
GABB Today

Volume 104 Issue 8 Newsletter of the GA Association of Business Brokers August 2004

from your President- *To Escrow or Not-That is the Question!*

It is opinion of this author that it is an advantage to the Broker to engage an "Escrow Attorney." An escrow attorney as referred to herein, drafts the transaction documents and represents the "deal" versus any party to the transaction. Let's briefly examine the advantages of a broker engaging an escrow attorney. They are as follows:

1. Escrow attorneys typically specialize in transaction law exclusively and generate documents indigenous to the transaction quickly, efficiently and in a cost effective manner.
2. The documents produced by the escrow attorney include but are not limited to: asset purchase agreements, non-compete agreements, employment and consulting contracts, earn outs and etc. These agreements are drafted in a manner that fairly reflects the positions of both parties as outlined in the Letter of Intent without bias. In a recent transaction involving a service company, the strategic buyer's attorneys drafted the agreements in such a biased and slanted manner that my client was forced to spend over \$50,000 in legal fees to unwind the onerous provisions. Needless to say, the transaction almost never happened.
3. Escrow attorneys keep the business broker involved until the transaction is closed. In a recent deal, I gave the buyers too much latitude in communicating with the Seller. The buyers proposed

that their attorney draft the closing documents and thereby save the Sellers one half of the costs of an escrow attorney. Throughout this process, I learned about problems late in the process and was even uncertain that my commission was accurately accounted for in the Closing Statement. My philosophy continues to encourage buyers and sellers to spend significant time together cultivating a "meaningful business relationship" and hopefully, a bond of mutual trust and respect. However, in the future, I intend to establish the ground rules immediately as to who will draft the transaction documents and that each party will assume 50% of the costs associated with employing an escrow attorney.

4. Today, everybody is concerned about cost. I truly believe that both buyers and sellers save as much as 60% on legal costs when engaging an escrow attorney to close the deal. And of course, who amongst our clients is not interested in saving money? Typically, the escrow attorney delivers the proposed documents to both parties for the review of their attorneys 10 days prior to close.

5. The escrow attorney compiles the Closing Statement which includes one small item for the Broker, their commission. Additionally, the Broker will typically see this statement before its dissemination to the buyer or seller.

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MEETING NOTICE: Tuesday, August 31, 2004, 10:30 AM

The DeKalb BOARD OF REALTORS
1414 Montreal Road, Tucker 30084-8140
770 410-7582 ❖ www.gabb.org

Speaker:

Tom McPeak, Ph.D.
"Integrity is Profitable!"

from your President
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6. Lastly and most importantly, in every transaction where I have engaged an escrow attorney, we have secured a signed "Release" from both buyers and sellers. Fellow GABB members please do not lose sight about the importance of this Release. Forevermore, both buyers and sellers release the broker from any litigation whatsoever related to this transaction and concur that your commission has been fully earned. Conversely, I have never had this Release signed in a transaction where the buyer or seller's attorney drafted the documents.

In summary, as your President and fellow Broker, I would highly recommend the engagement of an Escrow Attorney in each and every transaction if possible. Moreover, I would encourage you engage one of our competent affiliate members in this role as transaction attorney.

I look forward to seeing all of you at our next meeting on Tuesday, August 30th.

Pat Harkins



**Fall Education
Program**
Friday
October 1, 2004
8:00 AM to 5:00 PM

Course 111- *Business Brokering Marketing and Advertising*, taught by Jim Town, CBI.

Course 335- *Maximizing the Value of the Privately Held Company*, taught by Darrell V. Arne, CPA, CBA, CBI, ASA. (IBBA courses 210, 220, and 221 are prerequisites, or equivalent business valuation experience is necessary.)

\$150.00 for Course 111/ \$200.00 for Course 335

Make checks payable to GABB and mail them to:
Charles A. Jay, Education Chairman
Jay & Associates, LLC
P. O. Box 6635
Macon, GA 31208-6635

New/ Pending Members

New Members:

Tom McDeak
Prime Business Investments, Inc.
Tucker, Georgia
770-491-3710

Karen Brown & Kenneth Sebastian
Metrobrokers, EMAC
Roswell, Georgia
404-843-2500

Dat Jones
Dat Jones Business Brokers
Acworth, Georgia
678-665-3876

Pending New Affiliate & Active Members:

Michael Gregg
Moore & Cubbedge, LLP
Marietta, Georgia
770-422-0500

Bina Cline & Fatwant Singh
Metrobrokers, EMAC
Roswell, Georgia
404-843-2500

EDITORS NOTE

*"It was a lucky thing for all of us
when Alexander Graham Bell made
his first telephone call, that the line
was not busy!"*

*How's the telephone service
today at your office?*

Just some food for thought!

James Welch
Editor

Fall GABB Golf Tournament & BBQ

**ALL Member Event-
Golfers & Non Golfers
Join the Fun and Fellowship**

Date:

Wednesday, SEPTEMBER 15th

Time:

Golf -Arrive by 8:15am...Tee Time 9am sharp!
Barbeque-Arrive by 1:45pm..we eat at 2pm

Where:

Golf-Birch River Country Club
Barbeque-Hosted by Jeff Merry
at his new home just 5 minutes from the golf course
(directions to golf course and Jeff's house
will be handed out at the August monthly meeting)

PLEASE COMPLETE THIS FORM AND BRING IT TO THE AUGUST MEETING WITH YOUR CHECK MADE PAYABLE TO GABB.

I WILL ATTEND AND ENJOY THE FUN AS INDICATED BELOW:

MEMBER NAME _____

Yes Golf ___ Handicap _____ Yes BBQ ___

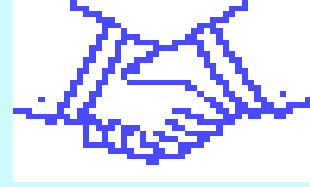
GUEST NAME _____

Yes Golf ___ Handicap _____ Yes BBQ ___

Costs per person: Golf..... \$55.00 (includes golf and cart)

BBQ....\$20.00 (includes food and adult beverages)

My check in the amount of \$ _____ is included.

MEET A MEMBER—*Up Close & Personal***Name: Charles A. Jay****Company: Jay & Associates, LLC****Position: Owner**

Charles Jay started Jay & Associates, LLC in 1984 after serving as president of a financial institution for 18 years. He has received four Georgia licenses allowing him to be diversified in investments, commercial real estate, insurance, income producing properties, partnerships, syndicates, providing venture capital, and business acquisitions. Charles joined GABB in 1992. He served as President in 1997 and has been the Education Chairman since 1994. Charles has also been active in the IBBA for approximately 12 years, taking 10 to 12 different courses and serving on several committees. Charles Jay holds the CBI designation along with being recognized as a Fellow of IBBA.

All about Charlie..

I suppose I would be considered by some as a community leader, for I have served in the capacity of president, chairman, or a member of the board of directors for over 35 different business, civic, and religious organizations throughout Central Georgia and the state. In addition, I have headed up numerous charitable fund-raising campaigns, such as the United Way, etc. and have served as chairman of many political campaigns; these would include positions like governor, senator, congressman, and local political offices. Today I am serving as Chairman of the Board of Deacons of Vineville Baptist Church, President of the Macon Rotary Club, and am active on several other boards, such as the Macon Cherry Blossom Festival.

Even though I am a graduate of Mercer, I have followed Georgia Tech athletics all of my life and have always been a season ticket holder. I enjoy all sports, both as a participant and a spectator and have participated in the Peachtree Road Race for the last 15 years, until this past year when I had a knee operation.

I have been married to Kerry Jay for 37 years and have two daughters, two son-in-laws, and three grandchildren, with all of the grandchildren looking exactly like me. Fortunately, they all live in Macon and they are very much a part of our family's daily lives.

I enjoy general business brokering, having sold a little bit of everything over the last 20 years. These sales include businesses such as chittlin' manufacturing plants, bootlegging establishments, and hotdog stands. Unfortunately, I turn down approximately 20% of the opportunities that come to me, due to the extensive due diligence I perform on every business I consider.

It's always nice to leave the country of Middle Georgia and hobnob with the rich and famous GABB members in Atlanta. You will notice that I seldom speak, but take many notes while being around the GABB members in order to learn all that I can.

Sincerely yours, Charlie

**Affiliate Spotlight: D. Scott Murray, P.C. Attorney at Law****1030 Powers Place Alpharetta, Georgia 30004****Phone (770) 754-1718/Fax (770) 754-6060****dscottmurraypc@msn.com****GABB Member since 2000**

Scott's law practice is transactional with an emphasis in business and corporate law. Specifically, this includes incorporations (corporations, limited liability companies, and professional corporations), contract preparation, and purchases and sales of businesses. For individual clients, Scott prepares last wills and testaments, durable powers of attorney, and living wills, and closes residential real estate transactions. He also enjoys handling uncontested adoptions and has handled stepparent, adult, private and state agency adoptions, as well as domestication of foreign adoptions.

For transactions involving sales of businesses, Scott has represented both buyers and sellers, as well as acted as a neutral closing attorney. He has experience in a wide variety of transactions, both asset and stock purchases. The businesses have been in retail and service industries, including sales of restaurants and sandwich shops, drycleaners, office supply stores, day-cares, health food stores, tree cutting and lawn treatment companies, as well as professional service businesses (such as dental, chiropractic, engineering, hair salon and appraisal practices). The sizes of the transactions have varied with purchase prices ranging from under \$100,000 to \$10 million.

Scott is currently an affiliate member of the Georgia Association of Business Brokers, and a member of the Georgia, Atlanta and Texas Bar Associations, the Rotary Club of North Fulton, the Greater North Fulton Chamber of Commerce, and Business Network International. He has been an adjunct professor of Business Law at Georgia State University, teaching Legal and Ethical Environment of Business and Advanced Business Law. Active with various legal periodicals, Scott has served on editorial boards of *South Texas Law Review*, *The Houston Lawyer* and the *Georgia Bar Journal*, on which he has served since 1993, including as its Editor-in-Chief. Scott has been married for 19 years and has two teenage children. He is an active member of Roswell United Methodist Church, currently serving on its Board of Trustees and Board of Stewards.

Scott has practiced law for 16 years, since graduating from South Texas College of Law, a private law school located in Houston, Texas. Prior to law school, he earned degrees in Accounting and Economics from the University of Alberta and worked in the areas of accounting and auditing for a large multinational accounting firm and an international manufacturing corporation. After law school, Scott worked for a mid-sized law firm in Houston that concentrated in the areas of business and banking law.

A suggestion for business brokers, particularly for those that represent buyers, is to pay careful attention to details. A release agreement to be signed by the parties at the closing to release the brokers is still suggested. Don't count on someone else, such as a lender, to do the due diligence. Be sure to review the title, UCC, tax and litigation records; review the seller's corporate minute book and financial records; and hire an inspector to examine the buildings and assets. If the business involves equipment or real estate leases, begin the process to transfer the leases early. Landlords can often delay a closing. If something appears questionable, get a satisfactory answer from the seller. If you don't already have one, prepare a due diligence checklist that can be adapted for each transaction. An escrow of part of the purchase price is sometimes suggested; however, this is often not a viable option. Another suggestion is to require the seller to finance a portion of the purchase price, with the right to offset against the premiums.

GABB TODAY

Georgia Association of Business Brokers
1414 Montreal Road
Tucker, Georgia 30084-8140

<p>President: <i>Patrick Harkins</i> 770-649-7666</p> <p>Vice President: <i>David Still, CBI</i> 770-962-8399</p> <p>Secretary: <i>Art Lennig</i> 678-852-6228</p> <p>Treasurer: <i>Greg DeFoor</i> 678-581-5966</p> <p>Directors: <i>Gloria Hall</i> 404-843-2500 <i>Henry Hicks, CBI</i> 770-569-8880 <i>John Soublis</i> 770-454-9630</p> <p>Past President: <i>Kathryne Pusch, CBC</i> 770-918-9390</p>	<p>COMMITTEES:</p> <p>Education: <i>Charles Jay, CBI, Chair</i> 478-477-6272</p> <p>BBMS: <i>Henry Hicks, Chair</i> 770-569-8880</p> <p>Forms: <i>Nick Nicholson, CBI, Chair</i> 404-874-6262</p> <p>Membership: <i>Gloria Hall, CBI</i> 404-843-2500</p> <p>New Member Orientation: <i>Jeff Merry</i> 770-534-6630 <i>Hank Tanner</i> 770-534-5868</p> <p>Monthly Speakers: <i>David Still</i> 770-962-8399</p>	<p>GABBMLS: <i>Ken Stebbins</i> <i>Ariel Gonzalez</i> for info contact Henry Hicks</p> <p>GABB TODAY Newsletter: <i>James Welch, Editor</i> 404-843-2500 <i>james.welch@metrobrokers.com</i></p> <p><i>Kristy Farrell, Production</i> 770-760-7595 <i>farre11s@yahoo.com</i></p> <p>Articles Due by the 5th Listings, Information, Members, and GABB Newsletter On-Line</p> <p>GABB Website: www.gabb.org</p>
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