

**Ep #40: Anatomy of a Deal:
Restaurant Transactions from Listing to Closing Escrow**



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.

Patrick Totah: Hey everybody, we're here at *Restaurant Deal Making EXPOSED!*, and we have hit a semi-milestone here of episode number 40. And we're calling this one *Anatomy of a Deal*. The anatomy of a deal, from kicking the tires to closing escrow. Every restaurant deal starts with curiosity and ends hopefully with champagne after you close escrow.

Transactions take different roads. Some are smooth, others feel like they all fall apart, sometimes more than once. Selling or buying a restaurant is emotional, stressful, and incredibly rewarding when it all comes together. In this episode, we'll break down the anatomy of a restaurant deal step by step, from that first inquiry to closing escrow.

Andy Mirabell: Awesome. Well, we're officially over the hill on our podcast, aren't we? Number 40.

Patrick: We're in our 40s.

Andy: Exactly. Good. Well, it's been a long, good ride and a big learning curve and a lot of fun along the way, so let's keep it rolling, Patrick. Kicking the tires, right? I think it's really nice for our listeners and people to know, you know, what a transaction looks like, kind of more surface-level stuff, but the big parts of it. And it really can be useful to know the stages of all the steps of a transaction, timelines, and things like that. So, let's just start very basic. If I'm a buyer and I'm out there, where do I find opportunities for myself if I want to buy a restaurant, a bar, or food establishment of some sort?

It mostly starts online, right? I highly recommend people looking in people in California checking out Restaurant Realty Company's website. We have a really vast network, and of course, we're specialized, so this is all we do. Other websites, such as BizBuySell, BizBen, or other platforms are also places that

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you can search and put in search parameters and find the type of business, the price range, the location, and all of those things.

Listing details are important to review on a listing, but they may be quite vague, especially if it's a confidential listing, right?

Patrick: Yeah. Let me just go back here. I think one of the things that's really important is, you know, with, like, let's say you're buying a house, there's kind of a centralized MLS listing platform that has every single house. I want to make it clear that with restaurant transactions or business transactions in general, there's no central place for a listing.

So, really, as a buyer, you have to kind of go out there on all the different websites, whether it's Restaurant Realty Company, BizBuySell, BizBen, there's a host of other ones. And then on top of that, there's, you know, specialized agents for, you know, each kind of listing. And I would urge you, as a buyer, to make relationships with agents because not all agents know about other restaurants for sale or other businesses for sale. So the more relationships that you can, you know, start up, you're going to find out if there's more business opportunities that may fit what you're looking for.

Andy: Yeah. I think what you're saying, too, is also very much in line with, you know, what we talked about on a previous episode about "talk to the pros." You know, use a particular lawyer for a particular kind of law. You know, likewise, I, like you, highly encourage folks to use someone who's very versed in restaurants, food and beverage business, because there's a lot of different nuances to those sort of transactions versus another one or another kind of business.

So, I mentioned that a lot of the listings are going to be confidential. Some are non-confidential. In general, all listings should have a, maybe a general title and description, a price. It may have a very generalized location, like a county, if it's a confidential listing. If it's not, of course, you will know where it's located and can drive by without reaching out to a broker or anything. But in our world, I'd say, how many do you think? I'm thinking 90% of our listings are confidential. Is that pretty safe estimate?

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Patrick: 90 to 95%. I think, you know, one of the things you have to consider, I know a lot of buyers get really frustrated with having to fill out the NDA as part of the whole process, but you have to remember with the restaurant business, you know, having your customers find out that you're selling or your employees finding out can disrupt the business. So it is to the buyer's protection to have this all be done under the umbrella of confidentiality because you want to buy a business that has no disruption. So it's really important that it is this way, even if it is a little frustrating.

Andy: Yeah, it is. It is. We have multiple levels of screening in ways to make it more confidential or less. So, as far as confidentiality, though, you do have to go out and locate where to sign an NDA, and then the broker typically is going to share more confidential information. One, the business address, the name, some or all of their financials, a lease, equipment list, and other things.

So, you see a listing that piques your interest. You've reached out. Maybe you've got information on it after signing an NDA. It's time to move on to, you know, what is your gut telling you on this? And you like it. What's the next step?

You're going to probably start some very basic preliminary due diligence. You're going to research the business online. Maybe you're looking at their reviews, Google and Yelp, looking at their website.

But most importantly, obviously, seeing it in person is great. So you're going to drive by or visit a business as a customer to discreetly observe. Again, it is very, it'd be bad practice to bring up to any of the staff or anybody there that you saw a listing, the business is for sale. That really could disrupt things. So we are very clear and explicit about that.

So once you get into a space, you get a feel of the flow, the concept, you can see some of the major equipment pieces. Has it been kept in good condition? Has it not been kept in good condition? Is there good energy there? I know, you know, we got to trust our guts. We can't just base everything on numbers, right?

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Patrick: I get a lot of buyers who come in with inquiries and want to dive into like really important information, and they haven't even been to the neighborhood, they haven't even been to the restaurant. I don't know how you can even begin to, like, consider something without going in there as a customer and just feeling it up that way, right?

Andy: Yeah. I mean, would you get married blind? I mean, there's plenty of TV shows that are like that, but I wouldn't. Just saying. So, you know, then maybe after that, you want to dig in a little bit deeper. And that's when maybe more communication is going between you and your broker and the seller and their broker or between buyer and seller, essentially, right?

Some of the major things that can be huge expenses if they need to be repaired, replaced, installed from scratch, you know, there's a lot of different things that go along with the American Disabilities Act, ADA compliance. Grease traps are a major piece of equipment, and if one is required and wasn't required before, that can be a heavy, big-ticket item. Does it have the size type one hood that you want? You know, those upgrades are also very expensive.

So, I want to point out that Patrick and I have to be as versed as possible within the cities, counties that we work in about what are some of the major red flags of regarding a change of ownership with health department, ADA, and other things. We have specialists. Remember, trust the pros. We have specialists we can refer you to for ADA compliance, for how to get a health department change of ownership inspection, all these things.

But we know the surface level stuff and what to look for and what may be a red flag, but we don't want something so big to be a surprise so late in the transaction that it derails things. So we really want to, you know, during due diligence, you really want to highlight, you know, some of the big ticket items that could disrupt your budget for purchasing this or disrupt the transaction.

The lease is the toughest and largest contingency we deal with, right, Patrick, I would say, getting a new lease negotiated or having it assigned?

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Patrick: Yeah, the lease is huge. I mean, that's a major part of getting a transaction done. And I think one of the things that gets forgotten about in a transaction like what we do is it's not a buyer and a seller. It's there's three parties usually, unless someone owns the building, right? There's a third party who is not privy to the contract. They have no, the buyer means nothing to them, you know. They have a contract with the seller, and now the seller is asking, "Hey, I'm selling my business." And so now you have to bring the landlord into it, but you do need their approval. And I think it's a major step that, you know, a lot of people just they kind of underestimate, right?

Andy: Yeah, absolutely. Sidebar on that, I've had multiple clients that do own the building and are just selling their business and want to sell the business and become a landlord. I've had two different versions of that. And so a little true-life experience.

One of them was very savvy and on his own business's P&Ls would charge himself market rent each year, and reflected on the P&L, okay? So a new buyer would see that on the P&L, and it wouldn't be a big surprise even though the guy owned the building.

I had another client who didn't do that. And so everybody would look at the financials and think they look quite healthy, and then of course, they go, "Well, wait, where's the rent line?" And once we figure out market rent, then it really changed people's perception on the profitability of the business. But it's, you know, sorry, sidebar there, but it struck a light bulb.

All right. So do you want to dive into, you know, the next step, the next major..?

Patrick: Yeah, I think once you have, you know, all your initial inquiries, you've gone there as a customer, you know, you've looked at the, you know, initial offering as far as financials, you perhaps at the very end there got a back-of-house tour, you've met the seller. You know, what's the next step there?

You know, and that would be for, you know, us to draft up an offer or an LOI, depending on the deal. And so most of the time we go directly into a purchase

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agreement. An LOI is not binding. That's the major difference, whereas an asset purchase agreement is binding.

I think it has, you know, for the transactions that we're doing, I think it's more appropriate to go directly into a purchase agreement. We typically start to draft that up. There may be an addendum to go along with it. We then, as you know, agent and buyer will present that to the seller. The seller can accept it, they can counter it, or they can reject it, depending, right?

Let's just say, you know, at some point after going back and forth and all that stuff, we get an accepted offer. At that point, we're not we're going into contract, we're not going into escrow yet, and there's a reason for that. Once you go into escrow, there are fees associated, and given that we're having a contract with between the buyer and the seller that has contingencies, we don't want to go directly into escrow. We want to go, we just want to be in contract at first.

You will make a deposit, a very small deposit, that gets held in escrow, which is fully refundable. Typically, a contingency period is going to be about 30 days. And during that process, you will have the ability to do all your due diligence, whether it be inspections or books and records, basically everything you need to make an educated decision on whether or not you want to proceed in the business purchase.

And then you have your lease contingency, which would either be, you know, to get approval on a new lease and draft that new lease, or sometimes we do a lease assignment of the current terms if it's a good lease and long term. That period will take roughly about 30 days. Does it go over 30 days? Yes, it does a lot. And that's usually because of who, Andy?

Andy: The landlord. Yes. Yeah, absolutely. I want to point out too that doing that due diligence process, you know, they've made this deposit into escrow that's refundable until we remove contingencies. It's not an all-or-nothing thing.

If you get into due diligence and something that was not disclosed or something that was not, you know, fully shared or reviewed prior, you know, there are

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details that come up during that period, whether it's an equipment that hasn't been serviced or need to be repaired, that we have to oftentimes amend the purchase contract, right? We have to make a small alteration to satisfy, you know, what the buyer has found. There's a lot of ongoing negotiations, as much as we would like to avoid that.

Patrick: And again, it should be in good faith, right? Like, you can't just renegotiate because you decided that, like, I mean, you can, I mean, I guess, but again, it's all about good faith. But yeah, if you find out something with their, you know, revenue or net income that wasn't correct and that changes everything for you, of course, you're going to want to renegotiate, or maybe you're going to want to cancel.

If you found out that they didn't disclose something about, you know, the neighborhood that's going to really drastically affect business, and that, you know, changes the transaction for you, then you may want to renegotiate, or you may want to cancel. All of that is you are able to do that while you're in your contingency period.

Andy: Yeah. And to be clear, Patrick and I, and hopefully other strong agents, want to get as much information up front before we take a listing, try to vet it as best we can. And that will make sure, that helps us avoid some of these conflicts down the road. Some files on some of these businesses are so poor that I want to stay clear because there's going to be, you know, issues down the road.

Patrick: Also, I just want to point out like when you go into a transaction, there's two different ways that we value businesses, and there's an asset sale, and then there's the going concern. A going concern is a business that has the goodwill and profit, and you're buying that, and you're basing that valuation on the profitability.

Whereas like an asset sale, you know, 50,000, 75,000, 100,000 for a second-generation restaurant, it's already been priced at the appropriate price based on the fact that, you know, maybe the revenue isn't that strong or maybe the profit isn't there at all, or, you know, maybe they don't have the right, you

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know, records, you know, and so when you go into that transaction, you have a slightly different perspective compared to going into a going concern transaction.

Andy: Yeah. All right, so what if we do remove contingencies? What if we get to that point? What's next in your list?

Patrick: Yeah, so, you know, hey, we just went through the whole lease contingency. We got an approval. We have a draft of a lease, which has been agreed to. You've done your due diligence, you feel good. We are now going to remove contingencies, and then we go into escrow.

Andy: That's a happy moment, but it's not done till it's done. We, it's our job to maintain that everything is moving up to a schedule and timely.

Patrick: Still lots of work to do.

Andy: Totally. Yeah. So, escrow, they're sending out notices to creditors. They do bulk sale publications, which are essentially legal notices published to alert any creditors of the sale of the business. This is a requirement in California. We may see things like liquor vendors pop up on this because they're monitoring, you know, the sale of businesses or transfer of ABC licenses, and they're like, "Hey, we're owed \$25,000. We're going to reach out and make a claim in escrow." That'd be a common example, right?

We see SBA liens, contractors' liens. Oftentimes, we do already know there's owed back rents, for example, and we would inform escrow that we are handling the owed rent to the landlord through escrow. Okay? So those are some examples of that.

Generally, without the ABC license, escrow for a business can take 25 to 30 days, the bulk sale transfer, right? The ABC adds the nuance of added timeline and a little bit of a moving target at the end of it, right? So with the ABC license, Patrick and I also extremely versed in all of the ABC application process for new licenses, transfers, and so on. It's a fair amount of work, a fair amount of paperwork, and a lot of instructions to both of our parties on what needs to be completed, answered, and notarized.

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We will turn in the application, and at that point, we're waiting for that 30-day poster to come in the mail. Once that 30-day poster is hung, we have a little bit more accurate timeline to predict here. We're about 40 days out, right? Once that poster gets up, if we can keep everything on track.

Patrick: Hopefully, and also depending on the county, right?

Andy: True. We won't name slow counties because there's a few of them.

Patrick: We love the ABC.

Andy: Yeah, exactly, we do. There are some changes to timelines if we talk about early possession. I'm not going to get into that today. We don't recommend it. There's always a situation for a buyer to take early possession, but they're far and few between, and they come with a lot of risk.

So, the ABC license transfer is in process. During that time, the escrow is doing their clearances and liens. They're reaching out to tax agencies, make sure the sales tax is paid, all that stuff. All that stuff needs to be resolved before we close escrow. So once we actually get to the end of that 30-day poster, we have already asked our buyer to fund escrow. Then we start honing in on this final date to close escrow upon the successful transfer of the ABC license. And then, what do we do?

Patrick: We're getting ready for closing and handoff. This is the exciting part and stressful part, and all the emotional things, right? So basically, once we know that we have clearances and liens in sight or completed and the ABC license is looking to transfer, we will look to schedule, you know, hopefully within a day or two at most, an inventory count, if there's inventory as part of the transaction, and a walk-through.

So the inventory, usually the seller will count the inventory. They will provide, you know, receipts for the food and the beverage. And then the buyer will come and confirm. This can go a number of different ways. It can be very reasonable. I've been a part of, you know, where the buyer didn't get too caught up in it and the seller didn't get too caught up in it. And then I've been a part of it where, you

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know, both sides or one side is, you know, nickeling and diming. So that's always kind of a fun part to see what happens there.

The walk-through, which is, you know, to ensure that, you know, as part of the transaction, we signed an equipment list, which has all the assets that are included. We want to make sure that those assets are still there, and also they need to be in good working order. So that's part of the transaction. So this will again happen right about, you know, one to two days before we close escrow.

Typically, once we do close escrow, training period. If you have training included in your transaction, then the training will start. Usually, it's about two weeks, you know, 30 or 40 hours a week, and that will usually happen right as, you know, we close the transaction.

Also during that period, I think it's a great time for handing over any intellectual property, doing anything that you need to do that might be easier together, kind of like, you know, the DBA, if like one person needs to release the DBA and the other person needs to accept it, then they can kind of be together to get all these things done, handing over utilities, things like that can all be done during training. I think it's a really good time. That's how I did it when I closed escrow on my business for myself.

Andy: Of course, some of the stuff is happening just before escrow, where we want to share what vendors are used, so they can fill out new credit applications. They have to rehire staff, so there's a lot of paperwork involved in reviewing that.

Patrick: And when you say rehiring staff, they are basically just taking on the current staff, but they technically are being rehired.

Andy: Yeah, they're not part of our transaction. They're not assets. So they need to be vetted, interviewed, and if it's a good fit, then the buyer rehires them under their entity and their business.

Yeah, and utilities, right? We want to have a close of escrow date for them to start service. All right. And then, lo and behold, we get an email from escrow, and we get to do the fun phone call of calling buyer and seller and saying

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congratulations, you are the new owner of a shiny new business, or a sort of shiny second-generation business.

Patrick: Yes.

Andy: So, yeah, it's always nice to get to the finish line. And I think the part that I love the most, and no, I'm not going to say commission. I'm going to say that there's so many of our transactions that the story at the end of the at the end of these long and very tense, sometimes tense and emotional transactions, the stories behind it are oftentimes really good.

Getting someone to retirement feels really good, right? Getting a new, exciting concept into a space feels really good. You know what I mean? And everyone's smiling and happy. So that's our goal, and that's where the payoff is, I think, in a large part of it anyway.

Patrick: Yeah, I agree. I've done a few transactions where, like, the buyer was a first-time buyer, you know, they'd been working very hard in restaurants for a long time, and this was their first transaction. And you know, some landlords might not have approved them because they didn't have the highest net worth. But you know, when you get those transactions done, I, to me, those are the my favorite ones because you know, I was one of those people at one time where I'd never owned a restaurant. I had all the experience in the world. I didn't have a ton of financials at the time that were, you know, super strong. And you know, I was given an opportunity, and I think I did a pretty good job with it. So it always feels good when we can kind of turn around and do a transaction like that.

Andy: Yeah, I'm sure your good looks and charm played some somewhat into the landlord's decision, right, Patrick? So here's a bonus question for you then.

Patrick: Oh, wow.

Andy: Of all of these hundreds and hundreds of transactions you've done, Patrick, how many transactions did it take for you to get the flow of the anatomy of a deal? You know, the true flow of it. Sometimes when I was first starting, it

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was like, okay, wait a minute, what's next? What, wait, where's my calendar? What's my timeline? How many transactions did it take you to get the hang of it?

Patrick: Prior to becoming an agent, I had done two transactions where I bought a restaurant from Restaurant Realty, no less, Steve Zimmerman. And then I had also turned around and sold two restaurants. And one of those transactions, I did a lot of the heavy lifting on it. And so I felt like I had a pretty good sense of what was needed for the transaction, but you know, I would say after the first year, I had a couple really hard transactions during that year where, you know, at the time I wanted to like, you know, pull out what hair I had left over, and like, I was like just super stressed out about it. But those transactions are the ones that really helped me become a really great agent because having those happen really early, I think personally, just like, now that I can think about it, it's really helped me be a better agent.

Andy: Well said. Well said. I didn't have that real estate, the residential real estate background. So, yeah, it probably took me a few more to get the hang of it. A few more transactions to get the hang of it than you did.

Patrick: But look at you. He's like one of our best agents for anybody who's out there listening.

Andy: All right. Thank you for that plug there, Patrick. All right. Well, thank you guys, for listening. I hope that you got to learn a little bit more about the anatomy of a deal today. If you have any questions about it...

Patrick: Hold up. Let me ask you a question.

Andy: Yeah?

Patrick: Given how we started this episode out. What is your favorite brand of champagne?

Andy: Oh, lord. Well, I mean, one of them shares my last name, Mirabell, so I mean, that's kind of a shoo-in for obvious reasons. Man, I've been spoiled with champagne when I had my restaurants and my best friends and my vendors and

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things. So I don't know. I mean, Piper Heidsieck was always a fun one for me when I had New Year's events and things.

Patrick: All right.

Andy: Yeah. Yeah. You? Do you have one?

Patrick: Maybe like Billecart-Salmon.

Andy: Ooh, you're fancy.

Patrick: It's the only one I could think of right now.

Andy: Yeah, yeah, exactly. But at the end of these deals, champagne is a must or non-alcoholic champagne, whatever you're into, okay?

Patrick: Yeah.

Andy: So, we hope one day we can say congratulations to one of you listeners. Thank you so much. Tune in next time.

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.