Ep #56: Restaurant Transaction Timeline:
How Long Does It Take to Buy or Sell a Restaurant?

Full Episode Transcript

With Your Hosts

Patrick Totah and Andy Mirabell

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Welcome to *Restaurant Deal Making EXPOSED!*, the only show that equips you with everything you need to know about restaurant transactions. In this show, we tell you all about how to make the sale or purchase of your restaurant not just possible, but successful. Now, here are your hosts, ex-restaurateurs, and seasoned brokers, Patrick Totah and Andy Mirabell.

Andy: Welcome back to another episode of *Restaurant Deal Making EXPOSED!* I'm Andy. I'm here with Patrick, and today we are discussing a restaurant transaction timeline. One of the biggest misconceptions buyers and sellers have about a restaurant transaction is the timeline. We live and work in a very fast-paced society and there are high expectations for things to get done quickly in business. Many people think that once an offer is accepted, that closing can happen in a matter of weeks or a single month. Transaction timelines greatly differ from residential transactions and escrows, and even most business transactions from that of a restaurant or bar transaction.

When it comes to restaurant deal-making, transaction timelines can take many months. In reality, even a straightforward restaurant transaction takes 60 to 90 days, and transactions involving financing, liquor license, or difficult landlords can easily stretch to 120 days and often longer if the brokers and parties involved are not managing aspects of the transaction and milestones.

So let's quit tapping our feet impatiently or checking our watches every minute and break down the real timeline for a restaurant transaction and escrow. Patrick, I'm going to start off by asking you something here, okay?

Patrick: All right.

Andy: How often do you get this question from a buyer or a seller when you first speak? And do you bring this up in your initial conversations with them? And the question is, how long does it actually take to buy or sell a restaurant?

Patrick: Yeah, I get asked that question all the time, but let me kick this back over to you. How many times have you been asked or told by a buyer, I have the money, I'll deposit it right now and we can finalize the transaction as if it's just like, send the money to the seller, and we're done.

Andy: Yeah, I've gotten that more than I would like to admit. And that's where we initially have to pump the brakes and really go through what a real timeline is. And I think I almost can see the shock on their face over the phone when we go over how long these things take. So, when do you bring this up?

Patrick: To be honest, it happens probably all the time in the beginning of a transaction, trying to set expectations. And I think one of the reasons why I wanted to do this podcast was how many times I've actually said this, and I, if we could have a podcast and kind of go through it and point our buyers and our sellers to this particular podcast, I think it would be really helpful for everybody.

Andy: True.

Patrick: And it's important to set expectations from the get-go. Everybody understands what's going on, but also you want to keep everybody on a on some sort of a timeline, and I urge both sides that it's a timeline, it's a schedule. It doesn't mean that it's all going to happen exactly this way, right? Like a closing day is scheduled for X date. You know, I don't know. I should go back and see how many times that's actually happened because it is a schedule and things have to happen and until those things happen, you can't close escrow.

Andy: Yeah, and you keep bringing up setting expectations and I think the further we've gotten into our career as restaurant brokers, that is a vital first step when we deal with our clients. There's different times of transactions, even within our lane of restaurant or bar or food-related businesses. There's different kinds of transactions.

We often deal with a straight lease. That can get done in a matter of weeks if we get an LOI accepted and a landlord's quick to move on creating a lease that's approved and signed off. So those can generally take less time if it's just a straight lease. But when we talk about getting into contract between a buyer and seller and going through the process of escrow, we have the most simple transaction just being an asset sale without a liquor license involved. We can typically get those transactions done in 30 to 60 days, depending on what they are.

The second you move towards a going concern that someone's buying the concept, taking over the brand recipe, has a liquor license, these transactions are the ones that generally that run much, much longer, many months at times. So there's a few different kinds of transactions we can transact in our lane here, but we wanted to kind of go over the actual timelines today with you guys so you can learn about them.

And I just want to point out, before we get into that timeline, one delay can affect an entire closing. One delay, one detail. So we really want to keep pushing through and working together to avoid those. So why don't we get into the timeline transaction breakdown?

Patrick: Let me just add to that too. I mean, I think within a transaction, there are controllables and uncontrollables, right? There are things that each the seller and the buyer can control, and there are things that the buyer and seller can't control. Like the landlord. You know, the landlord is not in contract with us. They have no obligation to our timeline. We can ask them to be, but they're not privy to that information and we hope that they act in a reasonable way, but it doesn't always happen, right?

And then there's the agencies like the CDTFA or the ABC, California State agencies. They're not transacting with us. We're asking them to do something for us. And yeah, they will hopefully do things in a reasonably, in a timely manner, but it doesn't mean it's going to happen. And those things are uncontrollables. However, for a buyer and seller, there are things that are deliverables on both sides that you can control and hopefully that does help keep things moving in an efficient way.

Andy: That's a great way that you point out controllables and uncontrollables. You're right. A landlord doesn't have to work with us because they have a tenant paying rent. They don't need to hurry up for us.

Patrick: I mean, there's language in the lease for an assignment that says that they'll not unreasonably withhold or they'll provide an assignment in a reasonable timeline. But what does that really mean? And does a landlord really respond to that? Because at the end of the day, is a seller or buyer going to hold a landlord responsible to that? Because that's just going to definitely muddy the waters.

Andy: It's not going to facilitate a transaction here. You brought up the uncontrollable of the CDTFA. I just had the CDTFA needing to remove a hold from an ABC license. It added three and a half weeks to the tail end of closing. So, anyway, you know, those are some good examples. I liked that you brought that up, but let's get into it.

Patrick: So what do we have here? We have the, you know, I say the kicking the tire stage, someone identifies a business and they are very interested and now they're kicking the tires. They're looking at all the things that is kind of like what I call the pre-due diligence. Basically warming up to making an offer and make sure that they're comfortable with the things that they, the information they have at that point. And so basically you're leading up into going into contract with a seller.

Andy: Yeah, absolutely. And I think we've done a good job, you and I specifically. We like to share as much as possible after they've signed that NDA so we can really cut down on potentially a due diligence period because they've already seen a lot of information and are comfortable with it.

Patrick: For the sake of this conversation here, when we talk about timeline, let's start with going into contract, and that being where the clock really begins. And so, really the phase one, as we're calling it here, is the seller and buyer have agreed. We've signed the contract and we call that signed both ways. So now we're in a contract, and that's when the timeline begins.

And typically, we write up contracts with a 30-day due diligence and lease contingency, basically meaning we have 30 days to secure a lease and do all your due diligence. And does that go over a little bit? Yes, because most likely the due diligence is done. However, the landlord is taking a little extra time. And obviously, you know, we'll have to extend as long as both parties are working in good faith to ensure they're trying to get the contract or the lease done as quickly as possible. Now, if the buyer is just totally wasting time and not doing the things that they need to do, you know, the seller would have like some ability to say, Hey, you need to, you know, perform on this or we're not going to extend, right?

Andy: Correct, correct. Well, let's add another layer to it. What happens if there's a lender involved or a lending requirement?

Patrick: The lending, I mean, is a very interesting contingency because theoretically you have timelines that are put into place where they have to get a pre-approval within a certain amount of days. They have to get a conditional approval within a certain amount of days, and then they have to get the actual funding. But in the end, the actual funding contingency happens at the very end. So it's not like a contingency that is being held up in the beginning by the like the due diligence or the lease contingency, right?

Andy: Yeah, we a big milestone with lending is that non-conditional funding letter, right?

Patrick: Exactly. Yeah. So here we are. So let's just say everything works out really well and we now are, we have a signed lease that is conditioned on the close of escrow and they want to remove contingencies. So the next phase would be fully opening escrow. Now, this is kind of a confusing little scenario. Some people think that we've already opened escrow because they've made an initial deposit once they've gone into contract, but really it's a placeholder. It's a, we have an escrow number, we have money being held there, which is fully refundable until you remove contingencies, but really, we don't open the actual escrow until we remove contingencies. And the reason for that, Andy, is why?

Andy: Yeah, well, the buyer and seller would incur costs. They would incur escrow fees. So we wait to put, I like to say, you said it's a placeholder. I say we open an escrow file with a fully refundable deposit. So it's a very soft language, so my buyer is comfortable with it. Once we remove contingencies, that's when we press go, and escrow starts doing their lean searches, tax clearances and other post things and they do their work. That's why buyer and seller incurs escrow fees from that point on.

Patrick: Exactly. Great. Thank you for answering that. So here we are. Now we've just used about 30 days to get through the contingency period and we're going to open escrow and let's just say there's two different paths here. There's an escrow with an ABC license and an escrow without an ABC license.

Theoretically, no ABC license, you're basically opening escrow and you're looking at another four weeks and you can probably be out of this transaction. So best case scenario, you're buying a cafe or a restaurant without an ABC license and you have another 30 days. Total deal time, 60 days.

Let's go back to opening escrow with an ABC license. So now that you've removed contingencies, you want to apply for your ABC license. Hopefully, you started that a little bit ahead of time so everything's ready, but you want to submit that application to the ABC. Now, a couple of years ago, you'd submit your application to the ABC and you can probably get an ABC poster within five days. Now, I'm experiencing more like 10 days plus or minus. What do you experience?

Andy: Yes. I mean, agreed, agreed. It's, staffing levels in state offices are not, it's not going up. Speed and efficiency is not necessarily going up. They're working very hard with a lot of files. So it is taking a long time in order to get us the 30-day poster. You did point out one thing. A good broker is going to try to have once we get the indication from the landlord, especially that the lease is approved and so on. Maybe we haven't signed it yet. Maybe we haven't removed contingencies or signed off on that. We're going to already have the dozens of ABC forms pre-filled and ready to go, so we can go to the ABC, turn it in, and we're not as a broker causing a delay to a transaction.

Patrick: Absolutely. And the reason for that is also once we've put that application in, the buyer is going to incur a good amount of fees on that. And some of that is refundable. However, you know, obviously, you just want to know that you're basically about to do this deal before submitting that application. Also, there's a timeline on once you receive that poster, technically, you're supposed to have it up within five days. So you don't want to have it two, three, four weeks before you actually put the poster up.

So here we are. We put the application in. It's been 10 days. We finally received the packet from ABC, which includes that 30-day poster. This is a hard deadline. That poster needs to be up for 30 days. So no matter what, that has to happen.

Now, during that time, we're going through all the normal stuff of escrow. You're doing all your government clearances, you're doing your bulk sale publication, which is basically a notice to all your vendors and any institutions that you may or may not owe money to. Basically, any creditors have a chance within this period of time to come forward and say, Hey, this seller owes me money. And so all that happens, you know, within that 30-day period of that poster, and once all that's cleared, you're basically hanging out and waiting for the ABC.

Now, we do a couple things to help save some time. We have the buyer fund escrow before that 30th day poster is up. And the reason for that is there's a final form from ABC, I'm sorry, from escrow that has to go from escrow to ABC that says, Hey, this buyer has funded escrow 100%. You may proceed with the license transfer. And that is the final form that needs to go to ABC before they can finalize on their side.

Andy: Yeah. I wanted to point out that during that 30-day poster period, too, in addition to all the other stuff you named, we, the broker, the agent, are working with the ABC to go through their needs list and getting them any extra information, which actually can be quite a bit of information that they request before they approve a final transfer. So we want that 30-day timeline is very vital to us. We want to get everything done and set up, and that's kind of what you were leading to.

Patrick: Yeah, and also within that, I think it's really important to note that who you get who's doing your ABC application with the ABC really matters. If you have an experienced agent who communicates really well, getting it done in 30 days can really happen. But sometimes you get an agent who doesn't communicate all that well, or they're newer, and it takes them longer than that 30th-day poster is up. So it really matters who you get. It really matters who your agent is to make sure that they stay on top of all the things that they need.

Andy: Persistence.

Patrick: Yes, and it's a fine balance between persistence and not nagging them because you don't want to make them angry at you.

Andy: Gosh, Patrick, you nag me all the time, man. You're very persistent. You're a persistent nagger. So. Yeah, no, absolutely. Staying on top of it is really important. So we want to get to that final stage where that licensing rep at the ABC says, it looks good to me. Here, boss, here, supervisor, take a look at it. And if it looks good to you, we're going to send that up to headquarters in Sacramento in California and they're going to take put their eyes on it. They're usually pretty efficient. I was on the phone with them yesterday and I complimented them how kind and nice they are and how fast they are. So that takes another five to seven days. Maybe sooner.

Patrick: Yeah. So here we are. We had an initial 30-day best-case scenario on the contingency period. We are now 30 days in on the ABC poster. Let's just say the buyer funded escrow on time and everything's been happening good with ABC, and you've sent that final form to them by the 30th day.

I would say right here, now we're 60 days in, best case scenario is that in the next 15 days, you can get ABC at the district office to approve your application, send that application off to Sacramento for final approval, and within that two, that 15 days, you might be able to close escrow. That is best case scenario. So you're 30, 60, you know, you're a little short of three months, I would say. This does not happen all that much anymore. We're looking more like with ABC, it taking more like 60 days from when the poster goes up. So you're really looking at more of a 90-day plus on a transaction, I would suggest.

Andy: Yeah. Yeah, time has definitely gone up in the past years for various reasons. So I like that you point that out. That's another point of setting expectations with buyers and sellers. And really again, we use that ABC time to try to get everything else done and prepared for closing in that at the end of the transaction here.

So let's say that all that's going well, the file's been approved up in Sacramento and the license is pending going live or active under the buyer, we are preparing to close escrow. There's a couple little things we want to do in that last final stage with buyer and seller. They're doing final walkthroughs. They're checking off the equipment list to make sure that an oven didn't walk out of the restaurant. You know, little things like that. We're counting inventory, we're doing final prorations and credits with escrow. These are all the little nuanced parts of the, you know, the week or days heading up to the close of escrow. But we're we're preparing to close, and let's say we've checked all our boxes, Patrick, we close escrow, and we pop the champagne, right?

Patrick: Well, kind of. Yeah. And I think it's important also, how many times have you had a seller or buyer say, okay, well, can we schedule close with an ABC license? And technically, we're kind of working with guesstimates at this time. Once the application is sent off to Sacramento, we get, we know it's just waiting for final approval. At that point, you know, me and Andy are guessing. We believe it's an educated guess, but we're guessing on when we believe we can close escrow. And once that license does go active under the new buyer, we're technically supposed to close within 24 to 48 hours because the seller is now operating without an ABC license, and now that license is under the buyer and just for any liability sake, it's best that we close as quickly as possible.

Andy: Yeah, absolutely, absolutely. And I say that's a lot harder. What you're describing is way more vital in a going concern transaction. If this business has not closed down, it is continually operated through escrow and will not close down. The buyer takes over the day of close of escrow or the next morning. So it's a lot more vital on those transactions because there's so many working parts with staff, vendors, all the things involved. So our educated guess better be pretty close.

Patrick: Yeah. And we try, and we have a good amount of knowledge. Every now and then, there's a curveball and all that stuff and things you can't make up. So the license is active, we closed escrow, the buyer now has taken possession, and the seller says, Where's my money, Andy?

Andy: Yeah, right? Pounds his fists on the phone. You can hear it on the desk. He says, Where's my money? And you go, oh, well, let's use the same example that we've been talking about, a going concern, that this is a business that did not close. Oh, well, sorry, mister or missus seller, you're going to have to wait probably another 14 days or so to get your funds because the CDTFA has clenched onto those funds and have a hold on your funds until you close out your CDTFA account. Do you want to expand on CDTFA and why, and the who and the what with them?

Patrick: Yeah, so for those wondering what the heck is the CDTFA or the BOE, it's the people you pay sales tax to. You collect sales tax on your revenue, and then you pay on a quarterly basis, the sales tax. Well, these folks are going to hold your funds until we receive a full clearance. And to receive that full clearance, you need to close out your seller's permit. You need to pay your final sales tax return for that quarter and then show that the funds have passed through your bank. And then from there, they will work on issuing a full clearance.]

Now, I have sellers that were selling the business for let's say over $500,000 or $700,000. And they're saying, Hey, in a quarter, I would never even owe that much sales tax. However, the CDTFA is, you know, they used to do like partial holds, but we're seeing now that they're just holding everything until they receive their final sales tax quarterly return from the seller and you've closed out your account.

Andy: It can seem very fair and very excessive to a seller, right? But it is the way we can't change how they handle it. They're a state agency.

Patrick: And me and Andy, you know, even though we've just closed escrow, we want to get your money back to you as quickly as possible. I try and set expectations ahead of time so that the sellers understand, because I could totally be sensitive to the idea that, you know, you may need that money to pay off your vendors or pay your employees or all the things that a seller may need to do. So it's really important that sellers understand so that they can plan accordingly. And then from that day we close, I can assure you that me and Andy, we really want to help try and get you all of your money as quickly as possible.

Andy: Yeah, we're not going to disappear on you. We're not going to go silent. I will point out that if we weren't dealing with a going concern, and let's call this an asset sale or second-generation restaurant that we're selling that was not operating, maybe it had closed the week prior, so the seller can clean up or whatever for whatever reason. The business is closed before the closing of escrow. We will definitely guide the seller to get a head start on the CDTFA closeout and final payment of their sales tax. So funds are not held up beyond close of escrow, if they receive that clearance in time. So, yeah, great. Okay. Well, I think it's nice to kind of highlight the timeline. There's a lot of working parts in a restaurant transaction.

You know, in conclusion, I want to say a restaurant transaction is less like buying a car and more like managing a project with multiple moving parts. There's escrow officers, there's brokers, lenders, landlords, attorneys, accountants, the ABC, the CDTFA, inspectors, and on and on and on.

The smoother everyone communicates and responds, the more likely the deal will stay on schedule. It's valuable to understand that every deal is unique. Setting realistic expectations from day one can reduce stress and help both buyer and seller navigate the process with confidence. That is the job of your broker.

And yet, that's another reason why you should find a specialized broker to sell your restaurant. So who are you going to call? Not Ghostbusters. You and me, Patrick. They're going to call Patrick and Andy, okay? So anyways, yeah, I think this is a very useful topic. I'm glad you urged me to work towards doing this podcast today. So I think this will be a good one for everyone. Let me ask you a bonus question.

Patrick: Oh, here we go.

Andy: Yeah, I'm going to throw you under the bus a little bit. Good and bad.

Patrick: Oh no.

Andy: What's the fastest transaction you've been a part of, and what is the slowest transaction you've been a part of?

Patrick: Oh, man.

Andy: Yeah, sorry.

Patrick: I am in the middle of one of the slowest transactions I've ever been a part of, and I do not want to talk about it.

Andy: Okay, okay. So what's the fastest? I mean, I'm assuming it's something without an ABC license, but you tell me.

Patrick: Yeah, I mean, I think a sale without an ABC license, we might have been able to get the contingencies removed, and the lease agreed to within 21 days, and then four weeks from that, we were able to close escrow. So just under two months, I think. I think that's probably best case scenario that I've been a part of. Yeah.

Andy: I'll just chime in on maybe one of the slower ones and the reasons why. There's oftentimes our sellers really have to, they need to sell. There's a need to sell. And maybe their back's against the wall a little bit. And sometimes that can empower a buyer to stall or change terms throughout a transaction, and the seller cannot necessarily afford to lose the transaction. So that really sometimes can uncomfortably extend things. So you got to play hardball, you got to speak up for your seller at that point. But anyways, that can really slow down a transaction. I've had that experience before and it was quite uncomfortable.

So anyways, thanks for listening, you guys. Tune in next time. Have a nice day.

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Thank you all for listening to this week's episode of *Restaurant Deal Making EXPOSED!* If you're considering selling your business and would like a free consultation, reach out to patrickAndAndy@therestaurantsalesbroker.com or visit TheRestaurantSalesBroker.com to learn more.