

Strictly Business

A Business Law Blog for Entrepreneurs, Emerging Companies, and the Investment Management Industry.



ABOUT THE AUTHOR

Alexander J. Davie is an attorney based in the Nashville, TN area. His practice focuses on corporate, finance, and real estate transactions. He works mainly with emerging companies, venture funds, entrepreneurs, and startups. His firm's website can be found at www.alexanderdavie.com.

In his corporate practice, Mr. Davie has worked extensively with his clients on all aspects of their businesses, including company formation, business planning, mergers and acquisitions, vendor and customer contracts, corporate governance, debt and equity financings, and securities offerings. In addition, he has represented investment advisors, securities brokers, hedge funds, private equity funds, and real estate partnership syndicators in numerous private offerings of securities and in ongoing compliance. Prior to returning to private practice, Mr. Davie served as the general counsel to a private investment fund manager.

In his real estate practice, he has participated in property acquisitions, mortgage financings, and commercial leasing matters throughout the United States. He has represented developers, governmental entities, life insurance companies, banks, and owners of malls, shopping centers, industrial parks, and office towers. He has worked on a number of transactions involving the syndication of real estate partnerships, advising sponsors on both real estate and securities issues.

Working Effectively with Your Lawyer: Don't "Outsource" the Details of Your Deal

Having an effective relationship with your lawyer involves more than just hiring an attorney who is knowledgeable and competent. You must also be able to work with your lawyer in a way that gets a deal done while protecting your interests. This is an interactive process that involves the active participation of both parties. All too often, I see clients ignore the details of their deals, often under the logic of "I pay him to handle all the details." This is a perfectly understandable reaction. First, most entrepreneurs are "big idea" people, and are not detail oriented, so pouring through the 10 page representations and warranties section of a stock purchase agreement doesn't exactly sound like a good time. Second, lawyers are expensive (many would say overpriced) and so clients want to see some tangible benefit to having hired them. Mitigation of risk arising from a deal is rarely tangible, but the luxury of not having to deal with the hassle or reading a dense 80 page agreement does seem like a tangible and tempting benefit. The problem is, this approach of "outsourcing" the details of your deal isn't always in your best interest. Here are some reasons why:

1. In the end only you know your own preferences and concerns. A good lawyer will ask you extensive questions about what is important to you in the deal and what concerns you have going in that you would like addressed. An even better lawyer can help you think about and your articulate preferences and concerns about the deal that you had never even thought of. Often times however, the client, after being asked about their preferences on an issue that they had never thought about or cared about simply responds with "I don't care; do whatever you think is best." Many lawyers will simply go ahead and do exactly that, but what the lawyer thinks is best is often not what the client really would have wanted had they had they taken the time to learn about the issues involved. Therefore, my recommendation for clients, is that the next time you are presented with a question from your lawyer asking your views on something you care little about, instead of telling them "do whatever you want," instead ask them "*Why should this matter to me?*" and see where the conversation goes. For lawyers, my recommendation is that next time you hear "do whatever you want" in response to a question you posed to your client on a relatively important matter, you should take the time to explain to the client why this point should matter to the client specifically and what the consequences would be for each of the various options the client has.

2. You lose the opportunity to learn about new aspects of business deals. Every business person, whether a new entrepreneur or a seasoned venture capitalist always has more to learn. A lot of this learning occurs during the



course of negotiating and executing deals. No one should ever assume that because they haven't heard of something or never really thought about it that it must be unimportant. By being fully engaged in the deal and all its details, you have an opportunity to learn more about the issues that drive deals and that have the potential to upset them. When it comes to being a consumer of legal services, especially in the business context, an educated consumer is a better consumer.

3. Often, the more sets of eyes looking at the problem, the better the solution that will be found. Studies have frequently found that having more than one person involved in a decision-making process is "synergistic"; that is, a group of people will often make a better decision than each person would make individually. If you check out of the process, and your lawyer is the only person working on a particular problem in your deal, statistically chances are that the solutions to those problems will not be as good as if you had participated in discussions with your lawyer on the issue. Sure the lawyer can talk to other lawyers in his firm (and often does), but this is not always an option at small firms or even at large firms where the client's budget does not allow for two lawyers to be sitting there talking over your issue at a \$1,000/hour each. Therefore, I believe that it is always beneficial for clients to be involved in the problem solving process where appropriate.

4. The more sets of eyes looking at an agreement, the less likely there will be mistakes and oversights. As we all know, lawyers are paid to be "perfect" and never make a mistake or overlook anything. Unfortunately, in reality, they are human and do sometimes make mistakes or overlook important issues, even when you use the most expensive international law firm in New York. Now, I'm not saying that you should be spending your time proofreading your lawyers documents. But by being actively engaged in the process of negotiating the legal documents, you will reduce the chance that items that are important to you end up being left out of the deal and you will maximize the chances that the terms of the documents conform to your expectations.

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5. Your lawyer will be at his or her best when you are fully engaged with the process. Lawyers, like any human being, are apt to take their cues from those around them. When they ask for your views on issues presented on your deal, and you respond with "I don't care," then unfortunately, some lawyers they are less likely to care. Yes, I know, they are paid to care, but when the message they receive from their client is that whatever issue they brought to their client is unimportant, then they themselves are more likely to treat it as unimportant as well. The really good lawyers are those that are willing to stand up to their clients a little bit and persevere through the "I don't cares" and ensure that their clients make good decisions about details that may currently seem unimportant but could be significant down the road. When you are fully engaged with the issues that your lawyer is working on in your deal, they will see you as a willing partner in helping them iron out those issues, and will be more likely to work through them to find the optimal answer.

In the end, you shouldn't hire a lawyer simply to escape having to deal with the details of a complex deal. Rather, the lawyers should function as your guide and adviser and a partner in helping you ensure that your interests are protected. A lawyer can certainly take a lot of the burden off your shoulders by being the one to draft the complex documents, but you should always read any agreement prior to signing it, and if you don't understand any portion of it or have any concerns, speak to your lawyer about those concerns. Being fully engaged will get the very best out of your attorney, whom after all, you have paid a lot of money to in order to have access to their judgment and skills.

