owners and other parties for environmental contamination of their property. Further, this act applies to both asset purchases and share purchases, so there is no difference to the Buyer(s).

3. **Occurrence-Based Insurance Policies:** There is little point in the Buyer(s) having the legal indemnification described above, if there is no practical way to assure funding for future monetary claims. Therefore, normally the Seller(s) have occurrence-based commercial general liability (CGL) insurance policies. This type of insurance is provided by

the underwriter of record on the date of occurrence and not the date the claim is made, even after the normal policy expires and/or the shares change ownership. In addition, other specific peril insurance coverages can be secured at a very reasonable price. Also, please note that BC's new Limitation Act came into on June 1, 2013 and limits most civil justice lawsuits to a 2 year basic limitation period from the date of damage or discovery.

4. **With a Share Purchase the Buyer(s) Inherit the Selling Corporation's Land Cost:** This is true, but there are a number of important considerations. Land, which normally is a very large per centage of the purchase price, either past or present, is not a depreciable asset for Canadian income tax purposes. Therefore, it is not available to reduce the park's future taxable income by claiming capital cost allowance, the tax jargon for amortization & depreciation. Secondly, Section 88(1)(d) of the Income Tax Act may allow for, in certain circumstances, the ability to bump the cost of the land up to the fair market value of the land at the time of purchase. The rules, in regards to this bump in the tax cost of the land, are complex and a tax professional would need to determine the maximum amount of the bump available. In order to take advantage of the bump, the corporation will need to be reorganized. If applicable to you, the Buyer(s), this bump could ultimately defer a significant amount of income taxes should the assets ever be sold in the future. Please consult with your tax professional to see if this works for you.

5. **With a Share Purchase the Buyer(s) Inherit the Depreciated Balance Other Assets:** Like number 4 above, this is also true. But, here the impact may be less. Capital Cost Allowance (i.e. tax deductible depreciation) is claimed to reduce your park's future taxable income. Fortunately, depreciable asset values are normally fairly small, and therefore provide only small future reductions in taxable income.

6. **Using the Savings Afforded by Your Share Purchase to Increase Depreciable Assets:** Also, I know of very few new park owners who do not initially invest in improvements to their newly acquired property. Therefore, why not use some of the savings afforded by not paying for the Seller(s) increased tax bill and/or the Property Transfer Tax required with an Asset Purchase and invest the money in new depreciable assets. This could now position the park's depreciable asset balance close to or beyond that of an asset purchase, with substantial money saved.

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