

# Working with Legal Counsel

*“Best Practices”*



*Scott W. Williams, Esq.  
The Small Business Law Firm, P.C.*

# When Do Buyers or Sellers Need Legal Counsel ?



- a) Only on deals over \$1M
- b) Only if the broker is inexperienced
- c) Only when CABB forms don't work
- d) Whenever the Buyer or Seller cares about their \$\$\$ and not being sued

# Why Brokers Don't Like Most Lawyers



- Broker wants to control deal
- Lawyer won't use CABBB forms
- "Litigation" mentality
- ~~Redlines in perpetuity~~

# Why Brokers Should Collaborate



- Attorney + CPA + other?
- Broker not licensed to practice law
- Reduced broker liability
- Better results for client

# CABB “Form” APA / SPA: When to Use?

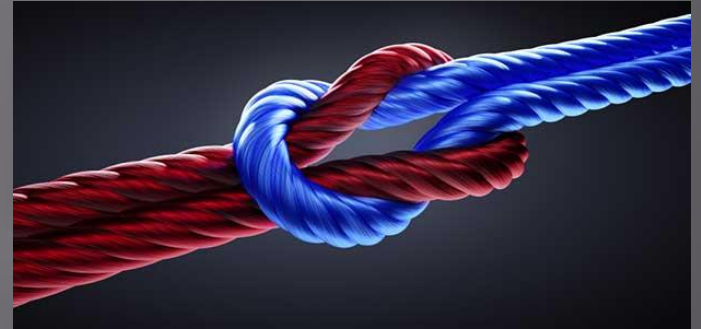


- From CABB website:

*“Using a form is okay when the form is suitable for the intended use and circumstances.”*

- Substantially all assets
- All equity (no partner buyout)

# Criteria for the “Right” Lawyer in M&A



- Experience: similar size M&A deals
- Working knowledge of labor law
- Avoid full-time litigators
- Referrals: when?

# Which Side Should Draft?



- Broker dictate a CABB form?
- The Golden Rule – Buyer has cash
- Broker comfortability irrelevant
- Fiduciary duties are overriding
- Broker addendums: how detailed?

# Attorney Drafted Agreements



- Relax, you can work with them
- Broker review vs. **redline**
- Shuttle diplomacy / lawyer-lawyer?
- Conference call with all if needed



# CABB Forms vs Custom Agts.



- **CABB SDS: 4 pages**  
**Disclosure Schedules: 10 – 20 pages**
- **CABB PAs Reps & Warr: “S & S”**  
**Custom Reps: 2 to 10 pages**
- Knowledge qualifiers
- Indemnification: Basket & Cap

# CABB Forms vs Custom Agts.

**What's  
the  
Difference?**

- **CABB PAs: simple signatures**  
**Corporate Resolutions: multiple**
- **CABB PAs: due diligence separate**  
**DD exhibits to purchase agreement**
- **Liquidated Damages to Seller**
- **Ancillary Agreements**

# Landmines in Agreements



- Nasty 4 letter word: “*GAAP*”
- Overly broad MAC clauses
- Due diligence all the way to closing
- “Seller has fully disclosed...”
- Unnecessary Closing Conditions

# Complex Deal Structures



- Stock sale but taxed as asset sale:  
*IRC section (338(h)(10)*
- F-Reorg: *IRC 368(a)(1)(F)*
- Merger of two or more entities
- Negative equity (*liabilities exceed assets*)

# Lawyer's Ethical Duties



- Confidentiality
- Loyalty to client(s)
- Investigate as appropriate
- Associate other counsel as needed
- Refer to other professionals

# Strategies for Success



- Recognize client's right to counsel
- Assemble the winning team
- Understand duties and allegiances
- Collaborative mentality
- Everyone be flexible

# Questions ???



## 2023 Annual Conference

September 28-29th, 2023 | Oakland

**LEARN • GROW • CONNECT**