

# GABB TODAY



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THE NEWSLETTER OF THE GEORGIA ASSOCIATION OF BUSINESS BROKERS

## Is Political Gridlock A Good Thing?



**By John Jugovic**  
**GABB Board member**

We deal with it every day. We work to avoid it. We suffer because of it ... can more of it actually be beneficial? Morning traffic gridlock makes commuting more difficult. Corporate gridlock keeps businesses stuck in their traditional ways. Even innovation gridlock must be avoided to insure remaining

competitive in today's marketplace. Our industry--business brokerage--and the transition of business ownership has slowed to a crawl as a consequence of the lending gridlock we are now experiencing.

**But one place** where we have counted upon gridlock is in our political system. It has become an unofficial part of the system of checks and balances envisioned by our founding fathers, who realized that too much concentration of power is a dangerous and corrupting thing. They knew that government should be limited. They focused on efficiency and intentionally made government inefficient.

When Congress was created, it was not the intent that political parties create or implement policy, but rather the individual representatives acting in the best interest of those who directly elected them. Party government has evolved from the desire to provide more powerful unified voices that should, in theory, provide greater efficiency in governing.

Today, we have the arrangement that one party rules both the Presidency and the Congress. Things are supposed to "get done." That has happened. We passed a massive health care initiative, a \$3.8 trillion

budget and implemented a \$814 billion stimulus of our economy. Sounds impressive...

### Are you feeling the benefits?

How have you been affected as a business broker? Have businesses you represent been placed on a firmer foundation to maximize their future potential to succeed? Have lending institutions improved their desire to invest their funds in the growth of business?

Perhaps the accomplishments of our government have not had the promised consequences and instead bred an uncertainty that has gridlocked our economy. Businesses find it difficult to understand the potentially significant financial implications of the health care bill that passed. Buried in the bill is a Form 1099 stipulation that businesses fear could impose significant new costs and compliance burdens. Tax planning is almost at a halt. We do not even know what the tax rates will be three months from now. What new taxes are on the horizon to manage and pay for the unprecedented national deficit?

**Continued on next page**

**MEETING NOTICE**  
**Jerry Darnell, Senior Vice President of Strategic Development at Benetrends, Inc., will speak at the Oct. 26 meeting about using retirement funds to buy a business.**  
**\*\*NETWORKING STARTS AT 9:45 AM \*\***

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# How is Your Business Affected? Decide in November

## **Continued from previous page...**

Partisan politics is often blamed for tearing our country apart and “gridlocking” our ability to make progress. Politicians want you to believe that a unified government in which both the legislative and executive branches of government are controlled by one party will most benefit the country. Yet two of the most productive legislative sessions over the past 25 years were in 1995-1996 when a GOP controlled congress and Democrat President Clinton passed 13 major laws including deregulation of the telecommunications industry and a welfare bill that has dramatically reformed that program.

Unchecked power pushes parties to excess, regardless of which party is in power. It leads to overreaching by the

majority party. The party that controls uses restrictive rules and the minority party resorts to obstructionist tactics. Political gridlock may be the only way to reign in this unproductive and dangerous behavior. It is the job of Congress and the President to fashion workable solutions, or just get out of the way and let capitalism and the free market work. Transparency and scrutiny are desperately needed and should be demanded for legislation that is so consequential to our country. We need to remind those we elected to act humbly with the power given to them. If they don't, we are obligated to remove them.

**How will your business be affected? You each have an opportunity in November to decide.**

## FORMS: The Importance of the Spousal Consent Form

### **By Dan Younkins**

There is nothing worse than learning the hard way! I just lost a \$95,000 commission! Recently, I obtained a signed offer at asking price on a Florida restaurant and property for \$950,000 with a 10% commission. Let me call it “Frank and John’s Place.” I was in process of getting a loan for the buyer when I read in the newspaper that “Frank and John’s Place” had been sold and the Broker was Coldwell Banker (at a 5% commission).

I had a Corporate Resolution signed by both Frank and John. When I confronted the owners, I found out that Frank had run off to Mexico with one of the waitresses – and John was not an officer of the corporation – his WIFE was the officer. And my agent had NOT gotten a Spouse Consent form for the sale signed.

John’s wife said she knew nothing of my transaction. Coldwell Banker told me that they knew nothing about my having an Exclusive Listing Agreement. My attorney said I did not have legal recourse - but I would have if I had obtained a Spouse Consent form signed by John’s wife. I now use the Spouse Consent form to make sure the spouse is on board.

Live and learn.

# Lender Minute

By Laurence S. Leopold, Vice President,

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**P**resident Obama recently signed the Small Business Jobs Act of 2010 which extended a number of SBA loan enhancements under the American Recovery and Reinvestment Act of 2009. Brokers will be interested in the temporary fee waiver on SBA 7(a) loans through Dec. 31, 2010 (or until allocated funds run out) and the temporary increase in the SBA guaranty from 75% to 90% which will also run through the end of the year. In addition, the Jobs Act made some permanent changes within the realm of SBA lending, including increasing the maximum loan size under the 7(a) loan program from \$2 million to \$5 million. The Act also permanently increases the small business size standard eligibility for SBA loans to \$15 million Tangible Net Worth AND \$5 million average net profit after tax.

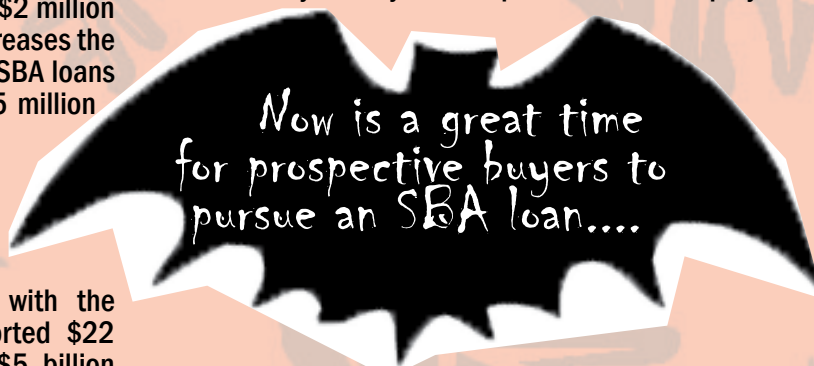
## **So what does this mean for business brokers and your clients?**

In the government's fiscal year 2010, with the Recovery Act enhancements, SBA supported \$22 billion in loans to small businesses, a \$5 billion increase and nearly 7,000 more loans than in fiscal year 2009. With the enhancements extended through the end of the year, small businesses are going to pursue loans that their banks may not have done at this time without the 90% guaranty. A number of SBA loan applicants are already waiting in the queue. As of early October, the SBA reports that they have cleared the queue, approving more than 1,900 loans for nearly \$970 million. Therefore, banks will be willing to look at more opportunities at this time while the guaranty is at 90%. After December 31, banks that were hesitant to consider SBA loan opportunities with a 75% guaranty will likely ease back on lending again barring any unforeseen economic or market changes. **Get those borrowers and opportunities in front of experienced lenders while you can.**

The temporary fee waiver could save the prospective borrower up to \$50,000 on a \$2,000,000 loan. But the fee waiver is temporary and will end when the \$505 million the government has set aside runs out. These fees, which include loan origination and underwriting costs, can represent anywhere from 2-3 percent of the loan amount and represent a significant added

expense for business owners.

Revisions to the SBA's Standard Operating Procedure (SOP) regarding business valuations became effective October 1, 2010. One key change is that "any amount in excess of the business valuation may not be financed with the SBA guaranteed loan." It is imperative that business brokers be sure that the sales price--including goodwill--can be verified by a business valuation, or, alternatively, that any prospective buyer can cover the excess with additional cash available, above and beyond any bank required minimum equity.



**The SBA** has also clarified when independent valuations would be required for change of ownership situations as follows: "If the amount being financed [including any 7(a), 504, seller, or other financing] minus the appraised value of the real estate and/or equipment is greater than \$250,000 or if there is a close relationship between the buyer and seller (for example, transactions between family members or business partners), the lender must obtain an independent business valuation from a qualified source."

Now is a great time for prospective buyers to pursue an SBA loan, with increased SBA loan limits, increased guaranty and waived fees provided by this new legislation. Be sure to work with qualified SBA lenders as the rules are being constantly revised. An experienced SBA lender can get the transaction approved and closed in as little as 30 to 45 days.

**Laurence Leopold was an attorney for the U.S. Small Business Administration and is now an SBA lender for NoaBank. He has 15 years experience with SBA lending and may be reached at laurence@noabank.com.**

# Ghosts and Goblins to avoid Gruesome Surprises this Halloween Season

By David Still, CBI, Capital Endeavors

Even if Halloween weren't around the corner, scary things appear all the time on the business pages. But business brokers can follow a few rules to keep the grim reaper from killing their deals in this new economy:

Who is your Seller? - Some sellers do not want to bring in other shareholders until late into the negotiations, which may "spook" your sale. Check that the person signing your engagement letter has the authority to sell the business. Often a spouse or relative of the owner can kill the deal also, so find out "who, who, who" the true decision makers are.

In Georgia, if the owner is going through a divorce, all the assets of the couple are frozen by the courts. This means you have to go through the courts to get approval of the spouse before you can sell the company.

What is your Buyer Profile? - Does your buyer have the financial and human capital to make the deal happen? If they are not seeking third party financing, the buyer should have enough cash for a down payment and working capital to purchase the business

If outside financing is needed, call a GABB banker affiliate member and find out what your buyer needs to look like (Superman or Wonder Woman) in terms of lifestyle personal expenses, outside collateral, cash down payment, credit, industry experience and working capital. Don't waste your time with a scarecrow that doesn't have the right stuffing.

Price vs. Terms - Remember the old adage "The Seller determines the price and the Buyer determines the terms." Many Sellers still want equity pricing of their business from the beginning of 2007. Most SBA-backed financing requires buyers to have industry experience, 20 to 25 percent cash down, outside collateral, and very good credit.

If sellers want old pricing, they are going to have to agree to a good bit of seller financing. Buyers are going to have hand a few more treats to sellers in the form of either earn outs or collateral since there are fewer sellers willing to enter the market compared to 2006.



Don't forget about just regular asset lenders. In some instances this will work well for deals now - especially if seller financing is involved and the business is in manufacturing or includes real estate. High net worth buyers may prefer this route as well.

Rules of Thumb - When using rules of thumb, it is a good idea to compare this info with the sold data available to you as a member of GABB. Don't poke your finger in your eye! You can chose from Pratt Stats, BizComps, IBA, and our own data within the state multi-list. Rules of thumb are based on businesses that have industry standard profits and assets. You need to know what these levels are. Sometimes, the industry experts do not report this information to Tom West in his annual Business Reference Book and/or they may disagree with each other.

Comparable Sale Data - When you compare your company to the sold data make sure you are comparing spiders to spiders and bats to bats as best you can. Don't ride around from business showing to showing like the headless horseman.

If your company's Seller's Discretionary Earnings (SDE) is much lower than the industry median, chances are your sales price will below for a financial buyer. If you have an industry or synergistic buyer, you may be in luck and get the industry market price or better (a large candy bar instead of a toothbrush)!

# BEWARE: Don't let employees scare off potential buyers

Find out what assets were included in most of the comparable deals:

- Is your deal large enough that you have to be concerned that typical levels of accounts receivable or inventory are included? To determine industry ratios, you may have to purchase data from Risk Management Associates or call a local trade association for free information.
- Are the comparable deals all from the same frightening year or time period? If so, this could mean that there was an industry roll up occurring which might have increased the multiples being paid.
- What was included in SDE? If you look at data for dentist practices sold in Pratt Stats, you will find that SDE includes more than one owner's salary - sometimes up to five. You will need to read the fine print within each comparable, or, in this case, you will come up with very low multiples.
- Did the seller receive cash, notes, or new company stock? Reasonable terms do not always increase a multiple that a Seller can obtain but paper stock in the new company always seem to really throw the multiple higher. If your deal is a real pumpkin (cash), don't use a multiple from a paper pumpkin deal (new company stock).

Concentration of Customers - If your company has more than 10% or 20% customer concentration, most buyers will see this as additional risk and will either smash your pumpkin price or pay a portion of the purchase price in an earn out or into escrow.

Non-compete employee contracts - More and more buyers want key sales people to have signed non-compete agreements before the sale. Done correctly, these give the buyer at least a year to stabilize the company before they have to compete with old employees. Don't let the employees scare off the buyer!

Deals with real estate - Commercial properties in many cases have not increased in value in the last three years and, in several cases, have gone down in value. Make sure to check for foreclosures in the industrial parks. Unfortunately, many industrial parks are turning into graveyards!

Rent - Landlords are being forced to modify leases by reducing rents in the near future to keep tenants



from moving when the rental period expires. This leverage can help you increase the value of the business by reducing the current rent that your seller has been paying. Worst case scenario is that it will at least stop the bleeding!

Bottom Line - Remember the devil is in the details! Work smarter, not harder this Halloween, and beyond. It is your decision - Trick or Treat?

David Still, CBI

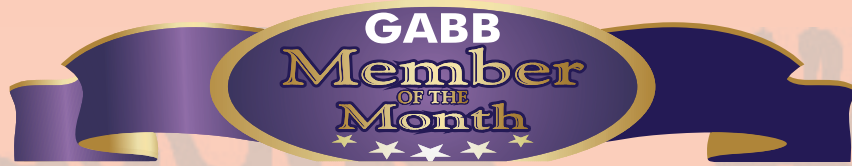
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## Where have you lived besides Atlanta?

Like the song says, "My home's in Alabama, no matter where I lay my head." I have lived in various places throughout the southeast, midwest and southwest.

## Professional & Personal Affiliations/ and other honors:

IBBA (Certified Business Intermediary), Commercial Board

of Realtors, National Society of Professional Engineers. Member of First Redeemer Church in Cumming, sing in the choir, volunteer as coach for soccer and basketball

## What role do you play within your company?

We run several small family owned businesses, one of which is the Commercial Real Estate Brokerage and Business Brokerage. I am the Broker, and I oversee all activities for the company.

## What is the focus of your company, and how does it differentiate itself?

The principal focus of our firm is on commercial real estate leasing, but we have frequent opportunities for business listings throughout the year. We also manage commercial and residential properties for our listed properties as well as other clients.

**The most important thing I've learned in business is:** To focus each of our businesses on a niche market, to become the very best we can be at some specific things, and then branch out from there.

**My most unexpected sources of business referrals are** landlords of commercial properties.

**The biggest mistake I've made that I'll never make again** is trying to be a buyer's broker for someone, who it turned out, didn't have any significant money.

**All about you:** Our family is an entrepreneurial one; my wife Vivian's business has grown to the point that she is the effective CFO/CAO of a major commercial real estate firm in Atlanta. We run a small landscaping firm, which employs most of the family plus a few others. We have "Hazelfaye's Gift Shop," an online store for women's apparel and household items. Even our 12-year-old daughter gets into the action by shredding documents on a weekly basis. We pay her with company checks, and she maintains a bank account of her own. With all this, we manage to have a family night every Friday night through board games, a movie, or Wii contests.

**Many people would be surprised to know that I:** played collegiate basketball and soccer for the University of Alabama-Huntsville.

## How to use Retirement Funds to Buy a Business: Oct. 26 GABB Meeting

Many skilled but unemployed workers have taken advantage of tax laws that enable them to use funds from retirement accounts to buy a new business, and the Georgia Association of Business Brokers will hear an industry expert describe the process at the Oct. 26 meeting.

Jerry Darnell, senior vice president of strategic development at Benetrends, Inc., will describe how his company helps individuals legally invest retirement funds into new businesses and avoid early withdrawal taxes and penalties. Darnell will speak to the GABB, the state's only professional organization and Multiple Listing Service dedicated to buying and selling businesses and franchises, on Tuesday, Oct. 26, 2010, at the South Terraces Conference Center, 115 Perimeter Center Place, Atlanta, GA, 30346. Networking begins at 9:45 a.m. with a free light breakfast before the group's 10:30 a.m. meeting.

"Since 1991, our company has helped nearly 1,500 people tap into their 401(k) accounts," says Darnell. "Most of our clients are between the ages of 35 and 50 who were laid off or who were tired of working for corporations."

The Benetrends method includes creating a corporation, creating a retirement plan for the new corporation and rolling over some or all of the individual's retirement plan into the new company plan. The individual uses the new retirement plan to buy stock in the newly formed company.

"The newly created corporation can use



**Jerry Darnell of Benetrends, Inc., will speak to the GABB on Oct. 26**

money raised from the stock sale to pay for business expenses such as license fees, supplies, advertisement, even the individual's salary," says Darnell.

The process works with 401 (K) and 401 (a) plans, 403 (b) plans, simple and traditional Individual Retirement Accounts, Simplified Employee Pension IRA's, but not with Roth IRAs.

**Jerry Darnell is Senior Vice President of Strategic Development of Benetrends, Inc. He is a board member**

**at Wave Energy Drink and director and consultant at Suncrest.**

**He was a consultant to Tony Martino, founder of Maaco, where he was Senior Franchise Development Director. He was senior vice president at computer services company Rescuecom, vice president at Sterling Optical, chief operating officer at Site for Sore Eyes and vice president of franchise development at Physicians Weight Loss Centers and The Medicine Shoppe.**

**A franchising expert, he co-authored the 1993 Franchise Handbook for the American Management Association and the 1999 Franchising Handbook for Dummies. He chaired the Exhibitors Advisory Committee of the International Franchise Association and served on a Ford Foundation advisory board for minority businesses.**

**He has served as a Senior Management Advisory Consultant for such companies as Molly Maids, ServPro, A Choice Nanny, Proforma, DuraClean and MAACO. He is a Big Brother sponsor and resides in Pennsylvania.**

# Affiliate of the Month

**Brent Swanson, Vice President  
Georgia Small Business Capital**

**Phone: 404-275-5250**

**business e-mail: [brent@ga504.com](mailto:brent@ga504.com)**

**e-mail: [swan1990us@yahoo.com](mailto:swan1990us@yahoo.com)**

**Affiliate member since 2009**



## What role do you play with your company?

I've been a business development officer and underwriter the past 5-years I've represented Georgia Small Business Capital. I've been in banking for 20-years.

## How does your company differentiate itself?

The primary focus of my company is to offer the SBA 504 Loan Program. The SBA 504 is a way to match long-term, fixed-rate financing with long-term assets. Through the 504 loan program, I help fund the purchase of land, buildings, machinery, equipment, construction and all associated soft costs, i.e. interest reserve during construction, appraisal, environmental, title, survey, intangible tax, etc. We can also help minimize the downpayment, allowing the small business to conserve operating capital to support future growth.

## What are your company's target markets?

Any for-profit small to medium sized business in which commercial real estate and/or equipment bought/refinanced will be primarily owner occupied.

## The most important thing I've learned in business is

to assume that there's someone who can do my job better than I can do it. This is what drives me to continually strive for improvement.

## My most unexpected source of business referrals:

Borrowers. Unlike bankers, my interaction with borrowers is typically limited to the time preceding the disbursement of loan proceeds. Thus, my involvement is more transactional in nature than a "relationship" banker that can offer many financial products to their client. However, there are many borrowers

who have had additional borrowing needs satisfied by the SBA 504 loan product at some point in the future and have also referred me to their friends and colleagues.

**Every day, I read:** Daily news from the internet news sites. I read lots of business and sports magazines, not many books. However, I do read a lot of children's books these days to my 4 year old.

**Where have you lived besides Atlanta?** Until I was 12, I lived in the small town of Ridgway in northwestern Pennsylvania. I spent Junior High in Glendale, Calif., and high school in Oxford, N.C. I spent my college years in Boone, NC and Greenville, NC., and worked for several years in Orlando.

**All about you:** I'm very fortunate to be happily married to my wife Laila. I have three wonderful daughters, a 4-year old (Noor) and twin 1-year olds (Mia and Sara). I met my wife while in the Peace Corps in Morocco, as she was my Arabic teacher. I'm certain I broke some Peace Corps rule in the process, but it has been worth it! I am a graduate of Appalachian State University (BSBA) and East Carolina University (MBA). I enjoy learning other cultures and their traditions. I like to travel (or at least arrive at my destination) and would like to travel a lot more in the future, both domestically and internationally.

**People would be surprised to know that I'm a** returned Peace Corps volunteer.

# IBBA Fall 2010 Conference

Registration is open for the Fall 2010 IBBA and M&A Source Conference in Las Vegas. Register by October 15th for the IBBA Conference for Professional Development this November and save.

The IBBA and M&A Source are offering a full schedule of courses, workshops and networking events at the upcoming meeting at the Rio Hotel and Casino this November 15th - 20th.

- Educational Courses will be offered on Nov. 15th, 16th, 17th and 18th
- The M&A Source Workshops will be all day on Wednesday, Nov. 17th
- The M&A Source Expo will run from 9 a.m. - 2 p.m. on Thursday, Nov.18th
- The IBBA Conference begins in the morning on Nov. 18th and ends the morning of the 20th
- Go to [www.ibba.org](http://www.ibba.org) to view a schedule of all events and to register

## FREE IBBA WEBINAR: SOCIAL MEDIA AND THE BUSINESS BROKER

The IBBA hosted its first Educational Webinar on September 21st at 11:00 a.m. Central Time (U.S.) The webinar discussed how Business Brokers can use social media networks in their overall marketing plans and other issues. Amy Jantzer, a Social Media Consultant from WeeDot, led the dicussion, which was recorded and posted in the Members Only section of the IBBA website.

## Code Corner

by Van Watkins, GABB Past President

We are living in the world of "**lowball offers**" at this time in our industry—this is, after all, "a Buyer's Market," right?? Like it or not, the waters are full of "bottom feeders" looking for the absolute lowest possible purchase price for a business or property. That's why it's all the more important to be diligent to see that **all** offers are submitted to our Sellers, regardless of the listing price, our personal opinion of the offer, or other relevant factors. An offer is an offer, and our obligation to Sellers demands that we leave all the options in **their** domain—not ours!

**From GABB Code of Ethics, Article Fifteen:** "*All bona fide offers will be submitted to the Seller. The decision to accept or to reject an offer remains with the Seller at all times.*"

# ★ ★ UPCOMING EVENTS ★ ★

GABB meetings are held on the last Tuesday of every month, except December  
 Future meetings will be held Oct 26 and Nov. 30

8:30 AM GABB Board Meeting  
 9:45 AM Networking/Breakfast  
 10:30 AM Membership Meeting  
 12:15 PM Committee Meetings



## New GABB Members

**Amy Kim**  
**First Intercontinental Bank**  
**5593 Buford Hwy.**  
**Doraville, GA 30340**  
**770-451-7200**

**Joy Manbeck, Private Bank of Buckhead**  
**Three Piedmont Center, Suite 210**  
**3565 Piedmont Road**  
**Atlanta, GA 30305**  
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**Chris Fonzi, Logic Environmental**  
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