

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper



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 Mirabell: Okay, welcome back to another episode of *Restaurant Deal Making EXPOSED!* I'm Andy, I'm here with my partner Patrick. And today, we have an episode called Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper.

Today, we're tackling a topic that is often overlooked but absolutely critical. Why every restaurant needs a specialized attorney and specialized bookkeeper and/or CPA. From lease negotiations to tax implications to keeping your business in legal compliance, you, the owner, should focus on the business's day-to-day and consistency within it. And leave many of these other nuanced and complicated responsibilities and requirements of running a successful business to specialized pros.

We feel adamant to share our opinion and information with you given we are also specialized in what we do as restaurant brokers. Would you call Patrick or I to help you buy a medical facility? No. Likewise, we want all of our clients to understand that they should source specialized professionals for overseeing many complex aspects of business operations and/or a pending business sale or purchase. Having professionals in your ring isn't just helpful, it's essential. Save yourself a headache and leave it to the pros.

So, there you go Patrick, that's my soft pitch to you here. Why are we using pros?

Patrick Totah: Yeah, I mean that's a that's a good question and I, you know, on this podcast I've tried to speak from my own personal experience and I definitely had a really bad experience not using the right accountant right off the bat with my first business and it was, it was terrible to correct the, it doesn't just happen overnight to correct. You have to go through a whole process of transitioning to

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

another accountant, they have to do a bunch of cleaning up. I never wish that upon anybody, and I hated that experience for myself. So, yeah, I think it's really, really important to, and if we can start talking immediately about like an accountant or bookkeeper.

Andy: One thing, one thing to chime in there, and I agree with you. I've had my own experiences too, where why it's been so beneficial to use a restaurant-specific bookkeeper, accountant, or CPA. One, I'll be honest, we've had Dan Engel from Engel Accounting on multiple times. He was integral from my 20s to really let me and help me and grow and understand the books of restaurants. I thought I did, but guess what? All the little nuances and what to do, not to do, I really learned a lot from him.

Likewise, I have had clients and I've experienced it too with myself in my first restaurant too, but I've had a lot of clients that had terrible books. And they're like, "Well, I don't know what to do about it. You know, it's my bookkeeper, it's my accountant." The books make no sense, they're not consistent year to year. They're not restaurant-specific accounting, as we know, it's quite nuanced. And so it really has caused a lot of problems, and it causes clients confusion, it causes them to spend more time and energy and stress on these things if they don't have the right people doing their books or helping them with legal aspects of their business, right?

Patrick: Yeah, and the other thing is timely, you know. And I have a very specific experience because I worked for Starbucks, and so that's, you know, during that time, I was given really good reporting in a very timely manner and I was able to really focus in on my business and managing it and having the right reports to do so.

So when I started my business, and I had an accountant and they weren't able to provide that for me. I got really frustrated and impatient and it wasn't good enough because I know what it can be. And obviously, I don't have as a small business the resources of a Starbucks. But, you know, what I had at that point was terrible, and I was like, "Well how am I going to manage this really awesome operation with no reporting?" You know, you can't do anything timely.

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

Like, what are my cost of goods? You know, what's my labor cost? And not knowing that is a death sentence immediately.

Andy: Especially in restaurants. Things are moving so quickly. Cash flow in and out is huge, right? But you had the knowledge. You knew what the appropriate, correct books looked like. So, knowledge was power there because you didn't spin your wheels for too long with a bad bookkeeper. And I've had clients that have had bad books for many years and, you know, they just kind of stay with the status quo.

Well, lo and behold, what happens when an audit comes along, right? The books aren't clean, and it's a headache, and it takes months, and they may owe a lot of taxes, who knows? But if you have clean books and you're paying for a premium professional, maybe you're paying a little bit more every month for this, but it pays off in the end. I promise.

Patrick: I have people that I have spoken to about selling businesses that don't get a profit and loss statement until they get their tax return done.

Andy: Exactly.

Patrick: And that blows my mind. It's like you don't even know.

Andy: For a year.

Patrick: Yeah, longer actually, maybe, you know.

Andy: Oh, you're right. You're right.

Patrick: By October of one year for the, you know, so you're talking about almost two years off, they have no reporting for their business other than like looking in their bank account.

Andy: Oh, gosh. All right, you're getting me hot and bothered. I'm with you on that one. All right. Let's dive in. You want to tackle, maybe legal?

Patrick: Yeah, I mean, uh, you know, I was very, very, my restaurant was at Four Embarcadero, and so I had some really good lawyers right above me there. And

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

so I learned really early on of having a very specific attorney, like a business attorney. I had a trademark issue; I had a trademark lawyer right above me. And I cannot tell you how important it is when you're doing a business purchase, a business sale, a lease negotiation, how important it is to have a business-minded attorney. Otherwise, they are going to reinvent the wheel, and you do not want that. I guarantee it.

Andy: Yeah. That's funny. You made me remember a situation here very early on, when I opened my restaurant, Skool. We, I literally designed that logo from scratch. My fish skeleton logo and so on, and school with a K instead of a CH. And within year two and three, we were doing really well, and I started we started getting notices that people were using very similar logos in other states. You know, I didn't have much of a fight out of state, but there was a local Bay Area concept that said there was crossover and pushed our buttons. Guess what? We had all the trademarks, and we had the attorney write the clear firm letter, and they had to stop, not us.

Patrick: I had a very famous chef in San Francisco show up to my door one day at my restaurant and asked to talk to me. And so we're talking, we're sitting at the table, and he's like, you know, basically starting off soft and everything like this. And he at some point he goes, "I bet you're wondering what I'm doing here." I'm like, "Yeah, what's going on?" And he's like, "Well, I started a business called Breaking Bread." And I was like, "Well, that's funny, that's the name of my business." He goes, "I know, and that's why I'm here." I'm like, "Okay." He's like, "Not only did I start it, but I trademarked Breaking Bread." And I was like, "Wow, okay." He's like, "So I want to learn if we can have a mutual use of the name." And I was like, okay, I'm not gonna be emotional. I'm gonna tell him, you know, "Hey, let me just think this through and I'll get back to you."

So what did I do? I went upstairs, talked to my trademark attorney, and he said, "Patrick, it doesn't matter if he has a trademark." He's like, "You've been using the name since 2010. You're already open, and he hasn't even opened his business. So you're going to tell him to..."

Andy: Pound sand."

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

Patrick: Yup. And sure enough, you know, I did that and I told them you need to give up that name and he did, and the rest is history. So, and that cost me like minimal amount of money to just have that person who knew exactly what the, you know, what the story was.

Andy: Good. Good. Oh, this is great. Those are two great examples. We've both been through it. So let's talk just in more day-to-day practical terms with an attorney. Attorneys that have worked with restaurants, they know the complexities and nuances. But what sort of specifics are we talking about here? Like an attorney can help us obviously with a lease, lease terms negotiating, working with a landlord to get, you know, a new a new lease drafted and so on. To have their eyes on it is vital, right?

Patrick: Yeah. I mean, I have a lease negotiation going on right now, and the buyers, there's three of them, they were like, "You know, we're gonna look over the lease." And I was like, "Do you guys have an attorney?" They're like, "No, we were just gonna do it ourselves." I was like, "I would highly advise you to have an attorney go through this, you know, and give a redline, you know, with their counterpoints." And they didn't even know what that meant. I was like, okay. So, it's our job to ensure that our clients are being looked after by the right attorney and someone who isn't gonna like just go and rewrite the whole lease, right? But just...

Andy: A facilitator. Someone who's gonna protect you from the bad, right? But also knows that you desire to enter into a lease in this location, right? I like that kind of approach from an attorney.

Patrick: Yeah. And some of it, you know, is pointing out red flags or, you know, even things that like won't be able to be negotiated, but making sure that the client understands what it means. I mean even something as simple as that like, "Hey, this can't be changed, this is the way it's going to be, but you should know what it means." And having an attorney explain that to you is really, really important, right?

Andy: Yeah. We're, you know, as a broker, obviously we look and review the lease in big detail for our clients, in great detail, right? And we're looking for the

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

big red flags, recapture clauses of a space, shared consideration clauses, all these things that we can point out that, hey, these are restrictive clauses, Mr. or Mrs. Buyer or Seller, our client. But please do have your attorney go over this because they really can dig into it deeper and explain the risks in more detail, right? And offer legal suggestions.

Patrick: Yep. And even with like, that's for like a full new lease review, right? But like, let's say we're doing an assignment, and assignments can be very simple. It could be like a one-page, you know, consent of an assignment and assignment between the seller and the buyer, and it could be very simple.

However, you know, if there's personal guarantees involved, there might need to be an indemnification, and you might need to have your attorney write that up. And so it can be simple, or it could be a little bit more complicated. And having again, the right attorney there to help you through that is going to be really important.

Andy: All right. And we've never had an attorney jump in on an assignment and made it too complicated. Have we? No comment, right? Yeah. All right, let's uh, leave that comment behind. All right.

Patrick: Maybe we'll bring one of our past guests on.

Andy: Yes. Yes. We'll call Roberto or Jordan. Yes. So, you and I were talking at the CABB conference recently that we went to, which is the California Association of Business Brokers. We talked about, you know, redlining offers, negotiations, you know, making comments on them. Where do we draw the line at what we can do and should do as a professional, and what our duty is to our clients, where we don't cross that line to be practicing law?

Patrick: Yeah, I mean, we're not allowed to write legal jargon, right? And so I mean when we're talking about counterpoints or, you know, addendum points, it needs to be fairly straightforward language. We're not there to rewrite clauses, suggest new clauses, that has to come from an attorney. We don't have a law degree and we're not to practice law. However, we're there to help facilitate the deal and uh, you know, we all have different hats, right?

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

Andy: It's Let me ask you this then, because we're working in a very specific lane with selling restaurants and bars, right? We have done hundreds of deals, you know, collectively between you and I. And if you're working on a deal and a situation comes up, question comes up, or a desire of the buyer or a seller that to, you know, add something to a purchase agreement. And we look back at other deals that maybe we've had a very similar experience.

Are, can we suggest? Can we say, "Hey, well, in this I had a similar situation in this transaction. This is what we used that satisfied buyer and seller" and give them that information so they can process it with their attorney on their own if they want to use something similar, adding a term or adding language to an addendum? What do you think on that?

Patrick: Yeah, I mean, I think it's safe for us to say, "Hey, look, you know, use our experience like hey, I've seen attorneys in the past suggest, you know, this sort of thing to solve this problem," right? But really, you can't advise them that this is the way they should go. They have to make that decision for themselves. And maybe it ends up saving them some money because they can just go to their attorney and say, "Hey, look, this is what the broker, you know, suggested based on other attorneys." And so you don't have to spend the time to have the attorney write that language or, you know, again, start from scratch

Andy: No, I think it's... Very, very well said. I want to be useful to my clients. So I don't want to just be like, "Oh, talk to your attorney." I don't like that approach either. Let's try to be useful, but then of course, the true legal stuff should really the decision should be made between the attorney and the client. So, great. All right. What next in legal? Anything else we need to tackle?

Patrick: I think that's pretty good. I mean, the things that we mostly advise our clients is to have an attorney throughout the transaction, help, you know, if there's anything that you want as far as the purchase agreement, or if you're buying, you know, depending how big or small the deal is, it could be a little different. Depending on how complex the deal is, it could be a little different.

And then, you know, lease is a major part, right? And then from ongoing, you know, there's various different things that an attorney can help you out with, like,

[Restaurant Deal Making EXPOSED!](#) with Patrick and Andy

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

you know, I had a labor dispute. Obviously, I'm going to go to a labor attorney, you know, and have, you know, help with that. You know, there could be some ADA issues.

Andy: Compliance, yeah.

Patrick: Yeah, you know, you may need an ADA-minded attorney. So, you know, there's an attorney for everything, right? And it's really important that you go to the right person. But yeah, there could be many different attorneys that you need throughout your time as a restaurant owner.

Andy: I think also on some of the smaller transactions that are more asset-based or Main Street businesses that we sell, there's a lot of parties that we work with that go, "No, I'm not going to bring in my attorney." And we have to be vocal about that as brokers and say, remind them of the value, and suggest that this is the smartest thing for them to do. We can't force their hand, but.

Patrick: Hey, let me ask you this. Let me ask you this. Let's say you're doing a \$50,000 transaction, okay? Small on the bigger scale of what we do, right? Okay. So yeah, you don't want to spend too much money, but let's say that something went really wrong, and that \$50,000 could end up costing you a lot more in the long run, instead of you, you know, spending maybe \$1000 or \$500 or whatever it might have been. So it's not really always about the size of the transaction, it's what your total risk or liability could potentially be if you get something really, really wrong.

Andy: Touche. All right. Let's move on to accounting.

Patrick: Pound foolish, I think they call that? Penny-wise, pound-foolish, right?

Andy: Yes, exactly. Exactly. Thought you were hitting on me or something there. I don't know. Okay. Accounting. So why is an accountant or bookkeeper and especially a CPA, why is it vital that they also have worked with restaurant clients in the past? This is a really big deal. I'm going to bring up again that we've had Dan Engel, who's very dear to me, and I've worked with him for, I mean, nearly 20 years on and off.

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

Patrick: I think he should pay us for a little plug right there, you know.

Andy: I think we should. I'm calling him after this. Yes. At lunch at minimum. Let's see. So, yeah, he speaks the lingo. He knows what the best practices are for restaurants, and he knows how important it is as a restaurant bookkeeper to be providing information to his restaurant owners quickly so they can pivot and make adjustments because we know how slim and how difficult how slim the margins are and how difficult it is to run restaurants day-to-day. If we a small mistake can really culminate over time quickly and cost you a lot of money if you don't know how to shift, okay?

So obviously, clean, accurate, and consistent books are essential in this industry. We see a lot of different kinds of bookkeeping and, you know, some of them are a little hard to determine, hard to translate when we're trying to value businesses because they're not clean. And, you know, I think one of the themes I, as a broker, have noticed is we have a lot of clients that we have dealt with in the past that, you know, want to have their cake and they want to eat it too.

They have creative, their own creative accounting in order to mitigate or limit their tax liability. They do things like cash draws or run a lot of personal expenses through the business, and that may benefit them when they are owning the restaurant year to year. They're paying less taxes, they're filtering more things through the business, and it benefits their day-to-day. It does not benefit us when it comes time to sell the restaurant. It does not.

Patrick: No. No, in fact, I think it's a serious red flag because you really don't know what you're buying, right? And it's like, oh no, you know. And I mean, if there's a buyer for that, they can do a deal direct because I can't be privy to, you know, some under-the-table type deal. And you know, I tell people all the time, like, hey, you've been, you know, being creative, we'll use the word creative, all these years, and we're not going to sell your business based on what you say it potentially is making. We're going to sell it based on what you're reporting. And...

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

Andy: Yeah. If we see losses on the tax return, then losses are losses. There are some, you know, big add-backs we've talked about them a lot that we can do, but we can't be so creative on things that are not above board. So.

Patrick: I would say I would argue that there's, you know, maybe this was a thing back in the like 80s and beyond.

Andy: When cash was being taken in?

Patrick: Yeah, I would say that this buyer is less and less. There aren't a lot of buyers for this kind of thing anymore because, you know, everything's on the, you know, up and up these days, you know what I mean? And you know, I just don't think that's a thing that some buyers want to get into.

Andy: Yeah. You made a comment when we were talking about some of the notes with this that I appreciated is that, you know, you want a bookkeeper and CPA that have that has already worked with several restaurants because they can advise you on what the quote, "normal," end quote, is, right?

If your past bookkeeper, for example, didn't work in restaurants and was using a particular, you know, accounting style or structure, and then we go to the CPA and he goes, "This is not kind of industry standard for restaurants." And you may be paying more taxes, or maybe there may be, you know, negatives in how you've been doing it. So you want that set of eyes, those professional set of eyes on it that can advise you on what how to do it better and how to do it right for your industry.

Patrick: Yeah, I mean, I see so many different ways that people report tips. I see so many different ways that people report sales tax. I see, you know, and in my opinion, I've seen a lot of wrong ways, and I'm like, "I don't think that's the way you're supposed to do it" based on my experience. But, you know, there are ways to report for restaurants that may be a little different for other industries.

But also, I think one of the most important factors is having a restaurant-minded accountant is they can advise you as you said earlier on, you know, what other restaurants are reporting for certain costs, you know, like labor and cost of

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

goods and other things so that you're kind of hoping that you know, can gain some knowledge from this person who does books for a hundred restaurants or you know, 20 restaurants. And so that you know what averages look like, which may help you.

Andy: A restaurant owner may be misguided on what tax credits or deductions you can have for your business. I may be out there spending every single bar and restaurant I go to putting my credit card on it, saying this is dining and entertainment, right? And put it on my P&L as such. That's got that's all but gone these days, you know.

Patrick: And then and then we have like things like the restaurant, you know, healthcare mandate in San Francisco or other counties. And so you have these surcharges that have to be managed. I would assume that other industries don't have that. There's the gross receipts tax, you know, there's so many different things that, you know, you want to make sure that you're, you know, maybe not even just industry specific but maybe even local specific because, you know, someone in, you know, San Mateo doing accounting there doesn't have to deal with these like mandates whereas like someone in San Francisco does. So, you know.

Andy: Compliance. Compliance. I think compliance is a word that goes in both of our categories of having an industry-specific professional for accounting and an industry-specific attorney. Compliance.

I couldn't keep up with San Francisco compliance. It was mind-bending, right? But, you know, I think we're really pushing this home, why we need professionals in restaurants, bars, or, you know, food-driven businesses. Any other topics that we think we should add on accounting? I know we talked about, we had noted that a CPA obviously is going to help you with proper price allocation if you're purchasing a restaurant. We deal with that in every one of our transactions. That's important.

Patrick: I think it's really important, and it's funny because I feel like the allocation in my eyes is more of a strategy, and I feel like some accountants look at it as a strategy, and some look at it as a very literal kind of thing. And, you

[Restaurant Deal Making EXPOSED!](#) with Patrick and Andy

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

know, I would love to maybe one day get Dan back on and talk about that because, you know, the way I understand it is that, you know, it's setting a depreciation schedule for the seller, and it's how the buyer is recognizing either capital gain or capital loss or income gain or income loss. And so, you know, the way you allocate can affect what your total net proceeds will be after, you know, all of that.

Andy: And to that point, we are brokers. We can't give tax or financial advice, okay? So when I say, "Hey, Mr. and Mrs. Buyer and Seller, can you please provide me with the allocation of purchase price on this transaction? We have to agree on it. Both parties have to agree on it." How would you like to break down the price allocation? And I often hear crickets, right? And so I can go, "Well, on a similar-sized deal, this is what another party chose to do, but that may not suit this transaction. So please go to your accountant or CPA and ask." Right?

So anyways, you know, I don't want to be blunt, but don't be a dummy, people, right? Use professionals. We're professional brokers. We work in the restaurant lane in buying, you know, helping people buy and sell restaurant,s and that's what we do. We're specialized in it. Likewise, restaurant attorneys, there's a lot of different, you know, types of categories we can talk about, but a restaurant-specific attorney is vital. A restaurant-specific bookkeeper, accountant, or CPA is vital. It'll help you sleep better at night, right?

Patrick: If you can sleep when you own a restaurant.

Andy: Yeah, exactly, exactly. All right, all right. Patrick, we have strayed from the food bonus question, but I'm going to hit you with one today, okay?

Patrick: All right.

Andy: Can you remind and share with our listeners what your cultural background is, your heritage?

Patrick: I am Palestinian.

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

Andy: Great. I would like to know, you know, what dish warms your heart? What is one of your favorite cultural dishes that you either ate at home or make at home or whatever?

Patrick: My favorite dish probably is going to be, I won't say it in Arabic, but it's basically a sumac chicken. And so what it is it's, you know, a chicken that's cooked with sumac and other spices. And there's onions that have been marinating in sumac and lemon juice and...

Andy: What is sumac?

Patrick: It's a purply kind of spice, and it has like a citrusy kind of note to it. So you put that with like allspice and cumin and some other, you know, spices. And so it's kind of a one-pot dish. So you have like what you do is you layer it, you put bread at the bottom, like pita bread, you put the onions that you've kind of started, you know, grilling on the, sweating out on the on the stove and you put that on top of the bread and then you put, you know, the brown chicken on top of that and then you put it in the oven and let it cook. And so the bread gets kind of all like the chicken juice, and you what I do after that is then I put it in like a, I take the bread out, and I put it in like a cast iron skillet and then reheat it so it gets kind of crunchy too. It's that's my probably one of my favorite dishes.

Andy: I love that. Thank you for sharing. And you know what, we obviously live in a very diverse part of the country, and so on, and I love, we love cooking for Thanksgiving, for example. We did total fusion last year. We went like Asian hybrid. It was amazing, and we had a great time, and what you just described could easily translate to a turkey dinner. Right? With the stuffing and the it kind of feels like that.

Patrick: Yeah, yeah, you could do it. Yeah, yeah, totally.

Andy: Cool. Thank you for sharing and sparking some new ideas. All right, you guys, just to be blunt, don't be a dummy, use a pro. All right? Thank you so much for listening. Check us out next time for a new, exciting top-five list episode. Have a good day.

Ep #38: Leave It to the Pros: Why Every Restaurant Needs a Specialized Attorney & CPA or Bookkeeper

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.